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[Riverchase]

COLLATERAL ASSIGNMENT OF LEASES

mtg 3-24-88

THIS ASSIGNMENT OF LEASES dated as of the 22 day of March, 1988, by POLMAR & ASSOCIATES, an Alabama general partnership, whose address is P. O. Box 12, Montgomery, Alabama 36101 ("Assignor") to FIRST ALABAMA BANK, an Alabama banking corporation, whose address is P. O. Box 511, Montgomery, Alabama 36134 ("Assignee"), is made with reference to the following facts:

A. Assignee has become indebted to Assignor in the sum of EIGHT MILLION AND NO/100 (\$8,000,000.00) DOLLARS, evidenced by a certain promissory note executed by Assignor, including any extensions, modifications or amendments thereto (the "Note"), the payment of which is secured by a mortgage of even date herewith, executed by Assignor in favor of Assignee (the "Mortgage") covering the right, title and interest of Assignee in the real property located in Hoover, Alabama more particularly described in Exhibit "A" attached hereto (the "Demised Premises") and Assignor's interest in the buildings, improvements, personal property, trade fixtures and equipment situated on the Demised Premises; and

B. As further security for the payment of the Note, Assignor desires to assign to Assignee all of its right, title and interest in and to those certain leases identified in Exhibit "B" attached hereto, including all leases hereafter made by Assignor as landlord covering or affecting the Demised Premises and the improvements located thereon (the "Leases");

FOR VALUE RECEIVED, Assignor hereby GRANTS, TRANSFERS AND ASSIGNS to Assignee all of the right, title and interest of Assignor in and to the Leases, together with any and all extensions and renewals of any thereof and also together with any and all guarantees of the lessee's obligations under any thereof and under any and all extensions and renewals of any thereof.

## FOR THE PURPOSE OF SECURING:

ONE: Payment of all sums now or at any time hereafter due to Assignee and secured by the Mortgage, including, without limitation, payment of the Note, in accordance with its terms.

TWO: Performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein or in the Mortgage or the Note.

A. To Protect the Security of the Assignment, Assignor Covenants and Agrees, with Respect to the Leases:

1. To faithfully perform and discharge each and every obligation, covenant and agreement of the Leases by Assignor as lessor thereunder to be performed; to give prompt notice to Assignee of any notice of default on the part of Assignor with respect to the Leases received from any lessee or guarantor, together with an accurate copy of any such notice, at the sole cost and expense of Assignor, to enforce the performance of each and every obligation, covenant, condition and agreement of the leases to be performed under the Leases; not to modify or alter; in any way the terms of the Leases, not to terminate the term of the Leases and not to accept a surrender thereof unless required to do so by the terms of the Leases, not to consent to an assignment of the Leases by any of the lessees under the Leases or to a subletting of the Leases by any of the lessees unless required to do so by the term of the Leases; not to anticipate the rents thereunder, or in any way to waive, excuse, condone or release or discharge the lessees thereunder of or from the

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obligations, covenants, conditions and agreements by the lessees to be performed, including the obligation to pay the rental called for thereunder in the manner and at the place and time specified therein; and Assignor does by these presents expressly release, relinquish and surrender unto Assignee all of Assignor's right, power and authority to modify in any way the terms or provisions of the Leases, or to terminate the term or accept a surrender thereof, and any attempt on the part of Assignor to exercise any such rights without the written authority and consent of Assignee thereto being first had and obtained shall, at the option of Assignee, constitute a breach of the terms hereof and of the Mortgage entitling Assignee to declare all sums secured hereby immediately due and payable and to exercise any remedies provided in the Mortgage and the Note.

2. At Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of lessor, lessee or guarantor thereunder, and to pay all costs and expenses of Assignee, including reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear.

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3. That should Assignor fail to make any payment or to do any act as herein provided, then Assignee, but without obligation so to do and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the right or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor as lessor contained in the Leases; and in exercising any such powers, to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

4. To pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at a rate which is three (3%) percent per annum more than the rate stated in the Note, and the same shall be added to the indebtedness evidenced by the Note and shall be secured hereby and by the Mortgage.

5. Assignor has delivered to Assignee true and correct copies of all of the Leases now in existence and Assignor has not executed or granted any modification or amendment whatever of any of such Leases either orally or in writing, except as authorized by Assignee.

6. The Leases delivered herewith are in full force and effect.

B. It is Mutually Agreed with Respect to Each of the Leases that:

1. So long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement contained herein or in the Mortgage, or the Leases, Assignor shall have the right to receive and collect, but not prior to accrual, all rents, issues and profits from the Leases and to retain, use and enjoy the same.

