

This instrument prepared by:
J. Keith Windle
Bradley Arant Rose & White LLP
420 North 20th Street, Suite 2000
Birmingham, Alabama 35203-2736

2 0 0 0 0 9 / 9 8 5 8

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is made (this "Assignment") by **ROBERT M. STAPLES and TERRI C. STAPLES**, individual residents of the State of Alabama, (hereinafter collectively referred to as "Assignor"), in favor of **INSOUTH BANK**, (hereinafter "Assignee") on or as of the 21st day of August, 2000.

WITNESSETH:

FOR VALUE RECEIVED, Assignor does hereby assign to Assignee the leases identified on Schedule 1 attached hereto and incorporated by reference, any and all existing and future leases (including subleases of any thereof), and any and all modifications, extensions, renewals, and replacements thereof, upon all or any part of the premises described more particularly in Exhibit A (hereinafter the "Premises") (the leases described on Schedule 1 and all such leases, subleases, and tenancies are hereinafter referred to as the "Leases");

TOGETHER WITH all rights of Assignor with respect to the Leases and any and all guaranties of tenants' performance under the Leases;

TOGETHER WITH the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, and profits (hereinafter the "Rents") now due or which may become due or to which Assignor may now or shall hereafter become entitled or which he may demand or claim, including those Rents coming due during any redemption period, arising or issuing from or out of the Leases or from or out of the Premises or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, together with any and all rights and claims of any kind that Assignor may have against any tenant under the Leases or any subtenants or occupants of the Premises, excepting therefrom any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm, or corporation other than the landlord under the Lease.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, until termination of this assignment as hereinafter provided.

SUBJECT, HOWEVER, to a license, limited as hereinafter provided, granted by Assignee to Assignor to collect and receive all of the rents.

FOR THE PURPOSE of securing the payment of the indebtedness evidenced by that certain promissory note (together with any note or notes given in extension or renewal thereof, collectively, the "Note") made by Robert M. Staples and Standing Room Only, Inc., payable to the order of

Assignee in the amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) dated of even date herewith and presently held by Assignee, including any extensions modifications, and renewals thereof and any supplemental note or notes increasing such indebtedness, as well as the payment, observance, performance, and discharge of all other obligations, covenants, conditions, and warranties contained in the Mortgage and Security Agreement (the "Mortgage") made by Assignor, dated of even date herewith, recorded in the Office of the Judge of Probate of Jefferson County, Alabama, and in any extensions, modifications, supplements, and other consolidations thereof, covering the Premises and securing the Note and supplemental notes, if any.

In order to protect the security of the assignment, Assignor covenants and agrees as follows:

1. Assignor's Warranties Concerning Leases and Rents. Assignor represents and warrants that:

a. Except as provided in subparagraph (d) below, it has good title to the Leases and Rents hereby assigned and good right to assign them, and no other person, firm, or corporation has any right, title, or interest therein;

b. Assignor has duly and punctually performed all the terms, covenants, conditions, and warranties of the Leases that were to be kept, observed, and performed by it;

c. The existing Leases are valid and unmodified and in full force and effect, except as indicated herein;

d. Assignor has not previously sold, assigned, transferred, mortgaged, or pledged any part of the Rents from the Premises, whether they are due now or become due hereafter;

e. Any of the Rents due and issuing from the Premises or from any part thereof for any period subsequent to the date hereof has not been collected, and payment thereof has not otherwise been anticipated, waived, released, discounted, set off, or compromised;

f. Assignor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents;

g. The tenants under all existing Leases are not in default of any of the terms thereof; and

h. Assignor has not subordinated its rights under any Lease to the rights or claims of any other party, including any mortgagee of any part of the Premises.

