

ASSIGNMENT OF RENTS AND LEASES

This ASSIGNMENT OF RENTS AND LEASES entered into as of the 12th day of October, 1976, by C D G PROPERTIES, an Alabama Partnership, (the Assignor), to BIRMINGHAM TRUST NATIONAL BANK, a national banking corporation having its principal place of business at Birmingham, Alabama 35203, (the Assignee).



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WITNESSETH:

WHEREAS, the Assignor is the landlord named in those certain leases for premises located on the property, (the Building), the legal description of which is more particularly described on Exhibit "A" annexed hereto; and

WHEREAS, the Assignee is the holder of a certain mortgage dated even date herewith which mortgage constitutes a first lien upon the Building and the premises upon which it is constructed (said Building and premises being hereinafter referred to as the Mortgaged Premises and said mortgage being hereinafter referred to as the Mortgage) which Mortgage is in the principal sum of \$210,000.00.

NOW, THEREFORE, in consideration of and as an inducement to the making by the Assignee to the Assignor of the loan secured by the Mortgage, the Assignor does hereby assign, transfer and set over to the Assignee all the right, title and interest of the Assignor in, under and by virtue of any and all leases entered into for premises located in the Building (hereinafter referred to as the Assigned Leases, which terms shall be deemed to include the leases and all extensions or renewals thereof) and any and all such other or further leases of space in the Building as the Assignee shall from time to time determine, including specifically, but not by way of limitation, all the right, power and privilege of the Assignor to cancel, terminate or accept the surrender of any Assigned Lease, to accept prepayment of more than one periodic installment of rent thereunder, or to modify or



abridge any of the terms, covenants and conditions of any such lease so as to reduce the term thereof or the rental payable thereunder (other than charges for electricity) or to change any renewal privilege therein contained without the prior written consent of the Assignee (except as any such right, power and privilege as to any of the foregoing is expressly permitted to a lessee under the specific provisions of its lease), together with all of the rents, issues and profits which may be or become due, or to which the Assignor may now or hereafter become entitled, arising or issuing out of the Assigned Leases, or from or out of the Mortgaged Premises or any part thereof.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, until such time as the indebtedness secured by the Mortgage shall have been paid in full, for the purpose of further and collaterally securing (1) payment of the indebtedness evidenced by the Mortgage together with the interest on said indebtedness; (2) payment of all other sums, with interest thereon, to become due and payable to the Assignee under the provisions of the Mortgage; and (3) performance and discharge of each and every obligation, covenant and agreement of the Assignor herein, and in the Mortgage, contained.

This instrument of assignment is delivered and accepted upon the following terms and conditions:

1. So long as no default shall exist under the Mortgage, or under the assignment, the Assignor shall have a license to manage and operate the Mortgaged Premises and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of such Assigned Leases, and to execute and deliver proper receipts and acquittances therefor.

2. Immediately upon the occurrence of any default under the Mortgage, or under this assignment, and until such default shall have been cured as hereinafter defined, the license mentioned in the foregoing paragraph "1." hereof shall cease and terminate, and in such event the Assignee is hereby expressly and irrevocably authorized to enter and take possession of the

Mortgaged Premises by actual physical possession, or by written notice served personally upon or sent by registered mail to the Assignor, as the Assignee may elect, and no further authorization shall be required. Following such entry and taking of possession, the Assignee may:

(a) manage and operate the Mortgaged Premises or any part thereof;

(b) lease any part or parts thereof for such periods of time, and upon such terms and conditions as the Assignee may, in its reasonable discretion, deem proper;

(c) enforce, cancel or modify any such Assigned Lease and any other leases hereafter in effect covering the Mortgaged Premises or any part thereof;

(d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents, issues and profits that may then be or may thereafter become due, owing or payable with respect to the Mortgaged Premises or any part thereof from any present or future lessees, tenants, subtenants or occupants thereof;

(e) institute, prosecute to completion or compromise and settle, all summary proceedings, actions for rent or for removing any and all lessees, tenants, subtenants or occupants of the Mortgaged Premises or any part or parts thereof;

(f) enforce or enjoin or restrain the violation of any of the terms, provisions and conditions of any lease or leases, now or hereafter affecting the Mortgaged Premises or any part thereof;

(g) make such repairs and alterations to the Mortgaged Premises as Assignee may, in its reasonable discretion, deem proper;

