

1879

ASSIGNMENT OF RENTS AND LEASES

The following terms shall have the meanings set forth below, as used in this instrument:

- a. "Owner" shall refer to BIRMINGHAM I ASSOCIATES, LTD., a Georgia limited partnership.
- b. "Lender" shall refer to AMSOUTH BANK N.A.
- c. "Loan Amount" shall refer to \$10,600,000.
- d. "Owner's Notice Address" shall refer to 5775-A Peachtree-Dunwoody Road, Suite 200, Atlanta, Georgia 30342.
- e. "Lender's Notice Address" shall refer to Post Office Box 11007, Birmingham, Alabama 35288, Attention: Mr. John C. Ham.
- f. "State" shall refer to the Alabama.

1. BY THIS ASSIGNMENT, the Owner, for value received, hereby assigns to the Lender all of Owner's right, title, privileges and interest which Owner has and may have in the leases, operating agreements, management agreements, concession agreements, licenses, and all similar agreements, now existing or hereafter made and affecting the real property and the improvements thereon described in Exhibit A attached hereto and incorporated herein by reference (collectively referred to as the "Property"), together with all extensions, renewals, modifications or replacements of said leases and agreements, and together with any and all guarantees of the obligations of the lessees and other obligors thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. All said leases and all other said agreements described in this Paragraph 1, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter collectively and severally referred to as the "Lease".

2. OWNER'S PURPOSE in making this assignment is to relinquish to Lender its right to collect and enjoy the rents, royalties, issues, profits, income and other benefits at any time accruing by virtue of the Lease (hereinafter called "Rents and Profits") as additional security for the outstanding indebtedness to Lender as evidenced by the note in favor of Lender (hereinafter called the "Obligation") dated this same date, in the aggregate original principal sum equal to the Loan Amount, executed by Owner, and as additional security for the Owner's obligations under the Mortgage and Security Agreement ("Mortgage") executed to better secure the Obligation; and to furnish security for the performance of Owner's obligations contained herein, in the Obligation. The Obligation and other said loan documents, and all other documents executed in connection with this loan are referred to as the "Loan Documents".

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Please Return This Instrument To  
GUY V. MARTIN, JR.  
LEWIS, MARTIN BURNETT & DUNKLE  
1900 SouthTrust Tower  
BIRMINGHAM, ALABAMA 35203

✓ This instrument was prepared by  
GUY V. MARTIN, JR.  
1900 SouthTrust Tower  
BIRMINGHAM, ALABAMA 35203

3. THE PARTIES INTEND that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan Documents, the Rents and Profits as they respectively become due and to enforce the Lease, which license shall not be revoked so long as there is no default (not timely cured) by Owner in performance of the terms, covenants or provisions of the Obligation, the Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

4. UPON THE OCCURRENCE OF ANY DEFAULT (not timely cured) under the terms and conditions of this Assignment or any of the Loan Documents, this Assignment shall constitute a direction to and full authority to any and all obligors under the Lease and any guarantor of the Lease to pay all Rents and Profits to Lender without proof of the default relied upon. Owner hereby irrevocably authorizes any and all obligors under the Lease and any guarantor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any Rents and Profits due or to become due. Any and all obligors under the Lease and any guarantor shall have no right or duty to inquire whether a default has actually occurred and Owner shall have no claim against any obligor under the Lease or any guarantor for any Rents and Profits paid by such obligor Lessee or such guarantor to Lender pursuant to Lender's demand or notice.

5. OWNER WARRANTS:

(a) that no default exists or will exist and continue uncured on the part of Owner under any Lease;

(b) that no rent or other payment has been or will be collected under any Lease in advance, except in the ordinary course of business;

(c) that neither the Lease nor any interest therein has been previously or will be assigned or pledged by Owner;

(d) that no concession has been or will be granted to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent or other payment due or to become due, except in the ordinary course of business.

All such foregoing warranties shall be deemed to be reaffirmed on and as of the time of each Lease executed by Owner on the Property.