2. Assignor's Covenants of Performance. Assignor covenants and agrees to:

a. Observe, perform, and discharge, duly and punctually, all the obligations, terms, covenants, conditions, and warranties of the Note, the Mortgage, and the other loan documents executed in connection with the loan evidenced by the Note, the Leases, and all

future Leases affecting the Premises that Assignor is to keep, observe, and perform, and give prompt notice to Assignee of any failure on the part of Assignor to observe, perform, and discharge same;

b. Give prompt notice to Assignee of any notice, demand, or other document received by Assignor from any tenant or subtenant under the Leases specifying any default claimed to have been made by the Assignor under the Leases;

c. Notify in writing each and every present or future tenant or occupant of the Premises or of any part thereof that any security deposit or other deposit heretofore delivered to Assignor has been retained by Assignor or assigned and delivered to Assignee, as the case may be;

d. Enforce or secure in the name of Assignee, upon notice to Assignee, the performance of each and every obligation, term, covenant, condition, and agreement in the Leases to be performed by any tenant, and notify Assignee of the occurrence of any default under the Leases;

e. Appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Assignor and any tenant thereunder, and upon request by Assignee, do so in the name and on behalf of Assignee, but in all cases at the expense of Assignor;

f. Pay all costs and expenses of Assignee, including attorneys' fees in a reasonable sum, in any action or proceeding in which Assignee may appear in connection herewith; and

g. Neither create nor permit any lien, charge, or encumbrance upon its interest as lessor of the Leases.

3. Prior Approval for Actions Affecting Leases. Assignor further covenants and agrees not to, without the prior written consent of the Assignee:

a. Receive or collect any Rents, in cash or by promissory note, from any present or future tenant of the Premises or any part thereof for a period of more than one (1) month in advance of the date on which such payment is due, or pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents;

b. Waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Lease of the Premises of and from any obligations, covenants, conditions, and agreements to be kept, observed, and performed by the tenant, including the obligation to pay the Rents thereunder in the manner and at the place and time specified therein;

c. Cancel, terminate, or consent to any surrender of any of the Leases, permit any cancellation, termination, or surrender, commence an action of ejectment or any summary proceedings for dispossession of the tenant under any of the Leases, exercise any right of recapture provided in any Leases, or modify or in any way alter the terms of any Lease; and

d. Subordinate its rights under any Lease to the rights or claims of any party, including any mortgagee of any part of the Premises.

4. Rejection of Leases. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state, or local statute which provides for the possible termination or rejection of any of the Leases assigned hereby, Assignor covenants and agrees that if any of the Leases is so rejected, no settlement for damages shall be made without the prior written consent of the Assignee, and, if such rejection occurs prior to any default by the Assignor hereunder or under the Note or Mortgage, any check in payment of damages for rejection of any such Lease will be made payable both to the Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Agreement Assignee may elect.

5. Default Deemed Default Under Note and Mortgage. In the event any representation or warranty of Assignor made herein shall be found to be untrue, or Assignor shall default in the observance or performance of any obligation, term, covenant, condition, or warranty herein, each such instance, if the same shall continue for as much as fifteen (15) days after written notice thereof is given to Assignor, shall constitute and be deemed to be a default hereunder and under the Note and the Mortgage, thereby entitling Assignee to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and herein, as well as by law.

6. License to Collect Rents. As long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant, condition, or warranty contained herein, in the Note or the Mortgage, or in the Leases, Assignor shall have the right under a license granted hereby, but limited as provided in the following paragraph, to collect, but not prior to accrual, all of the Rents arising from or out of said Leases or any renewals, extensions, and replacements thereof, or from or out of the Premises or any part thereof. Assignor shall receive such Rents and shall hold them as a trust fund to be applied as required by the Assignee, and Assignor hereby covenants to so apply them before using any part of the same for any other purposes, firstly, to the payment of taxes and assessments upon said Premises before penalty or interest is due thereon; secondly, to the cost of insurance, maintenance, and repairs required by the terms of said Mortgage; thirdly, to the satisfaction of all obligations specifically set forth in the Leases; and fourthly, to the payment of interest and principal becoming due on the Note.

7. Transfer of License. Upon the conveyance by Assignor and its successors and assigns of the fee title of the Premises, all right, title, interest, and powers granted under the license aforesaid shall automatically pass to and may be exercised by each such subsequent owner, provided Assignee shall first have consented in writing to such conveyance.

