

BOOK

81 PAGE 463

BOOK

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This instrument prepared by and
after recording should be returned to:
Buchanan Ingersoll Professional Corporation
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219-1410
Attention: Erin M. Fagnilli, Esquire
Phone: 412-562-8930

STATE MS. DEPOSIT CO.
FILED
JUN 15 11 13 AM '99

STATE MS. DEPOSIT CO.
FILED
MAR 3 10 56 AM '99

BK 81 PG 463
W.E. DAVIS CH. CLK.

BK 80 PG 397
W.E. DAVIS CH. CLK.

ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "Assignment") is made as of the 17th day of February, 1999, by VALUE ENHANCEMENT FUND II, L.L.C, a Georgia limited liability company (hereinafter the "Assignor"), to PNC BANK, NATIONAL ASSOCIATION, ("Assignee"), a national banking association, as Agent pursuant to that certain Credit Agreement among the Assignor, Assignee and the Banks party thereto dated December 12, 1996 (the "Credit Agreement"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement;

FOR VALUE RECEIVED, and intending to be legally bound, Assignor hereby grants, sells, assigns, transfers, sets over and delivers unto Assignee all right, title and interest of Assignor in and to all Leases (as hereinafter defined) covering all or any part of those certain premises described in Exhibit A attached hereto and made a part hereof, or covering all or any part of the improvements now or hereafter located thereon (hereinafter collectively called the "Premises"), together with all the Rents (hereinafter defined) due and to become due to Assignor, and together with all rights of Assignor to amend, modify, terminate, extend or renew the Leases or to waive the Rents or the terms of the Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, for the purpose of securing the performance and discharge by Assignor of the obligations (as hereinafter defined).

Assignor hereby covenants, promises and agrees as follows:

1. As used in this Assignment, the following terms shall have the meanings indicated, unless the context otherwise requires:

(a) "Leases" shall mean the following agreements to which Assignor is a party as lessor, sublessor or owner: (i) all present and future leases and subleases covering all or any portion of the Premises, (ii) all agreements for use or occupancy of any portion of the Premises, (iii) all modifications, supplements, extensions and renewals of any such Lease and any and all further Leases (including rights in respect of lessees and sublessees holding over and tenancies following attornment) of all or any part of the Premises, and (iv) any and all guaranties of the performance of any lessee or sublessee under any Lease.

After Recording, Return To:
Holcomb Dunbar, P.A.
P.O. Box 190
Southaven, MS 38671
601.349.0664

(b) "Obligations" shall mean (i) the prompt and punctual payment of all principal and interest and other sums coming due under the Notes and (ii) the prompt and punctual payment and performance of all obligations, liabilities, covenants and sums now or hereafter to be paid or performed by Assignor under that certain Deed of Trust and Security Agreement and Fixture Filing (the "Mortgage") and the other Loan Documents.

(c) "Rents" shall include all of the rents, income, receipts, revenues, security deposits, issues and profits now due or which may hereafter become due under any Lease and all other rents, income, receipts, revenues, issues and profits now due or which may hereafter become due with respect to the Premises, or any part thereof, or the use, occupancy or operation of the same; and the proceeds of all such Rents, both cash and noncash, including, but not limited to, any minimum rents, additional rents, percentage rents, parking, maintenance, insurance and tax contributions, any damages following default by a lessee or sublessee under any Lease, any penalties or premiums payable by tenant under any Lease and the proceeds of any policy of insurance covering loss of rents resulting from destruction or damage to any portion of the Premises.

2. The parties intend that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Assignee the right to collect the Rents and to apply them in payment of the principal and interest and all other sums payable on the Obligations. However, Assignee hereby grants to Assignor a license, subject to the provisions set forth below, to collect the Rents as they become due for its own account so long as no Event of Default exists. Nothing contained herein nor any collection of Rents by Assignee or by a receiver shall be construed to make Assignee a "mortgagee-in-possession" of the Premises so long as Assignee has not itself entered into actual possession of the Premises.

3. Upon the occurrence and during the continuance of an Event of Default, this Assignment shall constitute an irrevocable direction to and full authority to each lessee and sublessee under any Leases to pay all Rents to Assignee without proof of the default relied upon. Assignor hereby irrevocably authorizes each lessee, sublessee, guarantor, person and entity to rely upon and comply with any notice or demand by Assignee for the payment to Assignee of any Rents due or to become due.