2. Upon or at any time after default in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement contained herein or in the Mortgage, Assignee may exercise all rights and remedies contained in the note or the Mortgage and without regard for the adequacy

of security for the indebtedness hereby secured, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Demised Premises or any part thereof, make, enforce, modify and accept the surrender of the Leases, or any of them, obtain and evict lessees, fix or modify rents, and do any acts which assignee deems proper to protect the security hereof, and either with or without taking possession of the Demised Premises, in its own name sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Assignee may determine. The entering upon and taking possession of the Demised Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or waiver, modify or affect notice or default under the Mortgage or invalidate any act done pursuant to such notice.

3. The whole of the indebtedness shall become due upon the election by the Assignee to accelerate the maturity of the indebtedness pursuant to the provisions of the Note or the Mortgage, or any other instrument by the Assignee as security for the indebtedness, or at the option of Assignee, after any attempt by Assignor to terminate any lease, accept surrender thereof, or to waive or release any lessee from the observance, performance or to anticipate rents thereunder more than thirty (30) days prior to accrual.

4. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or any of them, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Assignee against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Leases, or any of them, or under or by reason of this Assignment and of any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases; should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at a rate which is three (3%) percent per annum more than the rate stated in the Note, shall be secured hereby and by the Mortgage, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor so to do the Assignee may declare all sums secured hereby immediately due and payable.

C. It is Further Mutually Agreed That:

1. Until the Note has been paid in full, Assignor covenants and agrees to keep leased at good and sufficient rental all the Demised Premises upon the same or substantially the same terms and conditions as are herein contained, and to make, execute and deliver to Assignee upon demand, any and all instruments that may be necessary or desirable therefor. The terms and provisions of this Assignment shall apply to any such subsequent lease whether or not so assigned and transferred.

2. Assignor assigns to Assignee (a) the Lessors' interest under each and every lease or rental agreement, now existing or hereafter made, affecting the Demised Premises, or any part thereof, or any building or buildings, or any part thereof, now or hereafter located thereon, and (b) all rents and other moneys now due or hereafter to become due under any express lease or agreement now existing or hereafter made, or otherwise,

for the use or occupation of said Demised Premises, or any part thereof, or any such building or buildings, or any part thereof.

Assignor agrees to deliver to Assignee on demand Assignor's executed copy of any or all such leases or rental agreements and to execute all such further assignment of such leases, rental agreements, rents or moneys as Assignee may hereafter require.

3. Assignor irrevocably authorizes and directs the lessees and any successors to the respective interests of the lessees upon receipt of any written request of Assignee stating that a default exists in the payments due under, or in the performance of any of the terms, covenants or conditions of the Mortgage, or the note, to pay to Assignee the rents due and to become due under the Leases. Assignor agrees that the lessees shall have the right to rely upon any such statement and request by Assignee, that the lessees shall pay such rents to Assignee without any obligation or right to inquire as to whether such default actually exists and notwithstanding any notice from or claim of Assignor to the contrary, and that Assignor shall have no right or claim against the lessees for any such rents so paid by the lessees to Assignee. Upon the curing of all defaults, Assignee shall give written notice thereof to the lessees and thereafter, until the receipt of any further similar written requests of Assignee, if any, the lessees shall pay the rents to Assignor.

4. Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording of an instrument of full release of the lien of the Mortgage this Assignment shall become and be void and of no effect.

5. All notices given or served pursuant to the terms hereof shall be effective two (2) days after mailing the same by registered or certified mail, postage prepaid, return receipts requested, addressed if to Assignor, to the address first hereinabove written, and if to Assignee, to P. O. Box 511, Montgomery, Alabama 36134.

6. This assignment inures to the benefit of Assignee and its successors and assigns, and binds the Assignor and Assignor's heirs, executors, administrators, successors and assigns.

FOLMAR & ASSOCIATES

By:

James M. Folmar  
Partner

STATE OF ALABAMA:  
COUNTY OF MONTGOMERY:

I, the undersigned authority in and for said County in said State, hereby certify that James M. Folmar, whose name as Partner of Folmar & Associates, an Alabama general 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 agent and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 22nd day of March, 1988.

Madis North  
NOTARY PUBLIC  
My Commission Expires 9-18-89

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EXHIBIT A  
TO COLLATERAL ASSIGNMENT OF LEASES  
HOOVER, ALABAMA

STATE OF ALABAMA  
JEFFERSON COUNTY

A parcel of land situated in the Northeast Quarter of Section 24, Township 19 South, Range 3 West and West Half of Section 19, Township 19 South, Range 2 West, Jefferson County, Alabama and in the Southeast Quarter of Section 24, Township 19 South, Range 3 West, in Shelby County, Alabama and being more particularly described as follows:

