

4881

STATE OF ALABAMA

COUNTY OF SHELBY

COLLATERAL ASSIGNMENT OF
LEASE OR LEASES AND RENTS

THIS ASSIGNMENT is made the 28th day of May, 1975, by CHARLES F. WHITE, and Wife, JUDY L. WHITE; and WILLIAM M. HUMPHRIES, and Wife, SANDRA P. HUMPHRIES, parties of the first part, their successors and assigns, hereafter referred to as the Borrower, to MORTGAGE ASSOCIATES, INC., a Georgia corporation, party of the second part, its successors and assigns, hereafter referred to as the Lender,

W I T N E S S E T H :

For good and valuable consideration, receipt of which is hereby acknowledged, Borrower hereby grants, transfers and assigns to the Lender:

I.

The entire Lessor's interest in and to the leases described following this sentence. The term "lease" as used in this Assignment shall be deemed to include the leases more particularly described in Exhibit "B", and all the leases now or hereinafter placed upon the premises (as hereinafter defined) during the term of this Agreement.

II.

All rents, income and profits arising from said lease renewals and extensions thereof and together with all rents, income, profits, issues, revenues and benefits from the use and occupation of the property described in said lease or in the Mortgage hereinafter referred to and from all leases which may be placed on these premises (as hereinafter defined) during the term of this Assignment.

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See Pttg B/R 346 Page 230
See assign. Mac B/R page 271 5-30-75
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The lease and all rents, income, profits, issues, benefits and revenues assigned hereby are collectively referred to as "Collateral".

THIS ASSIGNMENT is made for the purpose of providing additional security for a loan made by Lender to Borrower including:

A. The payment of the principal sum, interest and indebtedness evidenced by a certain note (hereinafter referred to as "said note") and any amendments, extensions or renewals, in the original principal sum of Two Hundred Four Thousand and 00/100 (\$204,000.00) Dollars made by Charles F. White, and Wife, Joyce L. White, and William M. Humphries, an unmarried man, to Mortgage Associates, Inc. and dated even date herewith and secured by a Mortgage dated of even date herewith (referred to herein as "said mortgage") conveying property (herein referred to as the "premises") in Shelby County, Alabama, which real property is more fully described in said Mortgage and Exhibit "A" attached hereto and by this reference made a part hereof.

B. Payment of all other sums with interest thereon becoming due and payable to the Lender under the provisions of this Assignment or of said note, mortgage or any other instrument evidencing, securing or concerning the loan made by Lender to Borrower.

C. The performance and discharge of each and every obligation, covenant and agreement of the Borrower contained herein or in said note, mortgage or any other instrument evidencing, securing, or concerning the loan made by Lender to Borrower.



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THE BORROWER WARRANTS that the Borrower is the sole owner of the entire lessor's interest in said lease; that said lease is valid and enforceable and has not been altered, modified or amended in any manner whatsoever save as herein set forth; that neither the lessor nor lessee named therein is in default under any of the terms, covenants or conditions thereof; that no rent reserved in said lease has been assigned or anticipated and that no rent for any period subsequent to the date of this Assignment has been collected in advance of the time when the same became due under the terms of said lease; that Borrower is not prohibited under any agreement with any other person or any judgment from the execution and delivery of this Assignment, the performance of each and every obligation of Assignor hereunder, or the meeting of each and every condition herein contained; that no action has been brought or threatened which in any manner is likely to interfere with any of Borrower's obligations hereunder or under the lease; that all copies of the lease which have been furnished by Borrower to Lender are true and complete copies and said lease is in full force and effect and unmodified; that the Collateral is free and clear of any and all liens, security interests and encumbrances; that it has full power and authority to execute and deliver this Assignment and that said execution and delivery has been duly authorized and does not conflict with or constitute a default under any law, the lease or any other agreement or instrument binding upon Borrower or said property.