4. Assignor warrants as to each Lease that:

(a) to the knowledge of Assignor, the terms of each Lease have been fully disclosed to and approved by Assignee, and each Lease is in full force and effect;

(b) no Lease or any interest therein has been previously assigned or pledged by Assignor;

(c) to the knowledge of Assignor, no lessee or sublessee under any Lease has any defense, setoff or counterclaim against Assignor; and

(d) no Rents have been collected more than one (1) month in advance (except for up to two monthly installments of Rent that may be paid upon the entering of a new Lease).

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FOR VALUE RECEIVED, and intending to be legally bound, Assignor hereby grants, sells, assigns, transfers, sets over and delivers unto Assignee all right, title and interest of Assignor in and to all Leases (as hereinafter defined) covering all or any part of those certain premises described in Exhibit A attached hereto and made a part hereof, or covering all or any part of the improvements now or hereafter located thereon (hereinafter collectively called the "Premises"), together with all the Rents (hereinafter defined) due and to become due to Assignor, and together with all rights of Assignor to amend, modify, terminate, extend or renew the Leases or to waive the Rents or the terms of the Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, for the purpose of securing the performance and discharge by Assignor of the obligations (as hereinafter defined).

Assignor hereby covenants, promises and agrees as follows:

1. As used in this Assignment, the following terms shall have the meanings indicated, unless the context otherwise requires:

(a) "Leases" shall mean the following agreements to which Assignor is a party as lessor, sublessor or owner: (i) all present and future leases and subleases covering all or any portion of the Premises, (ii) all agreements for use or occupancy of any portion of the Premises, (iii) all modifications, supplements, extensions and renewals of any such Lease and any and all further Leases (including rights in respect of lessees and sublessees holding over and tenancies following attornment) of all or any part of the Premises, and (iv) any and all guaranties of the performance of any lessee or sublessee under any Lease.

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(b) "Obligations" shall mean (i) the prompt and punctual payment of all principal and interest and other sums coming due under the Notes and (ii) the prompt and punctual payment and performance of all obligations, liabilities, covenants and sums now or hereafter to be paid or performed by Assignor under that certain Deed of Trust and Security Agreement and Fixture Filing (the "Mortgage") and the other Loan Documents.

(c) "Rents" shall include all of the rents, income, receipts, revenues, security deposits, issues and profits now due or which may hereafter become due under any Lease and all other rents, income, receipts, revenues, issues and profits now due or which may hereafter become due with respect to the Premises, or any part thereof, or the use, occupancy or operation of the same; and the proceeds of all such Rents, both cash and noncash, including, but not limited to, any minimum rents, additional rents, percentage rents, parking, maintenance, insurance and tax contributions, any damages following default by a lessee or sublessee under any Lease, any penalties or premiums payable by tenant under any Lease and the proceeds of any policy of insurance covering loss of rents resulting from destruction or damage to any portion of the Premises.

2. The parties intend that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Assignee the right to collect the Rents and to apply them in payment of the principal and interest and all other sums payable on the Obligations. However, Assignee hereby grants to Assignor a license, subject to the provisions set forth below, to collect the Rents as they become due for its own account so long as no Event of Default exists. Nothing contained herein nor any collection of Rents by Assignee or by a receiver shall be construed to make Assignee a "mortgagee-in-possession" of the Premises so long as Assignee has not itself entered into actual possession of the Premises.

3. Upon the occurrence and during the continuance of an Event of Default, this Assignment shall constitute an irrevocable direction to and full authority to each lessee and sublessee under any Leases to pay all Rents to Assignee without proof of the default relied upon. Assignor hereby irrevocably authorizes each lessee, sublessee, guarantor, person and entity to rely upon and comply with any notice or demand by Assignee for the payment to Assignee of any Rents due or to become due.

4. Assignor warrants as to each Lease that:

(a) to the knowledge of Assignor, the terms of each Lease have been fully disclosed to and approved by Assignee, and each Lease is in full force and effect;

(b) no Lease or any interest therein has been previously assigned or pledged by Assignor;

(c) to the knowledge of Assignor, no lessee or sublessee under any Lease has any defense, setoff or counterclaim against Assignor; and

(d) no Rents have been collected more than one (1) month in advance (except for up to two monthly installments of Rent that may be paid upon the entering of a new Lease).

All the foregoing warranties shall be deemed to be continuously reaffirmed until all Obligations shall have been paid in full, or the earlier release of the Premises from the Collateral Pool pursuant to the Credit Agreement or transfer of the Premises to Assignee or any Bank or any of its or their Affiliates by foreclosure sale or deed in lieu of foreclosure pursuant to the Mortgage.