Commence at the Northeast Corner of Section 24, Township 19 South, Range 3 West; thence North  $88^{\circ}58'25''$  West along the north line of said Section 24, 618.94 feet to a point; thence South  $20^{\circ}02'58''$  East, 1059.79 feet to a point 25 feet southerly of the centerline of Data Center Drive; thence continue along the previously described course, 433.66 feet to the approximate centerline of the Cahaba River; thence along said centerline of the Cahaba River the following courses: South  $33^{\circ}20'32''$  West, 37.15 feet; South  $16^{\circ}23'24''$  West, 25.03 feet to the POINT OF BEGINNING; thence continue along said centerline of the Cahaba River the following courses: South  $16^{\circ}23'24''$  West, 18.58 feet; South  $15^{\circ}04'56''$  East, 541.33 feet; South  $23^{\circ}08'00''$  East, 222.85 feet; South  $01^{\circ}07'08''$  East, 216.30 feet; South  $39^{\circ}34'01''$  West, 236.88 feet; and South  $45^{\circ}24'27''$  West, 416.19 feet to a point on the easterly right-of-way margin of U. S. Highway 31, said point being 150 feet easterly of the centerline of U. S. Highway 31; thence North  $26^{\circ}23'50''$  West along said easterly right-of-way margin, 201.95 feet to a point; thence leaving said right-of-way margin, proceed North  $62^{\circ}07'44''$  East, 239.50 feet to a point; thence North  $26^{\circ}23'50''$  West and parallel to said right-of-way margin, 147.00 feet to a point; thence North  $72^{\circ}08'03''$  West, 73.98 feet to a point; thence South  $62^{\circ}07'44''$  West, 186.50 feet to a point on the easterly right-of-way margin of U. S. Highway 31, said point being 150.00 feet easterly of the centerline of U. S. Highway 31; thence North  $26^{\circ}23'50''$  West along said easterly right-of-way margin, 582.72 feet to a point; thence South  $63^{\circ}36'10''$  West along said easterly right-of-way margin, 50.00 feet to a point, said point being 100.00 feet easterly of the centerline of said U. S. Highway 31; thence North  $26^{\circ}23'50''$  West along said easterly right-of-way margin, 416.79 feet to a point; thence leaving said easterly right-of-way margin, proceed North  $63^{\circ}52'22''$  East, 271.98 feet to a point; thence North  $25^{\circ}27'37''$  West, 20.00 feet to the beginning of a curve to the left, said curve having a central angle of  $10^{\circ}07'14''$ , a radius of 310.00 feet, an arc of 54.76 feet and a chord which bears North  $30^{\circ}31'13''$  West for 54.69 feet; thence proceed northwesterly along the arc of said curve, 54.76 feet to the end of said curve; thence North  $35^{\circ}34'51''$  West, 121.67 feet to the beginning of a curve to the left, said curve having a central angle of  $82^{\circ}11'28''$ , a radius of 25.00 feet, an arc of 35.86 feet and a chord which bears North  $77^{\circ}29'33''$  West for 32.87 feet; thence proceed northwesterly along the arc of said curve, 35.86 feet to a point; thence North  $28^{\circ}35'17''$  West, 5.00 feet to a point on the southerly right-of-way margin of Data Center Drive, said point being 25.00 feet southerly of the centerline of said Data Center Drive, said point along being on a curve to the left, said curve having a central angle of  $11^{\circ}56'21''$ , a radius of 429.69 feet, an arc of 89.54 feet, and a chord which bears North  $55^{\circ}26'33''$  East for 89.38 feet; thence proceed northeasterly along said southerly right-of-way margin and along the arc of said curve, 89.54 feet to the end of said curve; thence North  $49^{\circ}28'23''$  East along said southerly right-of-way margin, 12.52 feet; thence leaving said southerly right-of-way margin, South  $26^{\circ}23'50''$  East, 447.25 feet; thence North  $63^{\circ}36'10''$  East, 561.80 feet to the POINT OF BEGINNING.

Containing 19.003 acres, more or less.



EXHIBIT B  
TO COLLATERAL ASSIGNMENT OF LEASES  
HOOVER, ALABAMA

<u>Tenant</u>	<u>Primary Term</u>	<u>Date</u>
Piccadilly Lease	20 years	January 26, 1988
Wal-Mart Lease	20 years	January 20, 1988

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STATE OF ALABAMA  
COUNTY OF MOBILE  
NOTARIAL PUBLIC

88 MAR 30 AM 10:22

JUDGE OF PROBATE

STATE OF ALABAMA  
COUNTY OF MOBILE  
NOTARIAL PUBLIC

1988 MAR 24, PM 2:50

RECORDED & INDEXED  
& \$16.00 TAX HAS BEEN  
PD. ON THIS INSTRUMENT.

*[Signature]*  
JUDGE OF PROBATE

16<sup>00</sup>

**RECORDING FEES**

Recording Fee	\$1500
Index Fee	100
<b>TOTAL</b>	<b>\$1600</b>