6. OWNER AGREES:

(a) if the Lease provides for a security deposit paid by Lessee to Owner, this Assignment transfers to the Lender all of Owner's right, title and

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interest in and to the security deposit, provided that Owner shall have the right to retain said security deposit so long as Owner is not in default (not timely cured) under this Assignment or the Loan Documents; and provided further that Lender shall have no obligation to any obligor under the Lease with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit;

(b) except as permitted in the Mortgage, to present to Lender, before any Lease is executed on the Property, (other than Leases approved in writing as of this date) a copy of the same and obtain Lender's approval of the same. Owner shall provide executed originals and/or copies of all Leases to Lender upon demand;

(c) that the Lease shall remain in full force and effect despite any merger of the interest of Owner and any obligor under the Lease, and Owner shall not transfer or convey fee title to the leased premises to any obligor under the Lease without the prior written consent of Lender, and where such consent is given or where under applicable law the requirement for such consent is not enforceable, Owner shall require the said obligor under the Lease, in writing, to assume and agree to pay the Obligation in accordance with the terms, covenants and conditions of the Loan Documents; provided, however, that, in no event shall any such transfer or conveyance operate to release or relieve Owner of any liability to Lender unless Lender specifically agrees otherwise in writing;

(d) Owner shall not terminate the Lease or modify or amend the Lease or any of the terms thereof, or grant any concessions in connection therewith or accept a surrender thereof, without the prior written consent of Lender except in the ordinary course of business operations;

(e) Owner shall not collect any Rents and Profits more than one (1) month in advance of the date on which they become due under the terms of the Lease except in the ordinary course of business operations;

(f) Owner shall not discount any future accruing Rents and Profits;

(g) Owner shall not consent to assignment of the Lease, or subletting thereunder, whether or not in accordance with its terms, without the prior written consent of Lender except in the ordinary course of business operations;

(h) Owner shall not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law;

(i) Owner shall not request, consent to, agree to or accept a subordination of the Lease to any mortgage or other encumbrance, or any other lease, now or hereafter affecting the Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(j) Owner shall faithfully perform and discharge its obligations under the Lease, and Owner shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Lease; and if requested by Lender, Owner shall enforce the Lease and all remedies available to Owner against any obligor under the Lease in the case of default under the Lease by any Obligor under the Lease;

(k) At Lender's request, Owner shall promptly provide to Lender a true and correct copy of the executed lease or other agreement; each such lease or agreement shall be deemed included in this Assignment automatically as though originally listed herein, and the term "Lease" as used herein shall include such lease or agreement;

(l) Owner shall at all times contract to manage the Property through a qualified manager, and Owner shall obtain the Lender's prior written consent to and approval of the said management contract and manager before execution of and employing the same, respectively. The said management contract and all of the management, leasing, or other fees under such management contract shall be subordinate to the lien of the Loan Documents;

(m) Nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Lease; Owner shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages which Lender may incur under the Lease or by reason of this Assignment, and Owner shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and reasonable attorneys' fees incurred by Lender; all of the foregoing sums shall bear interest until paid at the rate set forth in the Obligation; and any Rents and Profits collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

7. OWNER HEREBY GRANTS TO LENDER THE FOLLOWING RIGHTS:

(a) Upon any uncured default by Owner, Lender shall be deemed to be the creditor of any obligor under the Lease 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 Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein);

(b) Lender shall have the right to assign Owner's right, title and interest in the Lease subject to the provisions hereof to any subsequent holder of the Mortgage or any participating interest therein or to any person acquiring title to all or any part of the Property through foreclosure or otherwise, and any subsequent assignee shall have all the rights and powers herein provided to Lender;

(c) Lender shall have the right (but not the obligation), upon any failure of Owner to perform any of its agreements hereunder, to take any action as Lender may deem necessary or appropriate to protect its security, including but not limited to appearing in any action or proceeding and performing any obligations of the lessor under any Lease, and Owner agrees to pay, on demand, all costs and expenses (including without limitation reasonable attorneys' fees) incurred by Lender in connection therewith, together with interest thereon at the After-Maturity Rate set forth in the Obligation;

(d) upon default by Owner under any Lease, the Lender shall have the right, but not the obligation, to cure the same, upon failure of Owner to cure, and Lender shall have the right to add all costs necessary to cure such defaults, including reasonable attorneys' fees, to the Note.