5. Assignor agrees with respect to each Lease:

(a) If the Lease provides for a security deposit paid by the lessee or sublessee, this Assignment transfers to Assignee, to the extent permitted by law, all of Assignor's right, title and interest in and to the security deposit, provided that Assignor shall have the right to retain said security deposit so long as no Event of Default exists under the Loan Documents and provided further that Assignee shall have no obligation to the lessee or sublessee with respect to such security deposit, unless and until Assignee comes into actual possession and control of said deposit.

(b) Assignor shall not collect any Rents more than one (1) month in advance (except for up to two monthly installments of Rent that may be paid upon the entering of a new Lease).

(c) Assignor shall not discount any future accruing Rents.

(d) Assignor shall not execute any further pledge or assignment of its interest in any of the Leases or Rents or suffer or permit any such assignment to occur by operation of law.

(e) Assignor shall faithfully perform and discharge all material obligations of the lessor under the Leases and shall give prompt written notice to Assignee of any notice of Assignor's material default received from any lessee or sublessee or any other person and furnish Assignee with a complete copy of said notice. Assignor shall (or shall cause its insurer, if insurance is applicable, to) appear in and defend, at no cost to Assignee, any action or proceeding arising under or in any manner connected with any Lease in which Assignor is named as a party.

(f) Upon entering into a new Lease and upon becoming landlord by assignment thereof, if applicable, Assignor shall within thirty (30) days thereafter provide to Assignee a true and correct copy of each executed Lease.

(g) Assignor shall, within thirty (30) days after request by Assignee, use diligent efforts to deliver to Assignee duly executed estoppel certificates in accordance with the Mortgage between Assignor and Assignee made pursuant to the terms of the Credit Agreement.

(h) Nothing contained herein shall be construed to impose any liability or obligation arising prior to the date of a foreclosure sale or deed in lieu of foreclosure or of Assignee otherwise becoming the lessor or sublessor under any Lease of Assignee under or with respect to such Lease. Assignor shall indemnify and hold Assignee harmless from and against any and all liabilities, losses, damages, cost and expense which Assignee may incur under any

Lease or by reason of this Assignment, and from and against any and all claims and demands whatsoever which may be asserted against Assignee by any tenants or other third parties (other than the Banks and participants) by reason of any alleged obligations to be performed or discharged by Assignee under any Lease or this Assignment prior to such date, except if due to the Assignee's gross negligence or willful misconduct. Should Assignee incur any such liability, loss, damage, cost or expense under or by reason of any Lease or under or by reason of this Assignment, Assignor shall within ten (10) Business Days after demand reimburse Assignee for the amount thereof together with all reasonable costs, expenses and attorneys' fees incurred by Assignee, and if not paid within such 10 Business Days, the foregoing sums shall bear interest from the date of demand until paid at the default rate set forth in the Credit Agreement. Any Rents collected by Assignee may be applied by Assignee, in its discretion, in satisfaction of any such liability, loss, damage, cost or expense. Assignee, on behalf of the Banks, shall, upon its discovery of such claims or demands which Assignee reasonably believes may lead to an indemnification obligation of Assignor hereunder, promptly give notice to Assignor of such claim or demand, which notice shall set forth such claim or demand in reasonable detail. Assignor shall have the right to defend and settle any claim made by tenants or other third parties (other than Banks and participants) relating to a possible indemnification obligation to Assignee or any of the Banks under this Assignment.

6. Assignor hereby grants to Assignee the following rights:

(a) If an Event of Default has occurred and is continuing, Assignee may elect by notice to Assignor to be the creditor of each lessee or sublessee, as the case may be, in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee. If Assignee makes such election, Assignee shall file timely claims in such proceedings or otherwise pursue creditors' rights therein; provided, however, that Assignee shall notify Assignor if it decides not to file such claim or otherwise pursue such rights and thereupon Assignor shall have such rights.

(b) Assignee shall have the right to assign Assignee's right, title and interest in the Leases to any subsequent holder of the Mortgage or any replacement or renewal thereof or any participating interest therein as permitted under the Credit Agreement or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any such subsequent assignee shall have all the rights and powers herein provided to Assignee.

