

504
ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made this 11 day of May, 1982 by KOVACH-EDDLEMAN PROPERTIES, an Alabama general partnership ("Assignor"), to BIRMINGHAM TRUST NATIONAL BANK, a national banking association ("Assignee").

W I T N E S S E T H:

WHEREAS, contemporaneously with the execution of this Assignment, Assignee has loaned certain funds to Assignor, and Assignor has executed and delivered to Assignee that certain Secured Promissory Note of even date herewith payable to Assignee in the principal sum of \$1,900,000.00 (the "Note"); and

WHEREAS, the Note is secured by, inter alia, a Mortgage (the "Mortgage") of even date herewith on the real property commonly known as Building 500, located in the City of Hoover, County of Shelby and State of Alabama and which is legally described in Exhibit "A" attached hereto and made a part hereof (the "Mortgaged Property"); and

WHEREAS, upon completion of the building, Assignor will enter into commercial leases for portions of the Mortgaged Property (all of which leases and any subleases thereof, are hereinafter referred to as the "Leases"), all of which Leases, together with the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Assignor may now or shall hereafter (including the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Mortgaged Property or any part thereof, including, but not by way of limitation minimum rents, additional rents, percentage rents, parking fees, common area maintenance, tax and insurance contributions, deficiency rents and liquidated damages following default, the premium payable by any obligor under any of the Leases upon the exercise of a cancellation privilege originally provided in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Mortgaged Property together with any and all rights and claims of any kind which Assignor may have against any obligor under any of the Leases or any subtenants or assignees thereof, or any occupants of the Mortgaged Property (all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"), are deemed additional security for the payment of the Note and the performance of Assignor's obligations thereunder and under the Mortgage.

NOW, THEREFORE, in order to induce Assignee to make the above-mentioned loan and as additional security for the payment of the principal and interest due under the Note and for the performance and observance of all the agreements contained herein and in the Note and the Mortgage, Assignor does hereby set over, assign and transfer to Assignee, upon the terms and conditions hereinafter contained, all of the Leases and Rents, together with all the right, title and interest of Assignor therein and thereto.

THOMAS, TALIAFERRO, FORMAN, BURR & MURRAY

1600 BANK FOR SAVINGS BUILDING
BIRMINGHAM, ALABAMA 35203-4098

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TOGETHER with any and all guaranties of the obligor's performance under any of the Leases, and

TOGETHER with the immediate and continuing right to collect and receive all of the Rents,

SUBJECT, however, to a license hereby granted by Assignee to Assignor, but limited as hereinafter provided, to collect and receive all of the said Rents,

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever, or for such shorter period as hereinafter may be indicated, as additional security for the payment of the principal and interest provided to be paid in the Note and for the performance and observance of all the agreements contained therein and in the Mortgage.

Assignor hereby covenants and agrees as follows:

1. So long as there shall not have occurred a default or an Event of Default under the Note, the Mortgage, or the "Other Agreements" (as defined in the Mortgage), Assignor shall retain the right to collect all of the Rents, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of required insurance policies upon the Mortgaged Property, thirdly to any maintenance and repairs required by the Mortgage and lastly to the payment of obligations under the Note and the Mortgage, before using any part of the Rents for any other purposes.

2. At all times, any of Assignee's agents shall have the right to verify the validity, amount of or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Assignor, Assignee, a nominee of Assignee, or any or all of said names.

3. Unless Assignee notifies Assignor thereof in writing that it dispenses with any one or more of the following requirements, Assignor shall: (i) promptly upon Assignor's receipt or learning thereof, inform Assignee, in writing, of any assertion of any material claims, offsets or counterclaims by any of the obligors under any of the Leases; (ii) not permit or agree to any material extension, compromise or settlement or make any material change or modification of any kind or nature of or with respect to any of the Leases or the terms thereof except as provided in Subparagraph (iv) hereof;; and (iii) promptly upon Assignor's receipt or learning thereof, furnish to and inform Assignee of all material adverse information relating to or affecting the financial condition of any obligor of the Leases; (iv) not to enter into or execute any Leases of the Mortgaged Property or execute any material amendments, modifications, extensions or renewals thereof except by utilizing a lease form acceptable to Assignee in its sole and absolute discretion; and (v) except for Leases (new, renewal or amended) which are gross leases and which provide for an annual gross rental in an