(h) pay, from and out of rents, issues and profits collected in respect of the Mortgaged Premises or any part thereof, or from or out of any other funds, the rent and all other charges required to be paid under any ground lease on which the Mortgage may constitute a lien, any taxes, assessments, water rates, sewer rates, or other government charges levied, assessed or imposed against the Mortgaged Premises, or any portion thereof, and also any and all other charges, costs and expenses which it may be necessary or advisable for the Assignee to pay in the management or operation of the Mortgaged Premises, including (without limiting the generality of any rights, powers, privileges and authority hereinbefore or hereinafter conferred) the costs of such repairs and alterations, commissions for renting the Mortgaged Premises or any portions thereof, and legal expenses in enforcing claims, preparing papers or for any other services that may be required; and

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(i) generally, do execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Mortgaged Premises, as fully as the Assignor might do.

The Assignee shall apply the net amount of rents, issues and profits received by it from the Mortgaged Premises, after payment of all proper costs and charges (including any loss or damage hereinafter referred to in paragraph "4.") to the reduction and payment of the debt secured by the Mortgage. The Assignee shall be accountable to the Assignor only for monies actually received by the Assignee pursuant to this assignment.

For the purpose of this paragraph "2.", a default shall be deemed to be cured only when the Assignor shall have paid in full all sums owing and past due, and/or shall have performed all other terms, covenants and conditions, failure in the performance of which terminated the license hereinabove mentioned.

3. The Assignor hereby irrevocably directs each Lessee under each Assigned Lease and under any other lease which shall hereafter become an Assigned Lease, upon demand and notice from the Assignee of the Assignor's default under the Mortgage or under this assignment to pay the Assignee all rents, issues and profits accruing or due under its lease from and after the receipt of such demand and notice. Any lessee making such payment to the Assignee shall be under no obligation to inquire into or determine the actual existence of any such default claimed by the Assignee.

4. The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from any and all liability, loss, damage and expense, including reasonable attorneys' fees, which it may or shall incur under any of said leases, or by reason of this assignment, or by reason of any action taken by the Assignee hereunder, and against and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions

contained in any of the said leases. Should the Assignee incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the maximum rate permitted by law, shall be payable by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Mortgaged Premises collected by the Assignee. Nothing contained herein shall obligate or be constructed to obligate the Assignee to perform any of the terms, covenants or conditions contained in any Assigned Lease or otherwise to impose any obligation upon the Assignee with respect to any of said leases, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained, in the event that any lessee shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated. Prior to actual entry into and taking possession of the Mortgaged Premises by the Assignee, this assignment shall not operate to place upon the Assignee any responsibility for the operation, control, care, management or repair of the Mortgaged Premises, and the execution of this assignment by the Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Premises is and shall be that of the Assignor, prior to such actual entry and taking of possession.

5. The Assignor represents and warrants that the Assignor has duly and punctually performed all and singular the terms, conditions and covenants of the aforesaid leases on Assignor's part to be kept, observed and performed; that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues and profits from the Mortgaged Premises or any part thereof, whether now due or hereafter to become due, to any person, firm or corporation other than the Assignee; that each executed Assigned Lease is valid and in full force and effect; that no



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rents, issues or profits of the Mortgaged Premises, or any part or parts thereof, becoming due subsequent to the date hereof have been collected nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised and that no lessee thereunder is in default under any of the terms of its lease. The Assignor agrees that so long as no default shall exist under the Mortgage or this Assignment, the Assignor will enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by each lessee under each Assigned Lease, and any lease which may hereafter become an Assigned Lease.

6. The Assignor agrees to execute and deliver to the Assignee, at any time or times during which this assignment shall be in effect, such further instruments as the Assignee may deem necessary to make effective this assignment and the several covenants of the Assignor herein contained. The Assignor further agrees that at all times during which this assignment shall be in effect, the Assignor will use its best efforts to keep the Mortgaged Premises fully rented at the highest rentals obtainable and after the date of this assignment will promptly furnish the Assignee with a complete copy of each such lease.

7. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this instrument are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Assignee shall have under or by virtue of the Mortgage. The rights and remedies of the Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

8. The Assignee shall have the right to assign to any subsequent holder of the Mortgage, or to any person acquiring title to the Mortgaged Premises, the Assignor's rights, title and interest

in any lease hereby or hereafter assigned, subject, however, to the provisions of this assignment. After the Assignor shall have barred and foreclosed of all right, title and interest and equity of redemption in said Mortgaged Premises, no assignee of the Assignor's interest in said leases shall be liable to account to the Assignor for any rents, income, revenue, issues or profits thereafter accruing.

9. Upon payment in full of all the indebtedness secured by the Mortgage, as evidenced by a recorded satisfaction or release of Mortgage, as well as any sums which may be payable hereunder, this assignment shall become and be void and of no effect and, in that event, upon the request of the Assignor, the Assignee covenants to execute and deliver to the Assignor instruments effective to evidence the termination of this assignment and/or the reassignment to the Assignor of the rights, power and authority granted herein, provided, however, that as to any lessee of any portion of the Mortgaged Premises, any affidavit, certificate or other written statement of any officer of the Assignee, stating that any part of said indebtedness remains unpaid, shall be and constitute conclusive evidence of the then validity, effectiveness and continuing force of this assignment and any person, firm or corporation receiving any such affidavit, certificate or statement may, and is hereby authorized to, rely thereon. As against the Assignee, at all times during which this assignment shall be in effect there shall be no merger of the leases assigned hereunder or the leasehold estates created thereby with the fee estate in the Mortgaged Premises by reason of the fact that said leases or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the owner of said fee estate, unless the Assignee shall consent in writing to said merger.

10. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.



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11. In the event there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this assignment, the terms and provisions of this assignment shall prevail.

12. The terms, covenants and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective distributees, legal representatives, successors and assigns.

IN WITNESS WHEREOF, this ASSIGNMENT OF RENTS AND LEASES has been executed as of the day and year set forth above.

WITNESS TO ALL SIGNATURES: C D G PROPERTIES, an Alabama Partnership

Valerie H. Shipp

By:

James B. Lane

Partner

By:

Sam L. Gervault

Partner

By:

Thomas H. Gasket

Partner

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that James B. Davis, Ben L. Chenault and Thomas H. Gachet whose names as partners of CDG Properties, an Alabama Partnership, are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance they as such partners and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 12 day of October, 1976.

Valerie H. Shipp
Notary Public

My Commission Expires Feb. 24, 1980



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EXHIBIT A

A tract of land situated in the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said 1/4 1/4 Section a distance of 452.73 feet to a point; thence turn a deflection angle of $86^{\circ} 31' 40''$ to the right and run in a Southerly direction a distance of 1321.78 feet to a point; thence turn a deflection angle of $47^{\circ} 06' 00''$ to the right and run in a Southwesterly direction a distance of 250.20 feet to a point on the center line of the road; thence turn a deflection angle of $79^{\circ} 55' 15''$ to the right and run in a Northwesterly direction along the center line of said road a distance of 34.06 feet to a point; thence turn a deflection angle of $89^{\circ} 58' 30''$ to the left and run in a Southwesterly direction a distance of 146.00 feet to a point; thence turn a deflection angle of $38^{\circ} 00' 00''$ to the right and run in a Southwesterly direction a distance of 152.97 feet to a point on the East right-of-way line of U.S. Highway #31; thence turn a deflection angle of $85^{\circ} 12' 35''$ to the left and run in a Southerly direction along the chord of a curve to the right having a radius of 2010.08 feet a distance of 311.77 feet to the point of beginning; thence turn a deflection angle of $97^{\circ} 33' 22''$ to the left and run in a Northeasterly direction a distance of 260.00 feet to a point; thence turn an interior angle of $90^{\circ} 00' 00''$ and run to the right in a Southeasterly direction a distance of 205.86 feet to a point; thence turn an interior angle of $90^{\circ} 00' 00''$ and run to the right in a Southwesterly direction a distance of 315.33 feet to a point on the East right-of-way line of U.S. Highway #31, said point being a point on a curve; thence turn an interior angle of $71^{\circ} 55' 02''$ (angle measured to tangent) and run to the right in a Northerly direction along the arc of a curve to the left having a central angle of $6^{\circ} 04' 44''$ and a radius of 2010.08 feet a distance of 213.26 feet to the point of beginning; containing 1.36 acres, more or less.

Carroll M. Joubert
JUDGE OF PROBATE

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