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**ASSIGNMENT OF LEASES AND RENTS**

**THIS ASSIGNMENT OF LEASES AND RENTS** made this 22<sup>nd</sup> day of September, 1986, by **JARED PROPERTIES**, an Alabama general partnership (the "Borrower"), to **FIRST COMMERCIAL BANK**, an Alabama banking corporation (the "Lender"),

**R E C I T A L S**

Simultaneously with the execution hereof, the Lender is making a loan to the Borrower in the principal amount of \$700,000 (the "Loan") evidenced by a Promissory Note of even date herewith (the "Note"). In consideration of the Loan and as security therefor, the Borrower has this day executed various documents in favor of the Lender including, without limitation, the Note, a Construction Loan Agreement, a Mortgage and Security Agreement (the "Mortgage") and other security agreements (all the foregoing, together with this Assignment and all loan and security documents hereafter executed by the Borrower in favor of the Lender with respect to the Loan, being referred to collectively herein as the "Loan Documents").

**W I T N E S S E T H:**

**NOW, THEREFORE**, in consideration of the Loan and the promises and covenants contained herein, the Borrower hereby covenants and agrees with the Lender as follows:

1. Assignment. As additional security for (a) all obligations which are secured by the Mortgage and (b) for the performance and discharge of the obligations, covenants and agreements of the Borrower and other parties contained in the Loan Documents, the Borrower hereby grants, transfers and assigns to the Lender and its successors and assigns the following:

(a) All leases and subleases, written or oral, and all operating agreements, management agreements, concession agreements, licenses and all similar agreements, whether now existing or hereafter made (herein together called the "Leases"), together with all extensions, renewals, substitutions, modifications and replacements of the Leases, affecting or concerning the land described on Exhibit A attached hereto and made a part hereof and all improvements at any time situated on said land (said land and improvements being herein called the "Project");

(b) Any and all guaranties of performance by any obligor under any of the Leases and all extensions, renewals, substitutions, modifications and replacements thereof; and

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(c) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, royalties, issues and profits (herein together called the "Rents") now due or which may become due or to which the Borrower may now or shall hereafter (including during 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 any part of the Project or any part thereof, including, without limitation, minimum rents, additional rents, percentage rents, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for 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 any part of the Project, together with any and all rights and claims of any kind which the Borrower may have against any lessee under the Leases or against any subtenants or occupants of any part of the Project; provided that so long as no Event of Default hereunder shall have occurred and be continuing, the Borrower shall have the right under a license granted hereby (but limited as provided in paragraph 5 hereof) to collect, receive and retain, but not prior to accrual, all the Rents.

PROVIDED, HOWEVER, that upon the payment and performance in full of all obligations evidenced and secured by the Loan Documents, the assignment made herein shall be void.

2. Representations and Warranties. The Borrower hereby represents and warrants as follows:

(a) The Borrower has, or will have, good title to the Leases and Rents hereby assigned and good right to assign the same, and no other party has any right, title or interest therein.

(b) The Borrower has, or will have, duly and punctually observed and performed all the terms, covenants, conditions and warranties of the Leases on the Borrower's part to be observed and performed.

(c) The Borrower has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due, except as provided herein.

(d) No Rents due for any period subsequent to the date hereof have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

(e) The Borrower has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

(f) No default exists under any of the existing Leases.

All the foregoing representations and warranties shall be deemed to be reaffirmed upon the execution of each of the Leases by the Borrower.

3. Covenants of the Borrower. To protect the security of this Agreement and the assignment made hereby, the Borrower covenants and agrees:

(a) To observe and perform all obligations, covenants and warranties provided for under the terms of the Leases to be observed and performed by the Borrower, and to give prompt notice to the Lender in the event the Borrower fails to observe and perform the same.

(b) To enforce or secure in the name of the Lender the performance of each obligation, term, covenant, condition and agreement to be performed by any obligor under the Leases.

(c) 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 the Borrower and any obligor thereunder, and, upon request by the Lender to do so in the name and on behalf of the Lender but at the expense of the Borrower, and to pay all costs and expenses of the Lender, including reasonable attorneys' fees, in any action or proceeding in which the Lender may appear.

