


STATE OF ALABAMA

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COUNTY OF SHELBY

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20080501000179710 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:45PM FILED/CERT

ASSIGNMENT OF RENTS AND LEASES

KNOW ALL MEN BY THESE PRESENTS: That as of May 1, 2008, the undersigned, **DANIEL SENIOR LIVING OF INVERNESS I, LLC**, an Alabama limited liability company (hereinafter called "Borrower"), in consideration of the sum of One Dollar (\$1.00) and other valuable consideration in hand paid to Borrower by **THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA**, a body corporate of the State of Alabama (the "TRS") and **THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA**, a body corporate of the State of Alabama (the "ERS") (the TRS and the ERS are sometimes herein referred to individually as a "Lender" and collectively as the "Lenders"), the receipt of which is hereby acknowledged, does hereby sell, assign, transfer, and set over unto Lenders, their successors and assigns, all of the Borrower's right, title and interest in and to (i) all leases and occupancy agreements presently existing or hereafter made, whether written or verbal, or any agreement for the letting of, or agreement for the use or occupancy of, any part of the real estate described in Exhibit A attached hereto (hereinafter referred to as the "Property") (the foregoing leases, occupancy agreements and agreements are collectively referred to herein as the "Leases"); (ii) any and all guaranties of payment of the Leases; (iii) the rents, issues, and profits and any other payment made by any and all lessees under the Leases, now due and which may hereafter become due pursuant to any of the Leases; (iv) any and all moneys, awards, or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages which may hereafter become due pursuant to any of the Leases; and (v) all rights, powers, privileges, options, and other benefits of the Borrower under any of the Leases.

This Assignment is made as additional security for (i) the payment of indebtedness due by Borrower to Lenders in the principal amount of Fifty Six Million and No/100 Dollars (\$56,000,000), with interest thereon, as evidenced by those certain Promissory Notes (the "Notes") executed and delivered by Borrower to Lenders on the date hereof, (ii) the full and faithful performance by Borrower of all the terms and conditions of a certain Mortgage and Security Agreement of even date herewith (the "Mortgage") executed and delivered by Borrower to Lenders on the Property to secure the payment of the Notes, (iii) the full and faithful performance by Borrower of all the terms and conditions of that certain Loan Agreement between Borrower and Lenders dated of even date herewith (the "Loan Agreement"), and (iv) the due and timely payment and the full and faithful performance, as the case may be, of all Loan Obligations of Borrower now or hereafter owing to Lenders pursuant to the Loan Agreement. *Each capitalized term used herein without definition shall have the meaning assigned thereto in the Loan Agreement.*

Borrower agrees duly to operate and maintain the Property and perform all requisites on its part to keep any and all Leases on the Property in full force and effect.

Borrower agrees that this Assignment shall cover all future leases, whether written or verbal, or any agreement for the letting of, or any agreement for the use or occupancy of, any part of the Property.

Borrower further agrees that it will not (i) assign the rent or any part of the rent of the Property to any party other than Lenders, (ii) collect rents in advance for periods in excess of thirty (30) days; nor (iii) do any other act whereby the lien of the Mortgage may, in the opinion of the Lenders, be impaired in value or quality.

Borrower agrees that it has not and will not enter into any fictitious Lease or any Lease for the purpose of avoiding creditors and any attempt to do so will be void. Borrower represents and warrants that the Leases presently in effect are, and all Leases hereafter entered into will be, arms-length leases for a rental rate, which, in Borrower's best judgment, represents a fair market rental.

Borrower further agrees that this Assignment is to remain in full force and effect so long as the Notes and the other Loan Obligations remain unpaid and that it may be enforced by Lenders, their successors and assigns, or any other holder of the Notes.

Although it is the intention of the parties that this instrument be a present assignment, it is expressly understood and agreed by Borrower and Lenders that the Borrower is entitled to collect the rents, income, and profits upon, but not prior to, their accrual under the Leases, and to retain, use, and enjoy the same unless and until the occurrence of an Event of Default pursuant to the Loan Agreement, the Notes, or the Mortgage or until the violation of any term, condition, or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder.

Borrower hereby authorizes and empowers Lenders, their successors and assigns, to collect, upon demand, after any Event of Default hereunder, 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 agreement for the 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. Borrower hereby authorizes and directs the lessees under the Leases to pay to Lenders all rents and other sums as the same become due, upon notice from Lenders that an Event of Default has occurred hereunder. Any lessee making such payment to Lenders shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lenders.

Any amount received or collected by Lenders, their successors or assigns, by virtue of this Assignment shall be applied for the following purposes, but not necessarily in the order named, the priority and application of such funds being within the sole discretion of the Lenders:

- (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 policies related to the Property;
- (4) to the payment of installments of interest and/or principal and interest on the Notes as and when they become due and payable pursuant to the terms of said Notes;
- (5) to the payment of any other Loan Obligations and other sums due to Lenders, including those due under the Mortgage, the Loan Agreement, and the other Loan Documents; and
- (6) the balance remaining after payment of the above shall be paid to the then owner of record of the Property.

Borrower hereby agrees to indemnify Lenders for, and to save them harmless from, any and all liability, loss, or damage that Lenders might incur under the Leases or by virtue of this Assignment and the enforcement of their remedies hereunder, and from any and all claims and demands whatsoever that

may be asserted against Lenders thereunder or hereunder. Without limiting the generality of the foregoing, Borrower covenants that this Assignment, prior to any such Event of Default by the Borrower and entry upon the Property by the Lenders by reason thereof, shall not operate to place upon Lenders (i) the responsibility for the control, care, management, or repair of the Property; (ii) the obligation as landlord under the terms and conditions of the Leases; (iii) the responsibility or liability for any waste committed on the Property by the tenants or any other party; or (iv) the responsibility or liability 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.

