

## ASSIGNMENT OF RENTS AND LEASES

KNOW ALL MEN BY THESE PRESENTS THAT

SHELBY MART, LTD.



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Shelby Cnty Judge of Probate, AL  
05/04/1978 12:00:00 AM FILED/CERT

hereinafter called the assignor, in consideration of One Dollar paid by The First National Bank of Birmingham, hereinafter called the assignee, hereby conveys, transfers and assigns unto the assignee, its successors and assigns, all the rights, interest and privileges, which the assignor as Lessor has and may have in the leases now existing or hereafter made and affecting the real property described below or any part thereof, including, but not limited to, the following leases:

- (1) Winn-Dixie Montgomery, Inc., dated July 21, 1977, as amended.
- (3) Eckerd's-Alabama, Inc., dated August 10, 1977, as amended.

as said leases may have been, or may from time to time be hereafter, modified extended and renewed, with all rents, income and profits due and becoming due therefrom. The assignor will, on request of the assignee, execute assignments of any future leases affecting any part of said premises.

This assignment is made as additional security for the payment of a certain bond or note and mortgage or deed of trust (and all extensions or modifications thereof) made by Shelby Mart, Ltd.

to

THE FIRST NATIONAL BANK OF BIRMINGHAM

in the sum of One Million One Hundred Twenty Thousand and no/100 Dollars with interest dated December 29, 1977, covering real property situated in Shelby County, Alabama and described in Exhibit A attached hereto, and more particularly described in said mortgage or deed of trust, and the acceptance of this assignment and the collection of rents or the payments under the leases hereby assigned shall not constitute a waiver of any rights of the assignee under the terms of said bond or note and mortgage or deed of trust.



The lessees shall pay the rents and other charges due assignor under the terms of said leases directly to the assignee, at assignee's option, or as assignee may direct, said option or direction to be exercised by notice in writing from assignee to said lessee(s). Assignee shall apply the rents and other sums received by it, in the event such rents or other charges are paid to it or to its designee, to pay the installments of principal, interest and other charges due on the indebtedness hereinabove referred to in accordance with the terms and provisions of the note and mortgage evidencing the same so long as the indebtedness secured by the mortgage is outstanding and not paid. Any excess amounts over and above the charges due on the indebtedness shall be paid by assignee to assignor. Assignee shall have no liability to assignor for failure to collect said rent for any cause whatsoever, but shall be entitled to deduct from said rents received before applying on the indebtedness any costs of collecting or attempting to collect the same, including attorneys' fees.

No rent more than one month in advance shall be collected or accepted by assignor without the prior written consent of the assignee.

If assignee shall become the owner of the leased premises through purchase at foreclosure sale or otherwise so that the mortgage above referred to be no longer in full force and effect, lessees shall pay the rents and other charges to assignee and neither assignee nor its successors or assigns shall be liable to account to the assignor for the rents, income and profits thereafter accruing.

Anything to the contrary notwithstanding assignor hereby assigns to assignee any award made hereafter to it in any court procedure involving any of the lessees in any bankruptcy, insolvency or reorganization proceedings in any state or Federal court; and any and all payments made by lessees in lieu of rent. Assignor hereby appoints assignee as its irrevocable attorney in fact to appear in any action and/or to collect any such award or payment.

The assignor in the event of default in the performance of any of the terms and conditions of said bond or note and mortgage or deed of trust, hereby authorizes the assignee, at its option, to enter and take possession of the mortgaged premises and to manage and operate the same, to collect all or any rents accruing therefrom and from said leases, to let or re-let said premises or any part thereof, to cancel and modify leases, evict tenants, bring or defend any suits in connection with the possession of said premises in its own name or assignor's name, make repairs as assignee deems appropriate and perform such other acts in connection with the management and operation of said premises as the assignee, in its discretion, may deem proper.



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The receipt by the assignee of any rents, issues or profits pursuant to this instrument after the institution of foreclosure proceedings under said mortgage or deed of trust shall not cure such default nor affect such proceedings or any sale pursuant thereto.

Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by assignor under any of said leases, and the assignor hereby agrees to indemnify the assignee for, and to save it harmless from, any and all liability arising from any of said leases or from this assignment, and this assignment shall not place responsibility for the control, care, management or repair of said premises upon the assignee, or make the assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

The assignor covenants and represents that said assignor has full right and title to assign said leases and the rents, income and profits due or to become due thereunder, that the terms of said leases have not been changed from the terms in the copies of said leases submitted to the assignee for approval, that no other assignment of any interest therein has been made, that there are no existing defaults under the provisions thereof, and that said assignor will not hereafter cancel, surrender or terminate any of said leases, exercise any option which might lead to such termination or change, alter or modify them or consent to the release of any party liable thereunder or to the assignment of the lessees' interest in them without the prior written consent of the assignee.

Assignor hereby authorizes the assignee to give notice in writing of this assignment at any time to any tenant under any of said leases.

Violation of any of the covenants, representations and provisions contained herein by the assignor shall be deemed a default under the terms of said note or bond and mortgage or deed of trust.

Default by the assignor under any of the terms of the leases assigned herein shall be deemed a default under the terms of said note or bond and mortgage or deed of trust. Any expenditures made by the assignee in curing such a default on the assignor's behalf, with interest thereon at the highest rate for which it is now lawful to contract, shall become part of the debt secured by these presents.

The full performance of said mortgage or deed of trust and the duly recorded release or reconveyance of the property described therein shall render this assignment void.



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The net proceeds collected by the assignee under the terms of this instrument shall be applied in reduction of the entire indebtedness from time to time outstanding and secured by said mortgage or deed of trust.

This assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns, as well as any subsequent owner of the real estate described herein and any assignee of the mortgage or deed of trust referred to herein.

IN WITNESS WHEREOF, the said assignor Shelby Mart, Ltd., has signed and sealed this instrument MAY 3, 1978.

SHELBY MART, LTD.

By: James H. White III  
Its General Partner

By: Theresa M. Reddy  
Its General Partner

ACKNOWLEDGEMENT

STATE OF ALABAMA )  
~~JEFFERSON~~ COUNTY )

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I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James H. White, III, whose name as General Partner of Shelby Mart, Ltd., an Alabama limited 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 said instrument, he, as such general partner, and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and official seal this 3rd day of MAY, 1978.