amount not less than the annual per square foot rental set forth on Exhibit D hereto, containing annual increases in gross rent of not less than (i) the annual percentage increase in the Consumer Price Index of Mortgagee's choice (published by the Bureau of Labor Statistics) compounded, or (ii) 8% per annum compounded, whichever is less, and which are for a term not in excess of five (5) years and demise not more than 5,000 square feet of net rentable space, not to enter into any Leases of the Mortgaged Property or any extensions, renewals, modifications or amendments thereof, without in each instance securing prior written consent, which consent Assignee may withhold in its sole and absolute discretion. Assignor further warrants and represents to Assignee that it shall not, in any event, lease all or any portion of the Mortgaged Property for less than the then current market rates for identical and similar office space in the Birmingham, Alabama area.

4. Within fifteen (15) days after written demand therefor by Assignee, Assignor shall deliver to Assignee, in form and substance acceptable to Assignee, a detailed certified rent roll of all the Leases and such other matters and information relating thereto as Assignee may request.

5. Upon the occurrence of a default or an Event of Default under the Note, the Mortgage or any of the Other Agreements, Assignee at its sole election and in its sole discretion, may do or require any one or more of the following:

(i) Immediately upon demand by Assignee, Assignor shall deliver to Assignee the originals of the Leases, with appropriate endorsements and/or other specific evidence of assignment thereto to Assignee - which endorsement and/or assignment shall be in form and substance acceptable to Assignee.

(ii) Assignee, then or at any time or times thereafter, at its sole election, without notice thereof to Assignor, and without taking possession of the Mortgaged Property, may notify any or all of the obligors under the Leases that the Leases have been assigned to Assignee, and Assignee (in its name, in the name of Assignor or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Assignee.

(iii) Assignor, immediately upon demand by Assignee, irrevocably shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Assignee.

(iv) Assignee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Assignor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise; to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof; to make, modify, enforce, cancel or accept surrender of any of the Leases; to remove and evict any lessee or any subtenant or assignee of any lessee; to increase or reduce the Rents; to decorate, clean and

make repairs; and to otherwise do any act or incur any costs or expense as Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession, and in such event to apply the Rents so collected to the operation and management of the Mortgaged Property, but in such order as Assignee may deem proper, and including payment of reasonable management, brokerage and attorneys' fees, in the name of Assignor, Assignee, a nominee of Assignee, or in any or all of the said names.

(v) Assignee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Assignor, to declare all sums secured hereby immediately due and payable and, at its option, exercise any and/or all of the rights and remedies contained in the Note and/or the Mortgage.

(vi) Assignor hereby irrevocably designates, makes, constitutes and appoints Assignee (and all persons designated by Assignee) as Assignor's true and lawful attorney and agent-in-fact, with power, without notice to Assignor and at such time or times thereafter as Assignee, at its sole election, may determine, in the name of Assignor, Assignee or in both names: (a) to demand payment of the Rents and performance of the Leases; (b) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (c) to exercise all of Assignor's rights, interests and remedies in and under the Leases and to collect the Rents; (d) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (e) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (f) to take control, in any manner, of the Leases and Rents; (g) to prepare, file and sign Assignor's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (h) to endorse the name of Assignor upon any payment or proceeds of the Rents and to deposit the same to the account of Assignee; and (i) to do all acts and things necessary, in Assignee's sole discretion, to carry out any or all of the foregoing.

(vii) All of the foregoing payments and proceeds received by Assignee shall be utilized by Assignee, at its sole election and in its sole discretion, for any one or more of the following purposes: (a) to be held by Assignee as additional collateral for the payment of Assignor's obligations and liabilities under the Note and/or the Mortgage, (b) to be applied to any of Assignor's obligations and liabilities under the Note and/or the Mortgage, in such manner and fashion and to such portions thereof as Assignee, at its sole election, shall determine; (c) to be applied to such obligations of Assignor or the Mortgaged Property or the operation or business thereof as Assignee, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (d) to be remitted to Assignor.

(viii) Assignee may also exercise any other rights and remedies then available under any applicable laws.

TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR HEREBY COVENANTS, REPRESENTS AND WARRANTS AS FOLLOWS:

a) That Assignor is the owner in fee simple absolute of the Mortgaged Property and has good title to the Leases and Rents hereby assigned, and good right to assign the same, and that no other person, firm or corporation has any right, title or interest therein except as expressly set forth herein; that Assignor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the existing Leases on Assignor's part to be kept, observed and performed; that Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or Rents, whether now due or hereafter to become due; that any of the Rents due and issuing for any period, subsequent to the date hereof have not been collected and that payment of any of same has not otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised; that Assignor has not received any funds or deposits from any obligor under the Leases in excess of one month's rent for which credit has not already been made on account of accrued rents; and that the obligor under any existing Lease is not in default of any of the terms thereof.

b) That Assignor shall observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Note, the Mortgage and the Leases on the part of Assignor to be kept, observed and performed, and to give prompt notice to Assignee of any failure on the part of Assignor to observe, perform and discharge same; to enforce or secure in the name of the Assignee the performance of each and every obligation, term, covenant, condition and agreement in each of the Leases by any obligor thereof to be performed; to 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/or any obligor thereunder, and, upon request by Assignee, will do so in the name and behalf of Assignee but at the expense of Assignor, and to pay all costs and expenses of Assignee, including attorneys' fees in a reasonable sum in any action or proceeding in which Assignee may appear.

c) That Assignor shall not receive or collect any of the Rents for a period of more than one month in advance (whether in cash or by promissory note), or pledge, transfer, mortgage or otherwise encumber or assign future payments of any of the Rents; shall not waive, excuse, condone, discount, set-off, compromise or in any manner release or discharge any obligor thereunder, of and from any obligations, covenants, conditions and agreements by said obligor to be kept, observed and performed, including the obligation to pay the rents thereunder, in the manner and at the place and time specified therein; shall not cancel, terminate or consent to any surrender of any of the Leases, nor modify or in any way alter the terms thereof without, in each such instance enumerated in this paragraph, the prior written consent of Assignee.

d) That in the event any representation or warranty herein of Assignor shall be found to be untrue, or Assignor shall default in the observance or performance of any obligation, term, covenant,

condition or warranty herein, then, in each such instance, the same shall constitute and be deemed to be a default under the Note and the Mortgage, hereby 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 hereunder as well as by law.

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e) 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 of possession of the Mortgaged Property 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, the Rents or the Mortgaged Property, or to take any action hereunder, or to expend any money or 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 obligor thereunder and not assigned and delivered to Assignee, nor shall Assignee 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 Mortgaged Property; and that the collection of said Rents and application as aforesaid and/or the entry upon and taking possession of the Mortgaged Property shall not cure or waive, modify or affect any notice of default under the Note or the Mortgage so as to invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured for the time the original default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default, whether of the same or a different nature.

f) That Assignor hereby agrees to indemnify and hold Assignee harmless of, from and against any and all liability, loss, damage or expense which Assignee may or might incur by reason of this Assignment, or for any action taken by Assignee hereunder, 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 without limitation thereto, any claim by any obligor thereunder of credit for rental paid to and received by Assignor, but not delivered to Assignee, for any period under any of the Leases more than one month in advance of the due date thereof. Should Assignee incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorneys' fees) shall be payable by Assignor immediately without demand, shall bear interest (at the rate specified in the Note upon monies due after a default thereunder) from the date of Assignee's payment thereof until repaid to Assignee, and shall be secured hereby and by the Mortgage.

g) That until the indebtedness secured hereby shall have been paid in full, Assignor will deliver to Assignee executed copies of any and all future Leases, and hereby covenants and agrees to make, execute and deliver unto Assignee upon demand and at any

time or times, any and all assignments and other instruments sufficient for the purpose or that the Assignee may deem to be advisable for carrying out the true purposes and intent of this Assignment.

h) That 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 or times, shall not be construed or deemed to be a waiver by Assignee of any of its rights and remedies hereunder, under the Note, the Mortgage, the Other Agreements or under applicable law. The right of Assignee to collect the said indebtedness and to enforce any other security therefor may be exercised by Assignee, either prior to, simultaneously with, or subsequent to any action taken hereunder or under the Note, the Mortgage or the Other Agreements.

