

## ASSIGNMENT OF RENTS, LEASES AND OTHER BENEFITS

THIS ASSIGNMENT OF RENTS, LEASES AND OTHER BENEFITS ("Assignment"), made as of September 1, 1994, by Cole and Eddleman Development Company, an Alabama general partnership, whose address is 1100 East Park Drive, Suite 400, Birmingham, Alabama 35235, (hereinafter called "Assignor"), in favor of AmSouth Bank of Alabama, an Alabama banking corporation (hereinafter called "Assignee"),

### WITNESSETH:

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely and irrevocably bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of the Assignor in, to and under leases and lease guaranties with respect to all or any portion of the "Premises" (hereinafter defined) including without limitation those described on Exhibit A attached hereto and made a part hereof together with any and all future leases and lease guaranties hereinafter entered into by Assignor relating to the buildings and/or improvements located on the land, and/or with respect to the land, described in Exhibit B attached hereto and made a part hereof (collectively, the "Premises"), and all amendments, extensions and renewals of said leases and lease guaranties and any of them, all of which are hereinafter called the "Leases"; and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them; and all income, profits, revenues, royalties, bonuses, accounts, equitable and contract rights, general intangibles and benefits in any way pertaining to or on account of the use of the Premises.

Assignor warrants, covenants and agrees with Assignee as follows:

1.1 Assignor is the sole owner of the entire lessor's interest in the Leases, and has not executed any other assignment of any of the Leases or the rents, income, profits, and benefits accruing from the Premises, and has not done and shall not do anything which might prevent Assignee from fully exercising its rights under this Assignment.

1.2 The Leases are valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, or renewed, nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Assignee or in a manner consistent with good business practices.

1.3 No Leases have been or will be entered into except for actual occupancy of the Premises by the lessees thereunder.

1.4 There are no defaults now existing under any of the Leases and to the best of Assignor's knowledge there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases (except as set forth on the attached Exhibit C); and Assignor will fulfill or perform each and every condition and covenant

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of each of the Leases by lessor to be fulfilled or performed; and Assignor shall, at the sole cost and expense of Assignor, take such action with respect to the enforcement of the obligations of the lessee(s) in the performance of the covenant and conditions of such Leases, as is consistent with good business practice.

1.5 Assignor has not collected or accepted payment of rent under any of the Leases more than one month in advance.

1.6 Assignor shall not, without the prior written consent of Assignee: (i) execute any other assignment of the rents, income, profits and benefits accruing from the Premises; (ii) accept prepayments more than 30 days prior to the due date of any installments of rents to become due and payable under any Leases or tenancies; (iii) accept any security deposit equal to more than two (2) months' rent; or (iv) cause or permit any Leases or tenancies to be subordinated to any lien on the Premises, except the lien of the Mortgage referenced below.

1.7 Assignor shall and does hereby assign and transfer to Assignee any and all subsequent leases and lease guaranties upon all or any part of the Premises and shall execute and deliver at the request of Assignee a tenant estoppel certificate and/or subordination and attornment agreement in form and substance acceptable to Assignee for each subsequent lease, together with all further assurances and assignments as Assignee shall from time to time require or deem necessary.

1.8 Each of the Leases shall remain in full force and effect irrespective of any merger of the interests of the lessor and lessee under any of the Leases.

1.9 Assignor shall furnish to Assignee, within thirty (30) days after a request by Assignee to do so, a written statement containing the names of all lessees or occupants of the Premises, the terms of their respective Leases or tenancies, the spaces occupied and the rentals paid. If any of such Leases provide for the giving by the lessee of certificates with respect to the status of such Leases, Assignor shall exercise its right to request such certificates within five (5) days of any demand therefor by Assignee.