THE BORROWER COVENANTS with the Lender to observe and perform all the obligations imposed upon the lessor under said lease and not to do or permit to be done anything to impair the



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Lender's security; not to collect any of the rent, income or profits arising or accruing under said lease or from the premises in advance of the time when the same shall become due; not to execute any other assignment of lessor's interest in said lease or assignment of rents arising or accruing from said lease or from the premises; not to subordinate said lease to any encumbrance or permit, consent or agree to such subordination without Lender's prior written consent; not to alter, modify or change the terms of said lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Lender, or cancel or terminate said lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises or portion thereof or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, lessee thereunder; not to alter, modify or change the terms of any guaranty of said lease or cancel or terminate such guaranty without the prior written consent of the Lender; at the Lender's request to execute and deliver all such further assurances and assignments in the premises as the Lender shall from time to time require, including, without limitation, assignments of leases not yet executed; that it will keep the lease free from any liens, encumbrances or security interest whatsoever, other than security interest hereunder and that it will promptly pay or discharge all taxes assessed against the lease and all liens which may attach thereto; that it will maintain the lease in full force and effect, will enforce the lease in accordance with its terms, will appear in and defend any action or proceeding arising under or in any manner connected with any of the



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Collateral and will give prompt written notice to Lender of any claim of default under any lease either given by any lessee to Borrower or by Borrower to any lessee, together with a true and complete copy of any such claims.

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

1. So long as there shall exist no default by the Borrower in the payment of the principal sum, interest or indebtedness secured hereby and by said note and mortgage or in the performance of any obligation, covenant or agreement herein or in said note, said mortgage or any other instrument evidencing, securing or concerning the loan made by Lender to Borrower or in said lease to be performed by Borrower, and so long as none of the statements, representations or warranties made or furnished to Lender by or on behalf of Borrower with respect to the transaction resulting in the indebtedness evidenced by said note be untrue or incomplete in any material respect as of the date made, the Lender shall have the right to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, income and profits arising under said lease or from the portion of the premises described therein and to retain, use and enjoy the same.

2. Upon or at any time after default in the payment of the principal sum, interest or indebtedness secured hereby and by said note and mortgage or in the performance of any obligation, covenant or agreement herein or in said note, mortgage or lease or other instrument evidencing, securing or concerning the loan made by Lender to Borrower to be performed, or if any of the statements, representations or warranties made

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or furnished to Lender by or on behalf of Borrower with respect to the transaction resulting in the indebtedness evidenced by said note be untrue or incomplete in any material respect as of the date made, the Lender without in any way waiving such default may, at its option, without notice and without regard to the adequacy of the security for the said principal sum, interest or indebtedness secured hereby and by said note, mortgage or other instrument evidencing, securing or concerning the loan made by Lender to Borrower, 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 premises or any portion thereof, have, hold, manage, lease and operate the same on such terms and for such period of time as the Lender may deem proper and either with or without taking possession of said premises in its own name, demand, sue for or otherwise collect and receive all rents, income and profits of said premises, 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 the Lender and to apply such rents, income and profits to the payment of: (a) all expenses of managing the premises, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as the Lender may deem necessary or desirable and all expenses of operating and maintaining the premises, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which the Lender 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 premises; and (b) the princial sum, interest and



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indebtedness secured hereby and by said note, mortgage or other instrument evidencing, securing or concerning the loan made by Lender to Borrower, together with all costs and attorney's fees, in such order of priority as to any of the items mentioned in this paragraph as the Lender in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by the Lender of the option granted it in this paragraph and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver of any default by the Borrower under said note, mortgage, lease, this Assignment, or any other instrument evidencing, securing or concerning the loan made by Lender to Borrower.