The terms "Note," "Mortgage," and "Loan Agreement" shall refer to such instruments as they may hereafter be amended by Borrower and Lenders.

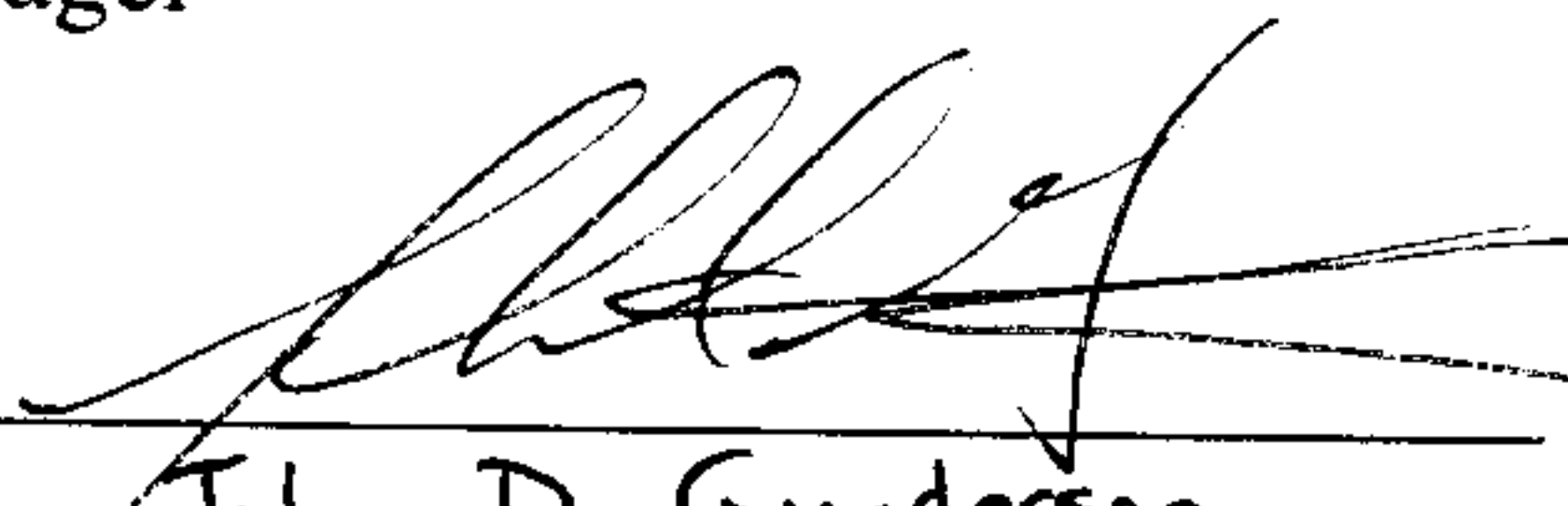
BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATED TO THE LOANS, OR (II) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDERS AND BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR THE LOANS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER, OR THE CONDUCT OF THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDERS MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDERS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, Borrower has caused these presents to be properly executed under its seal, as of the day and year first above written.

BORROWER:

DANIEL SENIOR LIVING OF INVERNESS I, LLC,
an Alabama limited liability company

By: Daniel Management Corporation,
an Alabama corporation,
Its Manager

By: 
Name: John D. Gunderson
Title: Sr. Vice President



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STATE OF ALABAMA

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COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John D. Gunderson, whose name as Sr. Vice President of Daniel Management Corporation, an Alabama corporation, whose name as Manager of Daniel Senior Living of Inverness I, LLC, 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation and limited liability company, on the day the same bears date.

Given under my hand and seal this 1st day of ^{May}~~April~~, 2008.

Robin D. Key
Notary Public

My commission expires: _____

MY COMMISSION EXPIRES FEBRUARY 15, 2009


NOTARY SEAL

EXHIBIT A



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Legal Description


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Parcel 1:

Lot 1, according to the Final Plat of Danberry Village, as recorded in Map Book 39, Page 139, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel 2:

A tract of land situated in the South 1/2 of the Southwest 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a found 1 inch crimp iron, being the Northeast Corner of the SE 1/4 of the SW 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run in a Southerly direction along the East line of said 1/4 - 1/4 Section a distance of 237.22 feet to a point; thence 90°00'00" to the right in a Westerly direction a distance of 1260.66 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003), being the Point of Beginning of the parcel herein described, said point being a P.O.C. (Point on Curve) of a curve to the right having a radius 225.00 feet and a central angle of 7°24'19"; thence 84°13'39" to the left (angle measured to tangent) in a Southerly direction along the arc of said curve a distance of 29.08 feet to the P.T. (Point of Tangent), being a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence tangent to said curve in a Southerly direction a distance of 107.11 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003), being the P.C. (Point of Curve) of a curve to the left having a radius of 1255.00 feet and a central angle of 0°04'50"; thence in a Southerly direction along the arc of said curve a distance of 1.76 feet to a P.O.C. (Point on Curve), being a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 90°04'50" to the right (angle measured from tangent) in a Westerly direction a distance of 125.06 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 90°00'00" to the right in a Northerly direction a distance of 116.87 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 90°00'00" to the right in a Easterly direction a distance of 60.30 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 39°11'11" to the left in a Northeasterly direction a distance of 33.24 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 39°11'11" to the right in a Easterly direction a distance of 37.12 feet to the Point of Beginning.

Along with the Beneficial Rights to the Easement Agreement, by and between Daniel Senior Living of Inverness II, LLC, and Daniel Senior Living of Inverness I, LLC, dated May 1, 2008, to be recorded in the Probate Office.

NOTE: Instrument to be properly executed and recorded in the Probate Office, before closing.