8. Enforcement and Termination of License. Upon or at any time after default in the payment of any indebtedness secured hereby (and upon the expiration of any applicable cure period, if any) or in the observance or performance of any obligation, term, covenant, condition, or warranty contained herein, in the Note or the Mortgage, or in the Leases, Assignee, at its option and

without notice, shall have the complete right, power, and authority to exercise and enforce any or all of the following rights and remedies at any time:

a. To terminate the license granted to Assignor to collect the Rents without taking possession, and to demand, collect, receive, sue for, attach, and levy against the Rents in Assignee's own name; to give proper receipts, releases, and acquittance therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine;

b. To declare all sums secured hereby immediately due and payable and, at its option, exercise all or any of the rights and remedies contained in the Note and the Mortgage;

c. Without regard to the adequacy of the security or the solvency of Assignor, with or without any action or proceeding through any person, by agent, or by a receiver to be appointed by a court, and without regard to Assignor's possession, to enter upon, take possession of, manage, and operate the Premises or any part thereof; make, modify, enforce, cancel, or accept surrender of any Leases now or hereafter in effect on said Premises or any part thereof; remove and evict any lessee; increase or decrease rents; terminate without penalty or obligation any management agreement(s) in effect with respect to all or any part of the Premises; decorate, clean and repair; otherwise do any act or incur any costs or expenses that Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession; and apply the rents so collected in such order as Assignee shall deem proper to the operation and management of said Premises, including the payment of reasonable management, brokerage, and attorneys' fees and the indebtedness under the Note, and payment for replacements to a reserve fund that shall not bear interest; and

d. Require Assignor to transfer all security deposits to Assignee, together with all records evidencing these deposits.

Provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges, and authority so created, shall not, prior to entry upon and taking possession of said Premises by Assignee, be deemed or construed to constitute Assignee a "Mortgagee in Possession," nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Premises, to take any action hereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty, or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee thereunder and not assigned and delivered to Assignee. The Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm, or corporation in or about the Premises.

Provided further, that the collection of the Rents and their application as aforesaid and/or the entry upon and taking possession of the Premises shall not cure or waive any default; waive, modify, or affect any notice of default required under the Note and on the Mortgage; or invalidate any act done pursuant to such notice. The enforcement of any right or remedy by Assignee, once exercised, shall

continue until Assignee shall have collected and applied enough Rents to cure, for the time, the original default.

Although the original default be cured and the exercise of any right or remedy be discontinued, the same or any other right or remedy hereunder shall not be exhausted and may be reasserted at any time and from time to time following any subsequent default. The rights and powers conferred on Assignee hereunder are cumulative and not in lieu of any other rights and powers otherwise granted Assignee.

9. Appointment of Attorney. Assignor hereby constitutes and appoints Assignee its true and lawful attorney, coupled with an interest of Assignor, so that in the name, place, and stead of Assignor, the Assignee can subordinate, at any time and from time to time, any Leases affecting the Premises or any part thereof or easement or right-of-way in connection therewith to the lien of the hereinbefore described Mortgage, any other mortgage encumbering the Premises, or any ground lease of the Premises, and request or require such subordination where such option or authority was reserved to Assignor under any such Leases, or in any case where Assignor otherwise would have the right, power, or privilege so to do. This appointment is to be irrevocable and continuing, and these rights, powers, and privileges shall be exclusive in Assignee, its successors, and assigns as long as any part of the indebtedness secured hereby or by the Mortgage shall remain unpaid. Assignor hereby warrants that it has not, at any time prior to the date hereof, exercised any right to subordinate any such Lease to the Mortgage or to any other mortgage or ground lease, and further covenants not to exercise any such right.

10. Indemnification. Assignor hereby agrees to indemnify and hold Assignee harmless from any and all liability, loss, damage, or expense that Assignee may incur under, or by reason or in defense of, any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Assignor but not delivered to Assignee. Should Assignee incur any such liability, loss, damage, or expense, the amount thereof, including reasonable attorneys' fees, with interest thereon at the maximum rate permitted by law shall be payable by Assignor immediately without demand, and shall be secured as a lien hereby and by the Mortgage. The foregoing indemnification agreement does not include any obligation on the part of the Assignor to indemnify or hold harmless the Assignee from any losses caused by the Assignee after (i) it has taken possession of the Premises or (ii) it has exercised any of its other rights hereunder.