3. The Lender shall not be liable for any loss sustained by the Borrower resulting from the Lender's failure to let the premises after default or from any other act or omission of the Lender in managing the premises after default unless such loss is caused by the willful misconduct and bad faith of the Lender. Nor shall the Lender be obligated to perform or discharge nor does the Lender hereby undertake to perform or discharge any obligation, duty or liability under said lease or under or by reason of this Assignment and the Borrower shall, and does hereby agree to, indemnify the Lender for, and to hold the Lender harmless from, any and all liability, loss or damage which may or might be incurred under said lease or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to perform

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or discharge any of the terms, covenants or agreements contained in said lease. Should the Lender incur any such liability under said lease or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby and the Borrower shall reimburse the Lender therefor immediately upon demand and upon the failure of the Borrower so to do the Lender may, at its option, declare all sums secured hereby and by said note, mortgage and any other instrument immediately due and payable. And it is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said premises upon the Lender, nor for the carrying out of any of the terms and conditions of said lease; nor shall it operate to make the Lender responsible or liable for any waste committed on the premises by the tenants or any other parties, or for any dangerous or defective condition of the premises, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

4. Upon payment in full of the principal sum, interest and indebtedness secured hereby and by said note, mortgage and any other instrument evidencing, securing or concerning the loan made by Lender to Borrower, this Assignment shall become and be void and of no effect but the affidavit, certificate, letter or statement of any officer, agent or attorney of the Lender showing any part of said principal, interest or indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The

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Borrower hereby authorizes and directs the lessee named in said lease or any other or future lessee or occupant of the premises upon receipt from the lender of written notice to the effect that the Lender is then the holder of said note and mortgage and that a default exists thereunder or under the Assignment to pay over to the Lender all rents, income and profits arising or accruing under said lease or from the portion of the premises described in said lease and to continue so to do until otherwise notified by the Lender.

5. The Lender may take or release other security for the payment of said principal, sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this Assignment.

6. Nothing contained in this Assignment and no act done or omitted by the Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Lender of its rights and remedies under said note, mortgage or any other instrument evidencing, securing or concerning the loan made by Lender to Borrower. This Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Lender under the terms thereof. The right of the Lender to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by the Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. In case of any conflict between the terms of this instrument and the terms of the mortgage described above, the terms of the mortgage shall prevail, but whenever possible the



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provisions hereof shall be deemed supplemental to and not in derogation of the provisions of said mortgage.