(e) upon any default (after expiration of applicable cure period) by Owner under this Assignment or under the Loan Documents, and without notice to or consent of Owner, Lender shall have the following rights (none of which shall be construed to be obligations of the Lender):

(i) Lender shall have the right under this Agreement to use and possess, without rental or charge, the furniture, appliances and all other personal property of the Owner located on the Property and used in the operation or occupancy thereof. Lender shall have the right to apply any of the Rents and Profits to pay installments due for personal property rented or purchased on credit, insurance premiums on personal property, or other charges relating to personal property on the Property. However, this Assignment shall not make Lender responsible for the control, care, management or repair of the Property or any personal property or for the carrying out of any of the terms or provisions of the Lease;

(ii) Lender shall have the right to apply the Rents and Profits and any sums recovered by Lender pursuant to Paragraphs 4 and/or 7(a) hereof to Owner's outstanding indebtedness to Lender secured hereby or by any of the Loan Documents, as well as to charges for taxes, insurance, improvements, maintenance and other items relating to the operation of the Property;

(iii) Lender shall have the right to take possession of the Property, manage and operate the Property and Owner's business thereon, and to take possession of and use all books of account and financial records of Owner and its property managers or representatives relating to the Property;

(iv) Lender shall have the right to execute new Leases of any part of the Property, including Leases that extend beyond the term of the Mortgage;

(v) Lender shall have the right to cancel or alter any existing Lease; and

(vi) Lender shall have the authority, as Owner's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Owner and to bind Owner on all papers and documents relating to the operation, leasing and maintenance of the Property.

All of the foregoing rights and remedies of Lender are cumulative, and Lender shall also have upon the occurrence of any such default all other rights and remedies provided under the Loan Documents or otherwise available at law or in equity or by statute.

8. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Loan Documents. Failure of the Lender to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

9. Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Lender in accordance with the terms of this Assignment.

10. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto (including without limitation, in the case of Lender, any third parties now or hereafter acquiring any interest in the Obligation or any part thereof, whether by virtue of assignment, participation or otherwise). The words "Owner", "Lender", "obligor under the Lease", and "guarantor", wherever used herein, shall include the persons and entities named herein or in the Lease or any guaranty and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named Lender or any successor designated as such by an instrument recorded in the appropriate office of the County in which the Property is located referring to this Assignment shall be sufficient for all purposes notwithstanding that Lender may have theretofore assigned or participated any interest in the Obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

11. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

12. Upon payment to Lender of the full amount of all indebtedness and obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release or the Mortgage, Note, and guarantees, this Assignment shall be void and of no further effect.

13. All notices given hereunder shall be given in the manner set forth in the Mortgage.

14. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

15. This Assignment shall be governed by and construed in accordance with the laws of the State.

16. The liability of Owner is limited to the extent set forth in the Note.

17. This Assignment shall terminate upon the satisfaction of the Mortgage by Lender.

IN WITNESS WHEREOF, the hand and seal of Owner is affixed hereon this 13<sup>th</sup> day of April, 1987.

BORROWER:

BIRMINGHAM I ASSOCIATES, LTD., a  
Georgia limited partnership

By: REALTY DEVELOPMENT CORPORATION,  
a Georgia corporation, its  
General Partner

ATTEST:

By:

Name:

Nicholas N. Sears

Its:

Asst Secretary

By:

Name:

Its:

Charles F. Coburn  
**CHARLES F. COBURN**  
**VICE PRESIDENT**

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CC



STATE OF <sup>Georgia</sup> ALABAMA )  
Fulton )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Charles Coburn whose name as Vice Pres. of Realty Development Corporation, a Georgia corporation, as general partner of Birmingham I Associates, Ltd., a Georgia 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as general partner of said partnership.

Given under my hand and official seal this 6 day of April, 1987.

Delores L. Spivey  
Notary Public

My Commission Expires: Notary Public, Georgia, State at Large  
My Commission Expires Feb. 10, 1989