(d) Not to further assign, pledge, transfer, mortgage or otherwise encumber the Leases or the Rents.

(e) Not to receive or collect any Rents from any present or future lessee of the Project or any part thereof for a period of more than one month in advance or discount any Rents.

(f) Not to waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any obligor under the Leases of and from any obligations, covenants, conditions and agreements by said obligor to be observed and performed, including the obligation to pay Rents in the manner and at the place and time specified in any Leases.

(g) Not to cancel, terminate or consent to any surrender of any Leases, or modify or in any way alter the terms thereof without the prior written consent of the Lender.

(h) To secure the approval of the Lender of any Leases before the execution thereof and promptly upon the execution by the Borrower of any Leases, (i) to furnish the Lender with the name and address of the obligor thereunder, the term of such Leases and a description of the premises covered thereby and, upon request of the Lender, a copy thereof, and (ii) to execute all such further assignments of such Leases and the Rents therefrom as the Lender may require.

(i) To pay over to the Lender immediately upon receipt all sums received by the Borrower as creditor with respect to an assignment for the benefit of creditors in bankruptcy, reorganization, arrangement, insolvency, dissolution or receivership proceedings, or as payment, premium or other consideration in connection with the cancellation or modification of any Leases, whereupon the Lender shall apply any funds so received to the payment of rentals due under the Leases or the payment of any part of the indebtedness secured hereby or by the Mortgage.

4. Events of Default. The occurrence of any of the following shall be an "Event of Default" hereunder:

- (a) the failure of the Borrower to perform or observe any obligation or covenant contained herein, or
- (b) a default or an Event of Default under any of the other Loan Documents, or
- (c) any warranty of the Borrower contained herein or in any of the Loan Documents being false or misleading in any material respect when made, or
- (d) the failure of the Borrower to perform any condition precedent to the obligation of any party to any of the Leases and the continuation of such failure after ten (10) days' written notice thereof to the Borrower by the Lender.

5. Remedies of the Lender. Upon the occurrence and continuation of an Event of Default hereunder, the Lender may:

- (a) Declare all or any part of the indebtedness secured hereby and by the Mortgage immediately due and payable;
- (b) Exercise any other right and remedy granted to the Lender under the Mortgage or under any of the other Loan Documents or at law or in equity;
- (c) Terminate the license hereby granted to the Borrower to collect, receive and retain the Rents as aforesaid, and, without taking possession, in the Lender's own name, to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the payment of any part of the indebtedness secured hereby or by the Mortgage;
- (d) Without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, and irrespective of the Borrower's possession, enter upon, take possession of, manage and operate the Project or any part thereof for the account of the Borrower, execute, modify, enforce, cancel or accept surrender of any Leases, take possession of and use the books of account and financial records of the Borrower relating to the Project, remove and evict any lessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Lender shall deem proper to protect the security hereof, as fully and to the same extent as the Borrower could do if in possession, and in such event to apply any funds so collected to the operation and management of the Project (including payment of reasonable management, brokerage and attorney's fees) and to the payment of any part of the indebtedness secured hereby or by the Mortgage; or
- (e) Take all other actions which the Lender may deem necessary or desirable to protect its security.

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The collection of the Rents and application thereof as aforesaid or the entry upon and taking possession of the Project or both shall not cure or waive any Event of Default or waive, modify or affect any notice of any Event of Default, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application of the Rents may have cured the original default. If the Lender 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. Nothing contained herein nor any collection of the Rents by the Lender or by a receiver shall be construed to make the Lender a "mortgagee-in-possession" of the Project so long as the Lender has not itself entered into actual possession of the Project. The Borrower irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, to execute any Leases in the Borrower's name.