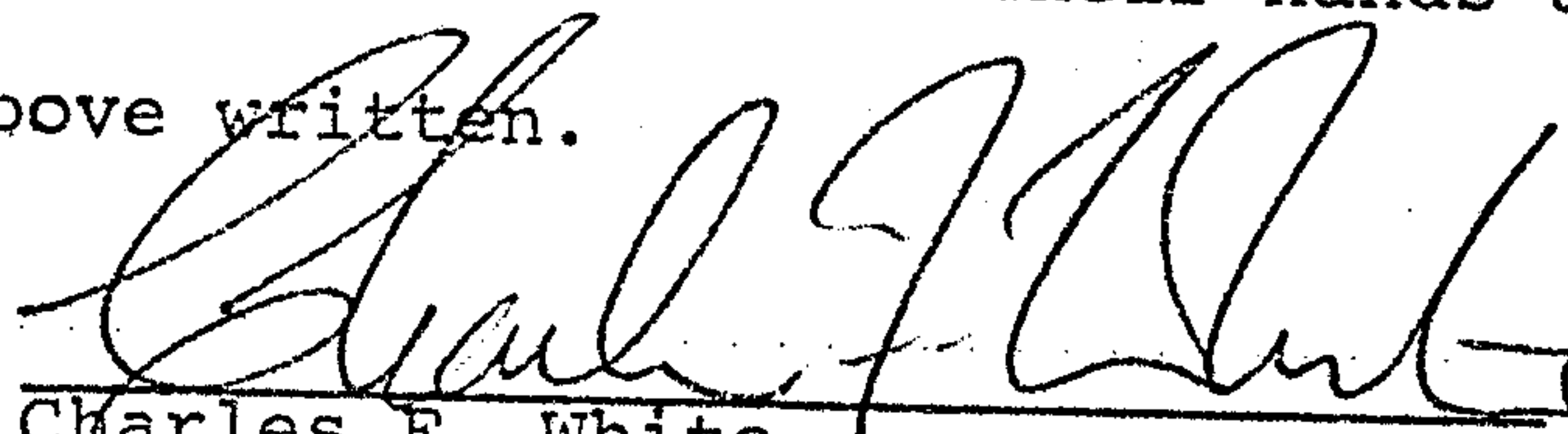
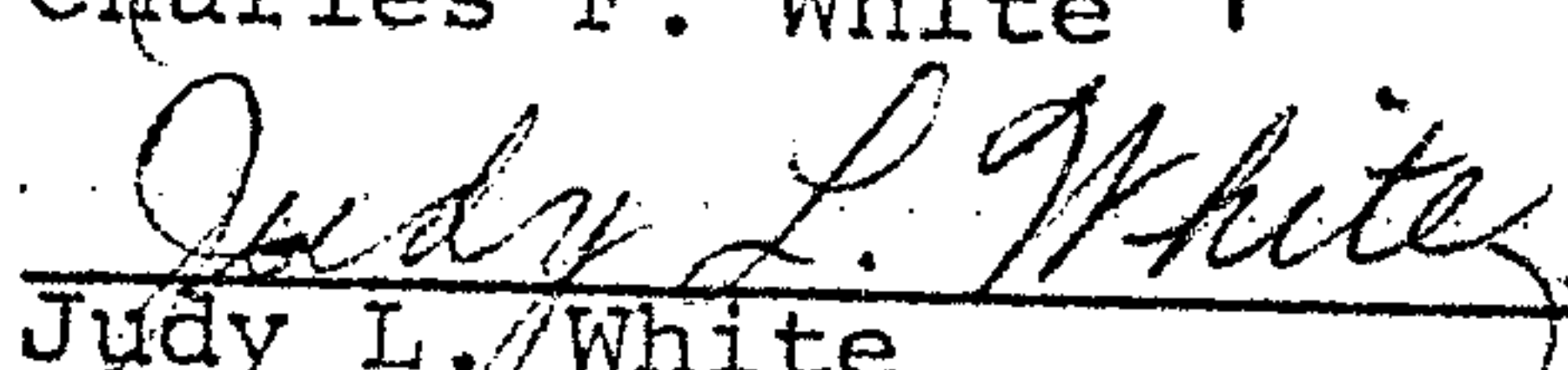
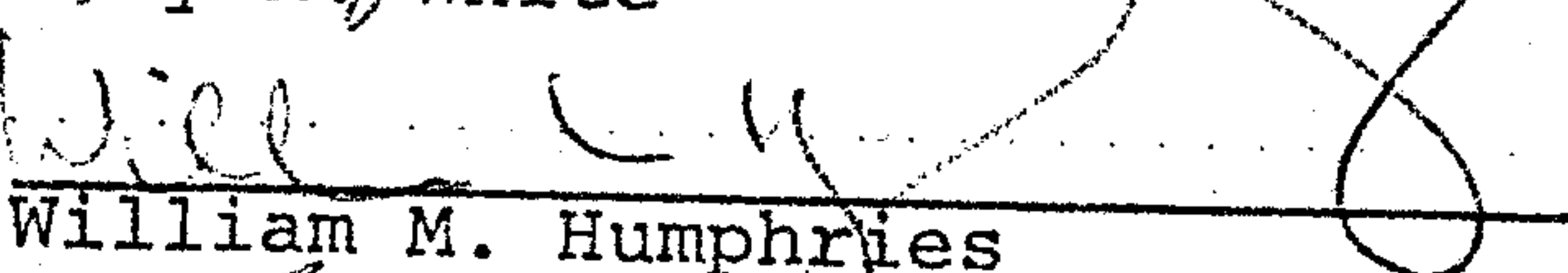

8. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9. This agreement shall be governed by and interpreted in accordance with the laws of the State of Alabama.

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of the Lender and any subsequent holder of the said note and mortgage and shall be binding upon the Borrower, their heirs, executors, administrators, successors and assigns and any subsequent owner of the premises.

IN WITNESS WHEREOF, the Borrower has set their hands and seals the year and day first above written.