i) That upon payment in full of all of the indebtedness secured by the Mortgage or hereunder, this Assignment shall become and be void and of no further effect, but the affidavit, certificate, letter or statement of any officer of Assignee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon.

j) That all notices, demands or documents of any kind which Assignee may be required or may desire to serve upon Assignor hereunder shall be sufficiently served by delivering same to Assignor personally or by leaving a copy of same addressed to Assignor at the address of the Mortgaged Property appearing hereinabove, or by depositing a copy of same in the United States mail, postage prepaid and addressed to Assignor at said address.

k) That the terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all lessees, subtenants and assigns of same, and all occupants and subsequent owners of the Mortgaged Property, and all subsequent holders of the Note and the Mortgage. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case.

l) Assignor shall secure Assignee's approval of all expenditures for preparing leaseable portions of the Mortgaged Property for occupancy by tenants prior to Assignor's entrance into any agreement or contract for same.

m) The rights and remedies of Assignee under this Assignment are and shall be cumulative and in addition to any and all rights and remedies available to Assignee under the Mortgage. In the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of the Mortgage, the provisions contained in the Mortgage shall govern and control. This

Assignment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, administrators, personal representatives, successors and assigns.

IN WITNESS WHEREOF, this Assignment has been duly executed the day and year first above written.

KOVACH-EDDLEMAN PROPERTIES,
an Alabama general partnership

By: 

Frank Kovach, Jr.,
General Partner

By: 

Billy D. Eddleman,
General Partner

Being all of the General Partners
of Assignor

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ALABAMA
STATE OF ~~ILLINOIS~~
JEFFERSON) ss
COUNTY OF ~~XXX~~)

I, Julia L. Harris, a Notary Public in and for said County, in said State, hereby certify that Frank Kovach, Jr., whose name as a general partner of Kovach-Eddleman Properties, an Alabama general partnership is signed to the foregoing conveyance and who is known to me, acknowledged before me, on this day that, being informed of the contents of the conveyance, he as such general partner, and with full authority executed the same voluntarily for and as the act of said general partnership.

GIVEN under my hand and seal of office this 11th day of ~~May~~ ^{June}, 1982 A.D.

Julia L. Harris
Notary Public

Commission expires:
8-28-85

ALABAMA
STATE OF ~~ILLINOIS~~
JEFFERSON) ss
COUNTY OF ~~XXX~~)

I, Julia L. Harris, a Notary Public in and for said County, in said State, hereby certify that Billy D. Eddleman, whose name as a general partner of Kovach-Eddleman Properties, an Alabama general partnership is signed to the foregoing conveyance and who is known to me, acknowledged before me, on this day that, being informed of the contents of the conveyance, he as such general partner, and with full authority executed the same voluntarily for and as the act of said general partnership.

GIVEN under my hand and seal of office this 11th day of ~~May~~ ^{June}, 1982 A.D.

Julia L. Harris
Notary Public

Commission expires:
8-28-85

EXHIBIT A TO ASSIGNMENT OF LEASES AND RENTS
DATED June 11, 1982, between
KOVACH-EDDLEMAN PROPERTIES, as ASSIGNOR,
and THE BIRMINGHAM TRUST NATIONAL BANK, as ASSIGNEE

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

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of Section 19, Township 19 South, Range 2 West; thence West along the North 1/4-1/4 line of said 1/4-1/4 4,622.16 feet; thence 90 deg. 00'00" left 88.78 feet to the point of beginning; thence 120 deg. 42'25" left 514.92 feet to the Southwest right of way of Parkway River Road; thence 84 deg. 25'59" right, along said right of way 160.90 feet to a curve to the right, said curve having a central angle of 92 deg. 49'00" and a radius of 170.00 feet; thence along the arc of said curve and said right of way, 275.39 feet; thence tangent to said curve and along said right of way, 116.87 feet to a curve to the left; said curve having a central angle of 31 deg. 00'00" and a radius of 280.00 feet; thence along the arc of said curve and said right of way 151.50 feet; thence 108 deg. 15'00" right, from tangent of said curve, leaving said right of way 413.96 feet to the point of beginning. According to survey of John E. Norton, Ala. Reg. P.E. and L.S. No. 10287.

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

1982 JUN 16 AM 8:10

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

Rec 15.00
Jud 1.00
16.00