11. Records. Until the indebtedness secured hereby shall have been paid in full, Assignor shall deliver to Assignee executed copies of any and all renewals of existing leases and all future leases upon all or any part of the Premises, and will transfer and assign such Leases upon the same terms and conditions as herein contained. Assignor hereby covenants and agrees to make, execute, and deliver to Assignee upon demand and at any time any and all assignments and other records and instruments, including, but not limited to, rent rolls and books of account sufficient for the purpose, that Assignee may deem to be advisable for carrying out the purposes and intent of this Assignment.

12. No Waiver. The failure of Assignee to avail itself of any of the terms, covenants, and conditions of this Assignment for any period of time or at any time shall not be

construed or deemed to be a waiver of any such right, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under the Note or the Mortgage or the laws of the state in which the said Premises are situated. The rights of Assignee to collect the said indebtedness, to enforce any other security therefor, or to enforce any other right or remedy hereunder may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any other action taken hereunder and shall not be deemed an election of remedies.

13. Primary Security. This Assignment of Leases and Rents is primary in nature to the obligation evidenced and secured by the Note, the Mortgage, and any other document given to secure and collateralize the indebtedness. Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral; however, nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Mortgage, or exercising any other right under any other document collateralizing the Note.

14. Merger. (i) The fact that the Leases or the leasehold estates created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Premises, (ii) the operation of the law, or (iii) any other event shall not merge any Leases or the leasehold estates created thereby with the fee estate in the Premises as long as any of the indebtedness evidenced by the Note and secured hereby or by the Mortgage shall remain unpaid, unless Assignee shall consent in writing to such merger.

15. Termination of Assignment. Upon payment in full of all of the indebtedness evidenced by the Note and all sums payable hereunder and under the Mortgage, this Assignment shall be void and of no effect. No judgment or decree entered as to said indebtedness shall operate to abrogate or lessen the effect of this assignment until the indebtedness has actually been paid. The affidavit, certificate, letter, or statement of any officer of Assignee showing that any part of said indebtedness has remained unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment. Any person, firm, or corporation may, and is hereby authorized to, rely on such affidavit, certificate, letter, or statement. A demand by Assignee of any tenant for payment of Rents by reason of any default claimed by Assignee shall be sufficient direction to said tenant to make future payments of Rents to Assignee without the necessity for further consent by, or notice to, Assignor.

16. Notice. All notices, demands, or documents of any kind that Assignee may be required or may desire to serve upon Assignor hereunder shall be sufficiently served by delivering them personally to Assignor, by leaving a copy addressed to Assignor at the address set forth below, or by depositing a copy in the United States mail, postage prepaid, certified or registered mail, addressed to Assignor at the address set forth below.

17. Successors. The terms, covenants, conditions, and warranties contained herein and the powers granted hereby shall run with the land and shall inure to the benefit of, and bind, all parties hereto and their respective heirs, successors, and assigns, all tenants and their subtenants and assigns, and all subsequent owners of the Premises and subsequent holders of the Note and the Mortgage, so long as the indebtedness secured hereby remains outstanding.

18. Additional Rights and Remedies. In addition to, but not in lieu of, any other rights hereunder, Assignee shall have the right to institute suit and obtain a protective or mandatory injunction against Assignor to prevent a breach or default, or to enforce the observance, of the agreements, covenants, terms, and conditions contained herein, as well as the right to ordinary and punitive damages occasioned by any breach or default by Assignor.

19. Severability. If any provision of this Assignment or the application thereof to any entity, person, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of its provisions to other entities, persons, or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

20. Third Party Beneficiaries. It is expressly agreed by Assignor that this Assignment shall not be construed or deemed made for the benefit of any third party or parties.


21. Entire Agreement. This document, as supplemented by the Mortgage, contains the entire agreement concerning the assignment of rents and leases between the parties hereto. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of, such party.

22. Construction. Whenever used herein and the context requires it, the singular number shall include the plural, the plural the singular, and any gender shall include all genders. If there is more than one Assignor hereunder, the liability of such Assignors hereunder shall be joint and several.

23. Governing Law. The parties agree that the law of the State of Alabama shall govern the performance and enforcement of this Assignment.

24. Financing Statement. A carbon, photographic or other copy of this Assignment may be filed by Assignee as a financing statement in any public office.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be executed by its duly authorized officer on or as of the date first above written.