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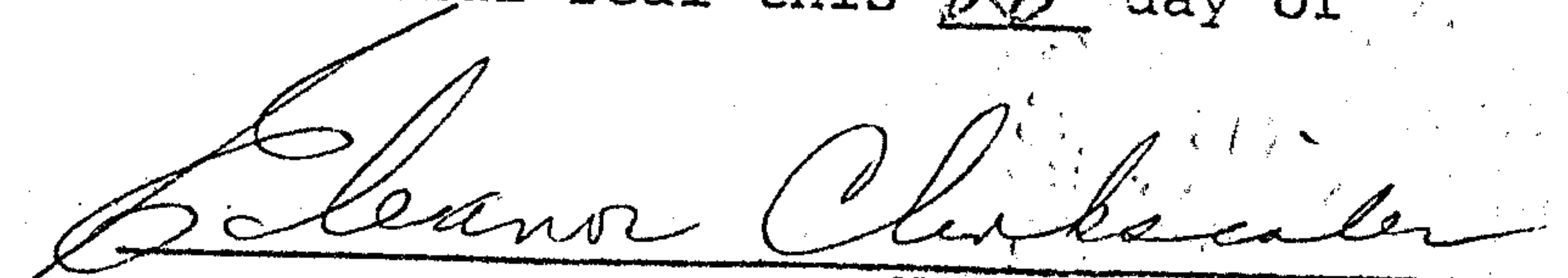
 (Seal)
Charles F. White
 (Seal)
Judy L. White
 (Seal)
William M. Humphries
 (Seal)
Sandra P. Humphries

STATE OF ALABAMA

COUNTY OF ~~SHELBY~~ Jefferson

I, the undersigned, Eleanor Clinkscales a Notary Public in and for said County in said State, hereby certify that Charles F. White, Judy L. White, William M. Humphries, and Judy L. White, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day, that being informed of the contents of the instrument they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 28th day of May, 1975.


Notary Public

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EXHIBIT "A"

A parcel of land located in the Northwest 1/4 of the Northeast 1/4 of Section 12, Township 20 South, Range 3 West, more particularly described as follows:

COMMENCE at the Southwest corner of said 1/4 - 1/4 section; thence in an Easterly direction along the South line of said 1/4 - 1/4 section a distance of 627.4 feet to the point of beginning; thence continue along last described course a distance of 255.0 feet to the intersection of the Northwest Right of Way Line of U. S. Highway 31; thence 64 degrees 08 minutes 15 seconds left along said right of way in a Northeasterly direction a distance of 144.47 feet; thence 115 degrees 51 minutes 45 seconds left in a Westerly direction a distance of 318.02 feet; thence 90 degrees left in a Southerly direction a distance of 130.0 feet to the point of beginning.
Situated in Shelby County, Alabama.

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EXHIBIT "B"

- (1) Lease Agreement with Haywood Kirkland, individually and doing business as Kirkland Office Supply dated August 2, 1974, for Store No. 4, 2756 Montgomery Highway, Chandalar Convenience Center, Pelham, Alabama;
- (2) Lease Agreement with Patricia H. Donalson, dated July 27, 1974, for Store No. 3, 2754 Montgomery Highway, Chandalar Convenience Center, Pelham, Alabama;
- (3) Lease Agreement with Contempo Properties, a corporation, dated March 29, 1974, for Store No. E, 2752 Montgomery Highway, Chandalar Convenience Center, Pelham, Alabama;
- (4) Lease Agreement with Franchise Distributors, Inc. dated November 20, 1973, for Store No. B, Chandalar Convenience Center, Pelham, Alabama;
- (5) Lease Agreement with Harry F. Moore and James E. Crim, individually and doing business as Suds-N-Dog, dated March 18, 1974, for Store No. 1, 2752 Montgomery Highway, Chandalar Convenience Center, Pelham, Alabama;
- (6) Lease Agreement with Utotem of Alabama, Inc. dated November 19, 1973, for approximately 2400 square feet, Chandalar Convenience Center, Pelham, Alabama; together with Guarantee of Performance of Lessee by Utotem Division of Fairmont Foods Company.



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Conrad H. Johnson
JUDGE OF PROBATE

1975 MAY 29 PM 3:13

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

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