6. Direction to Lessees. Upon the occurrence of any Event of Default hereunder, this Agreement shall constitute a direction to and full authority to any and all obligors under the Leases and any guarantor of the Leases to pay all Rents to the Lender without proof of the default relied upon. The Borrower hereby irrevocably authorizes all obligors under the Leases and any guarantors thereof to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any Rents due or to become due. All obligors under the Leases and any guarantors thereof shall have no right or duty to inquire whether an Event of Default has actually occurred, and the Borrower shall have no claim against any obligor under the Leases or any guarantors for any rents paid by such obligor or guarantor to the Lender pursuant to demand or notice by the Lender.

7. Rights of the Lender. (a) The Lender shall be deemed to be the creditor of any obligor under the Leases in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such obligor (without obligation on the part of the Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein).

(b) The Lender shall have the right to assign the Borrower's right, title and interest in the Leases to any subsequent holder of the Mortgage or any participating interest therein or to any party acquiring title to all or any part of the Project through foreclosure or otherwise, and any subsequent assignee shall have all the rights and powers herein provided to the Lender.

8. Performance by the Lender. Indemnity. (a) If the Borrower fails to perform or observe any covenant or comply with any condition contained in any of the Leases, without notice to or demand on the Borrower and without releasing the Borrower from its obligations to do so, the Lender may perform such covenant or condition, or it may appear in any action or proceeding. The Lender shall not be obligated to perform or discharge any obligation of the Borrower under any of the Leases either before or after the occurrence of an Event of Default. To the extent



that the Lender shall incur any costs or expenses or pay any moneys in connection therewith, including any costs or expenses of litigation, such costs, expenses or payments will be additional indebtedness of the Borrower to the Lender secured by the Mortgage, will bear interest at the after-maturity rate specified in the Note and will be payable upon demand.

(b) The Borrower agrees to indemnify and hold harmless the Lender from all claims, demands, liabilities, losses, costs, damages, fees and expenses which the Lender may incur under any of the Leases or under or by reason of this Agreement by reason of any act of the Lender under this Agreement or under any of the Leases.

9. Miscellaneous. The assignment made herein is intended to be supplementary of and not in substitution for or in derogation of any similar assignment contained in any of the other Loan Documents. It is intended that this Agreement and the assignment made herein shall run with the Land. The recordation of a satisfaction or release of the Mortgage shall operate automatically as a satisfaction and release of this Agreement and the assignment made herein. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in the Lender in any of the other Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by the Lender, and the remedies herein provided or otherwise available to the Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall the use of any of the remedies hereby provided prevent the subsequent or concurrent resort to any other remedy or remedies. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, heirs and legal representatives of the parties hereto. The provisions of this Agreement are severable, and the invalidity or unenforceability of any one or more of the provisions hereof will in no way affect any other provision. This Agreement constitutes the entire agreement between the Borrower and the Lender with respect to the subject matter hereof, and this Agreement may be amended only by an instrument in writing executed by the parties. This Agreement shall be governed by the laws of the State of Alabama.

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IN WITNESS WHEREOF, the Borrower has caused this Agreement to be executed by each of its general partners who have hereunto set their hands and seals

on the day and year first above written.


**JARED PROPERTIES**

By: Its General Partners

  
\_\_\_\_\_  
MICHAEL M. JARED (SEAL)

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
O. ALAN JARED (SEAL)

  
\_\_\_\_\_  
Witness

**ADDRESS:**

5501 Highway 280 South  
Leeds, Alabama 35094

This instrument was prepared by:

Meade Whitaker, Jr.  
800 First National-Southern Natural Building  
Birmingham, Alabama 35203

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STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that MICHAEL M. JARED, 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 such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 22<sup>nd</sup> day of September, 1986.



Meade Whitaker Jr.  
Notary Public

My Commission Expires: 3/26/87

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that O. ALAN JARED, 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 such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 22<sup>nd</sup> day of September, 1986.



Meade Whitaker Jr.  
Notary Public

My Commission Expires: 3/26/87

**EXHIBIT A**

Lot 2, according to the Map of B & S Subdivision, as recorded in Map Book 9, Page 52, in the Probate Office of Shelby County, Alabama.

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

1986 SEP 26 AM 8 47

*Thomas P. Fountain, Jr.*  
JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		_____
3. Recording Fee		<u>22.50</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>23.50</u>