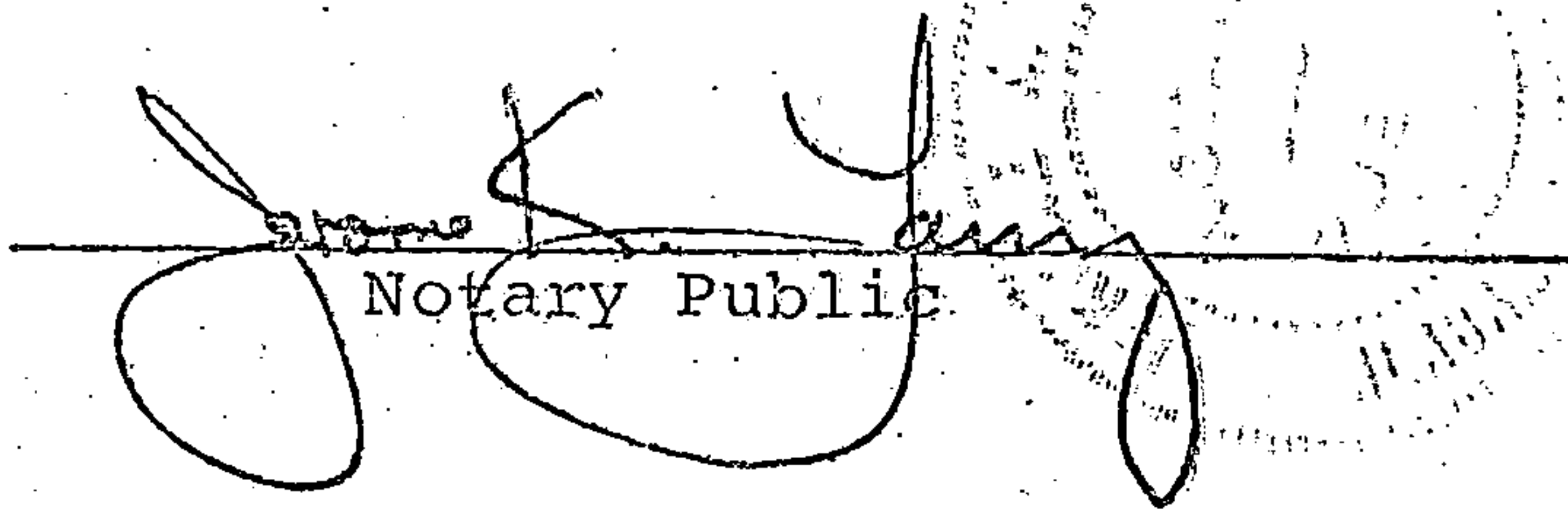
James H. White III  
Notary Public

STATE OF ALABAMA )

JEFFERSON  
~~SHELBY~~ COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Thomas M. Rodgers, Jr., whose name as General Partner of Shelby Mart, Ltd., an Alabama limited 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 said instrument, he, as such general partner, and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and official seal this 3rd day of May, 1978.

  
Notary Public



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BOOK



PARCEL I:

Part of the SW 1/4 of NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, said part being more particularly described as follows: From the northwest corner of said SW 1/4 of NE 1/4, run east along the north line thereof for 881.83 feet, more or less to a point on the west right-of-way of U. S. Highway 31; thence turn an angle to the right of 115°53' and run southwesterly along said west right-of-way line for a distance of 392.81 feet to the point of beginning; thence continue southwesterly along said right-of-way for a distance of 460.36 feet; thence turn at an angle to the right of 90° and run northwesterly for a distance of 125 feet; thence turn an angle to the left of 90°00' and run southwesterly for a distance of 18 feet; thence turn an angle to the right of 90°00' and run northwesterly for a distance of 333.22 feet to the centerline of the Old Montgomery Highway; thence turn an angle to the right of 86°07' and run northerly along the centerline of the Old Montgomery Highway for a distance of 124.34 feet; thence turn an angle to the right of 12°09' and run northerly along the centerline of old highway, 251.86 feet; thence turn at an angle to the right of 55°51' and run easterly for a distance of 389.50 feet; thence turn at an angle to the right of 115°53' and run southerly for a distance of 65 feet; thence turn at an angle to the left of 90°00' and run easterly for a distance of 80 feet to the point of beginning, said land containing 205,114 square feet, more or less.

PARCEL II:

Part of the SW 1/4 of NE 1/4 and part of the SE 1/4 of NW 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, said parts being more particularly described as follows: From the northwest corner of said SW 1/4 of NE 1/4, run east along the north line thereof for 881.83 feet, more or less, to a point on the west line of the right-of-way of U. S. Highway 31; thence turn at an angle to the right of 115°53' and run southwesterly along said west right-of-way line for a distance of 944.93 feet to a point; thence turn at an angle to the right of 65°01' and run westerly for a distance of 137.90 feet to the point of beginning; thence continue along the same course for 346.76 feet to center of the Old Montgomery Highway; thence turn at an angle to the right of 111°06' and run northeasterly along the center of the old highway for a distance of 279.14 feet; thence turn at an angle to the right of 93°53' and run easterly 333.22 feet; thence turn at an angle to the right of 90°00' and run southwesterly for a distance of 132.00 feet to the point of beginning; said land containing 67,149 square feet, more or less.



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

1978 MAY -4 PM 2:17

EXHIBIT "A"

*Thomas A. Browning, Jr.*  
JUDGE OF PROBATE

*Rec. 9.00*

*Ind. 1.00*

*10.00*