1.10 Assignor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under or in any manner related to any of the Leases.

The parties further agree as follows:

2.1 This Assignment is absolute and effective immediately. Notwithstanding the foregoing, Assignor shall have a license to receive, collect and enjoy the rents, income, profits and benefits accruing from the Premises until a default has occurred under the terms and conditions of a certain Note of even date herewith (the "Note") in the principal sum of Two Million Ninety-Four Thousand Four Hundred Forty-Seven and No/100 Dollars (\$2,094,447.00) given by Assignor to Assignee or an Event of Default has occurred under that certain Mortgage and Security Agreement securing such Note and also of even date herewith and upon the Premises (herein called the "Mortgage"); and upon such default such license shall cease automatically, without need of notice, possession, foreclosure, or any other act or procedure, and all rents, income, profits and benefits assigned hereby shall thereafter be payable directly

to Assignee and Assignor shall immediately deliver to Assignee all rents, security deposits and other payments received from tenants on account of such Leases and shall notify each tenant that all rents and all other payments due under such Leases shall be paid directly to Assignee or its designee; except that such license shall be reinstated automatically by acceptance by Assignee of any cure of any such default by Assignor, unless Assignee shall notify Assignor that acceptance of such cure shall not reinstate such license.

2.2 Assignee may demand, collect, receive and give complete acquittances for any and all rents, income, profits, and benefits accruing from the Premises, and at Assignee's discretion file any claim or take any other action or proceeding and make any settlement of any claims which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income, profits, and benefits. Lessees of the Premises are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases to Assignee or such nominee as Assignee may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

2.3 Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income, profits, and benefits assigned hereunder, including the right of Assignee or its designee to enter upon the Premises, or any part thereof, with or without force and with or without process of law, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor relating thereto, and may exclude Assignor, its agents or servants, wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Premises and of any indebtedness or liability of Assignor to Assignee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Assignor to Assignee on the Note and the Mortgage, all in such order as Assignee may determine. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor in the Leases. Assignor hereby agrees to indemnify Assignee and to hold it harmless from any liability, loss or damage including without limitation reasonable attorneys' fees which may or might be incurred by it under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee nor shall it operate to make Assignee liable for any waste of the Premises by the lessee under any of the Leases or any other party, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or

control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger.

2.4 Assignee may, at its option, although it shall not be obligated so to do, perform any lease covenant for and on behalf of Assignor and any monies expended in so doing shall be chargeable with interest to Assignor the same as for advances under the Mortgage.

2.5 Waiver of or acquiescence by Assignee in any default by Assignor, or failure of Assignee to insist upon strict performance by Assignor of any warranties or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

2.6 The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Assignee shall have under the Note, Mortgage, or any other instrument, or at law or in equity.

2.7 If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

2.8 All notices to be given pursuant to this Assignment shall be sufficient if mailed either by (1) postage prepaid, certified or registered mail, return receipt requested, or (2) by delivery to a nationally recognized overnight delivery service, to the above described addresses of the parties hereto, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail or delivered to said overnight delivery service, as the case may be.


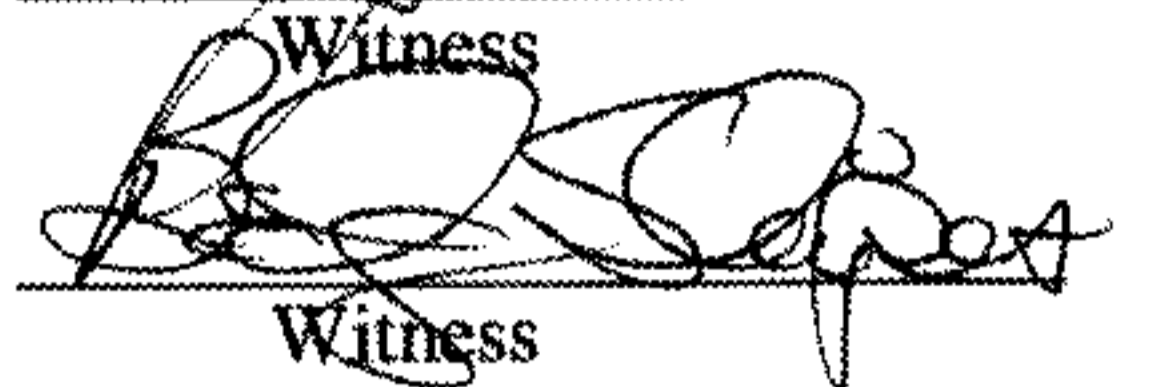
2.9 The term "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

2.10 This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

2.11 This Assignment shall terminate automatically when the Note is paid in full and the Mortgage is fully released and discharged.