Robert M. Staples



Terri C. Staples

Name and address of Assignor:
(Debtor)
Robert M. Staples
Terri C. Staples
1000 16th Avenue South
Birmingham, Alabama 35205

Name and address of Assignee:
(Secured Party)
InSouth Bank
6141 Walnut Grove Road
Memphis, Tennessee 38120

STATE OF ALABAMA

)

JEFFERSON COUNTY

:

)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Robert M. Staples, whose name 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 21st day of AUGUST, 2000.



Notary Public

[NOTARIAL SEAL]

My commission expires: 3/14/03

STATE OF ALABAMA

)

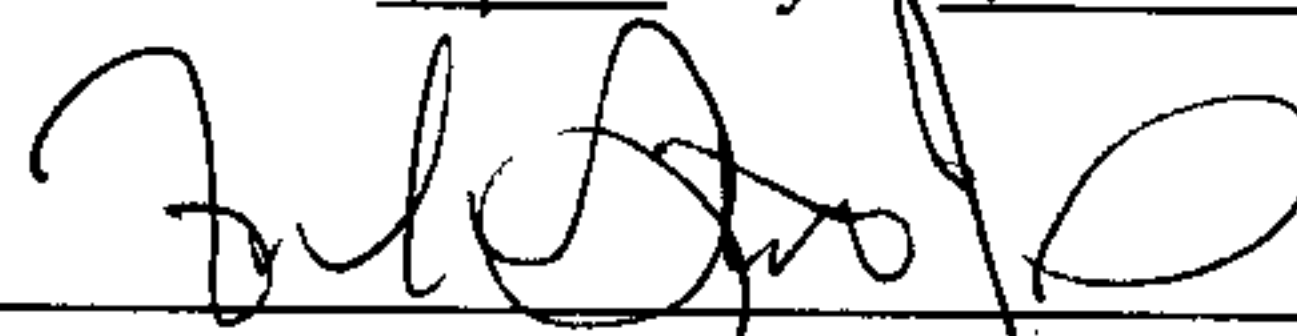
JEFFERSON COUNTY

:

)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Terri C. Staples, whose name 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 said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 21st day of AUGUST, 2000.



Notary Public

[NOTARIAL SEAL]

My commission expires: 3/14/03

EXHIBIT A

LEGAL DESCRIPTION

PARCEL I

That certain parcel of land situated in Jefferson County, Alabama, which is more particularly described as follows:

Lot 27-E, according to a Resurvey, as recorded in Map Book 111, Page 77, in the Probate Office of Jefferson County, Alabama, of Lots 27-C & 27-D, Block 1, Williams Addition to Beacon Park.

PARCEL II


That certain parcel of land situated in Shelby County, Alabama, which property is more particularly described as follows:

Commence at a point on the East right of way line of Alabama Highway 31 (Formerly U.S. 31) where the South right of way line of Pelham Street intersects said Highway in the Town of Pelham, Alabama and run thence South $12^{\circ}30'$ East along said Highway 31 right of way a distance of 300.08 to a found rebar corner and the point of beginning of the property being described; thence continue along said right of way line South $11^{\circ}46'52''$ East a distance of 199.55 feet to a found rebar corner; thence run North $89^{\circ}52'54''$ East a distance of 298.42 feet to a found rebar corner; thence run North $33^{\circ}01'56''$ East a distance of 229.57 feet to a found rebar corner; thence run South $89^{\circ}40'08''$ West a distance of 464.31 feet to the point of beginning; situated in the Southwest quarter of Section 13, Township 20 South, Range 3 West. Situated in Shelby County, Alabama.

SCHEDULE 1

1. All existing and future leases of the Premises.
2. Commercial Lease to be dated August 22, 2000 between Robert M. Staples + Terri C. Staples and Budwill Corporation (Parcel II).
3. Commercial Lease to be dated August 22, 2000 between Robert M. Staples and Standing Room Only, Inc. (Parcel I).

Inst # 2000-28835

State of Alabama - Jefferson County
I certify this instrument filed on:
2000 AUG 22 P.M. 14:50
Recorded and \$ Mtg. Tax
and \$ Deed Tax and Fee Amt.
\$ 32.00 Total \$ 32.00
GEORGE R. REYNOLDS, Judge of Probate

200009/9858

08/23/2000-28835
09:57 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 HHS 36.00