(c) Assignee shall have the right (but not the obligation), upon any failure of Assignor to perform any of its agreements hereunder, and continuance of such failure for ten (10) Business Days after notice from Assignee (except if Assignee determines in good faith that its rights hereunder are in risk of imminent impairment, in which case notice may be given immediately prior to the time Assignee acts and no grace period shall be required by Assignee to act), to take any action as Assignee may deem necessary or appropriate to protect its security, including, but not limited to, appearing in any action or proceeding and performing any obligations of the lessor under any Lease, and Assignor agrees to pay, within ten (10) Business Days of demand, all costs and expenses and reasonable attorneys' fees incurred by Assignee in

connection therewith (subject to the provisions of Section 16 hereof). The foregoing sums not paid within ten (10) Business Days of demand shall bear interest from the date of demand until paid at the default rate set forth in the Credit Agreement.

(d) Upon the occurrence and during the continuance of an Event of Default and upon notice to Assignor, Assignee shall have the following rights (none of which shall be construed to be obligations of Assignee):

(i) Assignee shall have the right to apply any of the Rents to pay installments due for personal property rented or purchased on credit, insurance premiums on personal property or other charges relating to personal property on the Premises; provided, however, that this Assignment shall not make Assignee responsible for the control, care, management or repair of the Premises or any personal property or for the carrying out of any of the terms or provisions of the Leases;

(ii) Assignee shall have the right to apply the Rents and any sums recovered by Assignee pursuant hereto to outstanding Obligations and to all other charges for taxes, insurance, improvements, maintenance and other items relating to the Premises, all in such order as Assignee shall, in its discretion, determine and whether or not the same be then due;

(iii) Assignee shall have the right to execute new Leases;

(iv) Assignee shall have the right to cancel or alter any existing Leases;

(v) Assignee shall have the authority, as Assignor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Assignor and to bind Assignor on all papers and documents relating to the operation, leasing and maintenance of the Premises.

All of the foregoing rights and remedies of Assignee are cumulative, and Assignee shall also have, upon the occurrence and during the continuation of any such Event of Default, all other rights and remedies provided under the other Loan Documents or otherwise available at law or in equity or by statute.

7. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Mortgage or in any other document executed in connection with this transaction. Failure of the Assignee to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

8. Assignee may take or release other security, may release any party primarily or secondarily liable for any Obligations secured hereby, may grant extensions, renewals or indulgences with respect to such Obligations, may amend, modify or cancel all or any of the terms of the Obligations, and may apply any other security therefor held by Assignee to the

satisfaction of such Obligations without prejudice to any of Assignee's rights hereunder or under the other Loan Documents. The rights of Assignee to collect the Obligations and to enforce any other security therefor held by Assignee may be exercised by Assignee either prior to, simultaneously with or subsequent to any action by Assignee hereunder. The failure of Assignee to avail itself of any of the terms, covenants and conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment or any of the terms, covenants or conditions hereof at any time or times that Assignee shall deem fit.

9. Any change, amendment, modification, abridgment, cancellation or discharge of this Assignment or any term or provision hereof not permitted hereby shall be invalid unless in a writing signed by Assignee and Assignor.

10. Upon payment to Assignee of the full amount of all Obligations or, provided no Event of Default exists, the release of the Premises from the Collateral Pool pursuant to the Credit Agreement or upon the release of the Mortgage, this Assignment shall be void and of no further effect, except that Paragraph 5(h) and all covenants and agreements of Assignor contained herein relating to indemnification of the Assignee shall survive such payment or release, and Assignee shall execute and deliver to Assignor in recordable form all necessary documents for the removal of this Assignment from the public record.

11. The terms and conditions of this Assignment shall be binding upon Assignor, its successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns.

12. Notices required or permitted to be given hereunder and all other communications hereunder shall be in writing and shall be sent or delivered, and shall be deemed to have been given in accordance with the terms of Credit Agreement.

13. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

14. This Assignment shall be governed by and construed in accordance with the laws of the jurisdiction in which the Premises are located.

15. Any representations given in this Assignment "to the knowledge of Assignor" or any other phrase having a similar import used in this Assignment shall mean the actual knowledge of the senior portfolio managers and senior asset managers who are making investment decisions for the Fund whether they are employed by Lend Lease Real Estate Investments, Inc. or otherwise.

16. Wherever in this Assignment the Assignor is obligated to pay or indemnify the Assignor or the Banks for costs and expenses of legal counsel, such payment and indemnification shall be subject to the terms of Sections 9.5 and 10.3 of the Credit Agreement as such Sections relate to Assignor's obligations to Assignee and the Banks for the payment of such fees and expenses.

17. In the event of any inconsistency or conflict between the terms and provisions of this Assignment and the terms and provisions of the Credit Agreement, the terms and provisions of the Credit Agreement shall prevail.