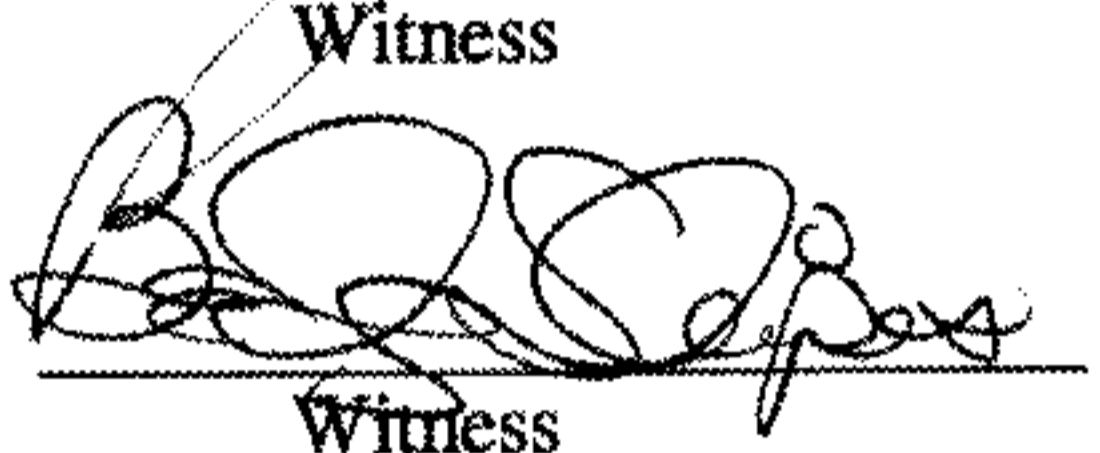
2.12 The personal liability of Assignor hereunder is limited as set forth in Section 15 of the Note.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be signed and sealed as of the date first above-written.

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

COLE AND EDDLEMAN DEVELOPMENT  
COMPANY, an Alabama general partnership

By   
\_\_\_\_\_  
Eugene K. Cole  
Its General Partner

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

By SOUTHEAST INVESTMENTS,  
an Alabama general partnership

By   
\_\_\_\_\_  
Billy D. Eddleman  
Its General Partner

STATE OF ALABAMA )  
                                  )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Eugene K. Cole, whose name as General Partner of Cole and Eddleman Development Company, an Alabama general partnership, 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 foregoing, as such general partner and with full authority, he executed the same voluntarily for and as the act of said partnership.

Given under my hand and seal of office this 30 day of September, 1994.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: 6-7-96

STATE OF ALABAMA     )  
                                      )  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Billy D. Eddleman, whose name as General Partner of Southeast Investments, an Alabama general partnership, 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 foregoing, as such general partner and with full authority, he executed the same voluntarily for and as the act of said partnership, acting in its capacity as General Partner of Cole and Eddleman Development Company, an Alabama general partnership.

Given under my hand and seal of office this 30 day of September, 1994.

  
Notary Public

[NOTARIAL SEAL]

My commission expires: 6-1-96

**EXHIBIT A**  
**TO**  
**ASSIGNMENT OF RENTS, LEASES AND OTHER BENEFITS**

Dated September 1, 1994

**RENT ROLL**  
**MEADOW WOOD APARTMENTS**

All tenant leases now or hereafter entered into with respect to the Meadow Wood Apartments.

EXHIBIT B

Legal Description - Meadowood Apartments

A parcel of land located in the NE 1/4 of Section 11 and the NW 1/4 of Section 12, all in Township 20 South, Range 3 West, more particularly described as follows:

Commence at the southwest corner of Lot 4, Block 6, of Cahaba Valley Estates, Seventh Sector, as recorded in Map Book 6 page 82, in the Office of the Judge of Probate in Shelby County, Alabama; thence in a southeasterly direction along the projection of the southwesterly line of said Block 6 a distance of 160.00 feet to the point of beginning; thence continue along last described course a distance of 762.00 feet; thence 90 deg. 10 min. left in a northeasterly direction a distance of 360.00 feet; thence 89 deg. 50 min. left in a northwesterly direction a distance of 762.00 feet; thence 90 deg. 10 min. left in a southwesterly direction a distance of 360.00 feet to the point of beginning.

EXHIBIT C

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There are tenant delinquencies not to exceed three in number.

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