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EXHIBIT A

Commence at the Southeast corner of the Northwest One-Quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; run thence in a Westerly direction along the South line of said Quarter Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86 degrees and run in a Northwesterly direction along the Northeasterly right-of-way line of U.S. Highway No. 31 South for a distance of 1,096.84 feet; thence turn an angle to the right of 101 degrees 03 minutes 10 seconds and run in an Easterly direction for a distance of 346.16 feet to the point of beginning; from the point of beginning thus obtained thence turn an angle to the left of 71 degrees 19 minutes 50 seconds and run in a Northeasterly direction for a distance of 580 feet; thence turn an angle to the right of 18 degrees 59 minutes 22 seconds and run in a Northeasterly direction for a distance of 525.54 feet; thence turn an angle to the right of 101 degrees 40 minutes 03 seconds and run in a Southeasterly direction for a distance of 526.96 feet; thence turn an angle to the right of 31 degrees 30 minutes and run in a Southeasterly direction for a distance of 176.65 feet; thence turn an angle to the right of 00 degrees 14 minutes 53 seconds and run in a Southeasterly direction for a distance of 60 feet; thence turn an angle to the left of 90 degrees to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 15 degrees 10 minutes 25 seconds and a radius of 438.82 feet; thence run in a Northeasterly direction along the arc of said curve for a distance of 116.21 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 87 degrees 12 minutes 41 seconds and a radius of 25 feet; thence run along the arc of said curve to the right in a Northeasterly, Easterly, and Southeasterly direction for a distance of 38.05 feet to the end of said curve; thence run along the tangent extended to last described course in a Southeasterly direction for a distance of 424.16 feet to the point of beginning of a curve to the right, said curve having a central angle of 19 degrees 26 minutes 05 seconds and a radius of 349.57 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 118.57 feet to the end of said curve; thence run along the tangent extended to said curve in a Southeasterly direction for a distance of 20.40 feet to the point of beginning of a curve to the left, said curve having a central angle of 12 degrees 15 minutes 04 seconds and a radius of 889.71 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 190.24 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 93 degrees 01 minutes 06 seconds and a radius of 25 feet; thence run along the arc of said curve to the right in a Southeasterly and Southwesterly direction for a distance of 40.59 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 25 degrees 18 minutes and a radius of 483.33 feet; thence run along arc of said curve in a Northwesterly direction for a distance of 213.43 feet to the end of said curve; thence run along the tangent extended to said curve in a Northwesterly direction for a distance of 35.74 feet to the point of beginning of a curve to the left, said curve having a central angle of 25 degrees 39 minutes 10 seconds and a radius of 271.57 feet; thence run along the arc of said curve in a Northwesterly and Southwesterly direction for a distance of 121.59 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 20 degrees 18 minutes 07 seconds and a radius of 591.13 feet; thence run along the arc of said curve in a Southwesterly, Westerly, and Northwesterly direction for a distance of 209.46 feet to the end of said curve; thence turn an angle to the right from tangent of last described course of 34 degrees 45 minutes 06 seconds and run in a Northwesterly direction for a distance of 307.91 feet; thence turn an angle to the right of 44 degrees 55 minutes 56 seconds and run in a Northerly direction for a distance of 142.00 feet; thence turn an angle to the left of 84 degrees 31 minutes 38 seconds and run in a Northwesterly direction for a distance of 335.53 feet; thence turn an angle to the right of 40 degrees 30 minutes and run in a Northwesterly direction for a distance of 153.91 feet to the point of beginning.

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EXHIBIT A

Together with a perpetual easement for a sanitary sewer pipeline over, along, and through the following described real estate, for the benefit of the real property described hereinabove:

Description of a 20-foot wide sanitary sewer easement situated in the SE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, the centerline of which is more particularly described as follows: From the Southeast corner of the SE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, run West along the South line of said SE 1/4 of the NW 1/4 for a distance of 1170.59 feet; thence turn an angle to the right of 110 degrees 52 minutes 50 seconds and run in a North-easterly direction for a distance of 32.41 feet to the center of an existing sanitary sewer manhole and the point of beginning of the centerline of the 20 foot wide sanitary sewer easement herein described; from the point of beginning, thus obtained, continue along the last described course for a distance of 175.15 feet; thence turn an angle to the left of 15 degrees 58 minutes 58 seconds and run in a Northeasterly direction for a distance of 178.66 feet; thence turn an angle to the right of 8 degrees 19 minutes 00 seconds and run in a Northeasterly direction for a distance of 160.00 feet, more or less, to a point on the Southern boundary line of the above described property, and the end of said sanitary sewer easement.

Also, an easement 15-foot in width for sanitary sewer easement over, along and through that certain property described in the easement recorded in Real Record 097, Page 535, in the Probate Office of Shelby County, Alabama.

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

1987 APR 15 PM 3:19

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

1. Deed Tax	\$ _____
2. Mig. Tax	_____
3. Recording Fee	25.00
4. Indexing Fee	1.00
TOTAL	26.00