18. This Assignment may be executed by different parties hereto on any number of separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE 1 OF 1 TO ASSIGNMENT OF LEASES AND RENTS]

IN WITNESS WHEREOF, Assignor has caused this Assignment of Leases and Rents to be duly executed the day and year first above written.

WITNESS/ATTEST:

ASSIGNOR:

VALUE ENHANCEMENT FUND II, LLC, a Georgia limited liability company

By: Lend Lease Real Estate Investments, Inc. (f/k/a Equitable Real Estate Investment Management, Inc.), its Manager

Krista Ayers
Title: _____

By: [Signature]
Title: the president

STATE OF Georgia)
)
) ss.:
COUNTY OF Fulton)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 17th day of February 1999, within my jurisdiction, the within named B. Stanton Brewer who acknowledged that (he) (she) is Vice President of Lend Lease Real Estate Investments, Inc. (f/k/a Equitable Real Estate Investment Management, Inc.), a Delaware _____ corporation acting in its capacity as Manager of Value Enhancement Fund II, LLC, a Georgia limited liability company, and that for and on behalf of and as the act and deed of said corporation and as its act and deed as such Manager acting for and on behalf of said limited liability company, and for and on behalf of and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument in the capacities stated after first having been duly authorized by said corporation and by said limited liability company so to do.

Barbara Brown
Notary Public



EXHIBIT A**Legal Description**

All of Lot 1, Southaven Commons, according to the final plat thereof dated February 1998, filed on March 25, 1998, in the office of the Chancery Clerk, at Plat Book 61, Page 6, being more particularly described by metes and bounds as follows:

13.34 acres, more or less, located in the Northeast quarter of the Northeast quarter of Section 31, Township 1 South, Range 7 West, Southaven, DeSoto County, Mississippi, being more particularly described as follows:

Beginning at the accepted Northeast corner of Section 31, Township 1 South, Range 7 West; thence South 00 degrees 15 minutes 35 seconds East, 245.07 feet with the centerline of Swinnea Road to a point; thence North 89 degrees 00 minutes 24 seconds West, 53.00 feet to an iron pin (found), said point being the true point of beginning for the herein described tract; thence South 00 degrees 15 minutes 35 seconds East, 525.95 feet to an iron pin (found); thence North 88 degrees 59 minutes 57 seconds West, 637.35 feet with the Northerly line of Southern Pines (PB 21, Pg. 43-46) to an iron pin (found); thence South 08 degrees 35 minutes 05 seconds West, 52.15 feet to an iron pin (found); thence South 03 degrees 30 minutes 50 seconds West, 57.04 feet to an iron pin (found); thence South 89 degrees 37 minutes 40 seconds West, 159.95 feet to an iron pin (found); thence South 00 degrees 26 minutes 25 seconds East, 31.69 feet to a pk nail (found) in the centerline of Southern Pines Drive; thence South 89 degrees 37 minutes 45 seconds West, 221.29 feet along the North line of Southern Pines Subdivision to an iron pin (found) in the East line of Lot 2, Southaven Commons Subdivision; thence North 00 degrees 05 minutes 15 seconds West, 75.95 feet with the East line of Lot 2, Southaven Commons Subdivision to an iron pin (found); thence North 89 degrees 54 minutes 45 seconds East, 126.83 feet to an iron pin (found); thence North 00 degrees 05 minutes 15 seconds West, 147.83 feet to a p.k. nail (found); thence South 89 degrees 05 minutes 13 seconds East, 6.72 feet to a p.k. nail (found); thence North 00 degrees 54 minutes 47 seconds East, 638.98 feet to an iron pin (found)

in the South right-of-way of Goodman Road (Mississippi Highway No. 302); thence along the South right-of-way of said road South 89 degrees 00 minutes 00 seconds East, 407.78 feet to an iron pin (found); thence South 01 degrees 00 minutes 00 seconds West, 217.99 feet along the West line of Lot 4, Southaven Commons Subdivision to an iron pin (found); thence South 89 degrees 00 minutes 00 seconds East, 269.33 feet along the South line of Lot 4 to an iron pin (found); thence North 00 degrees 59 minutes 36 seconds East, 28.13 feet along the East line of Lot 4 to an iron pin (found); thence South 89 degrees 00 minutes 24 seconds East, 10.00 feet to an iron pin (found) in the East line of Lot 4; thence South 89 degrees 00 minutes 24 seconds East, 200.08 feet to the true point of beginning containing 13.34, more or less, acres of land.