

841

THIS DOCUMENT PREPARED BY:

Mary Douglas Hawkins
CORRETTI & NEWSOM
1804 Seventh Avenue North
Birmingham, Alabama 35203
Telephone: (205) 251-1164

THE STATE OF ALABAMA)
SHELBY COUNTY)

FIRST ASSIGNMENT OF LESSOR'S INTEREST IN LEASES

THIS AGREEMENT, made this 12th day of January, 1989, by and between LESTER C. WYATT (hereinafter referred to as "Assignor") and JEFFERSON FEDERAL SAVINGS and LOAN ASSOCIATION OF BIRMINGHAM, a federally chartered savings and loan association (hereinafter referred to as "Assignee").

W I T N E S S E T H:

FOR VALUE RECEIVED, and as additional security for the indebtedness hereinafter mentioned, Assignor does hereby assign, set over, transfer, convey and deliver unto Assignee all of the leases described in Exhibit "B" which is attached hereto and incorporated herein by reference, together with any and all future leases, affecting all or any part of the real property described in Exhibit "A" which is attached hereto and incorporated herein by reference. Assignor does further hereby assign, set over, transfer, convey and deliver unto Assignee all of the right, title, interest and claim of Assignor in and to the rents, issues, profits, revenues, royalties, rights and benefits (hereinafter called "rents") derived from the real property described in said Exhibit "A".

The term of this Assignment shall be until that certain, Note in the amount of Four Hundred Six Thousand and No/100 Dollars (\$406,000.00), executed by Assignor, Lester C. Wyatt, to Jefferson Federal Savings and Loan Association of Birmingham, dated the 12th day of January, 1989, and the First Mortgage and Security Agreement (or any extension or renewal thereof) of even date therewith, executed and delivered by Assignor to Assignee, covering the real property described in Exhibit "A", shall have been fully paid and satisfied, or until the expiration of the period of redemption, if any, at which time this Assignment is to be fully satisfied, cancelled and released, and the releasing of said First Mortgage and Security Agreement shall constitute a release hereof.

AND TO THAT END, Assignor does hereby further assign, set over, transfer and convey and deliver unto Assignee all leases of

BOOK 222 PAGE 22

said premises now made, executed or delivered, whether written or oral, or to be hereafter made, be the same written or oral, and all lease agreements, addenda and amendments thereto and ratifications and modifications thereof.

And Assignor does hereby authorize and empower Assignee to collect the rents payable under all of the said leases as they shall become due and does hereby direct each and all of the tenants of the aforesaid premises to pay such rents as may now be due or shall hereafter become due to the Assignee upon demand for payment therefor by Assignee. It is understood and agreed, however, that no such demand shall be made unless and until there has been a default in the payment of the indebtedness evidenced by said Note, which is secured by said First Mortgage and Security Agreement herein mentioned, or default in the payment of any other sums secured by said First Mortgage and Security Agreement, or default in the performance of any of the covenants set forth in said Note or said First Mortgage and Security Agreement securing said Note; and, until such demand is made, Assignor is authorized to collect or continue collecting, as aforesaid by Assignor, her successors and assigns, and Assignor will not collect, demand or receive any installments of rent in advance of the date prescribed in said lease or leases for the payment thereof.

BOOK 222 PAGE 23
The authority and power of Assignee to collect said rents from said property as set forth herein may be exercised and said rents collected with or without the taking of possession of said real property, or any part thereof, and without the necessity of (but nothing herein contained shall be construed to prohibit) Assignee's instituting foreclosure of its First Mortgage and Security Agreement, and an action upon the Note secured by said First Mortgage and Security Agreement, or an action upon this Assignment directly against the leases assigned herewith.

And in furtherance of this Assignment, Assignor does hereby specifically authorize and empower Assignee, by its employees, agents or representatives, at the option of Assignee, upon the occurrence of any default as aforesaid, to enter upon the aforesaid premises and to collect, in the name of the Assignor or in its own name as Assignee, the rents accrued but unpaid and in arrears at the date of such default, as well as the rents thereafter accruing and becoming payable during the period this Assignment is operative; and to this end, Assignor agrees to cooperate and to assist Assignee, its employees, agents or representatives, in all reasonable ways with collection of said rents.

Assignor does hereby authorize (but nothing herein shall be deemed to require or obligate) Assignee, upon such entry, to take over and assume the management, operation and maintenance of said premises and to perform all acts necessary and proper in its sole discretion and to expend such sums as may be necessary in connection therewith, including the authority to effect new leases, to cancel or surrender existing leases, or to make concessions to

tenants. Assignor does hereby release all claims against Assignee arising out of such management, operation and maintenance, excepting the liability of Assignee to account as hereinafter set forth.

This Assignment is given as additional security for the performance of each and all of the obligations and covenants of the Note and First Mortgage and Security Agreement which secures said Note above described (or any extension or renewal thereof).

Assignee shall, after payment of all proper charges and expenses, including reasonable compensation to such agents, employees or representatives as shall be selected or employed, and after the accumulation of a reasonable reserve to meet taxes, assessments, utility rents, and fire and extended coverage and liability insurance in requisite amounts, credit the net amount of income received by it from the premises by virtue of this Assignment to any amounts due and owing to them by Assignor under the terms of said First Mortgage and Security Agreement, and the Note which is secured thereby, but the manner of the application of such net income and what items shall be credited shall be determined in the sole discretion of Assignee. The undersigned Assignor expressly covenants and agrees with Assignee that at the time of the execution and delivery of this Assignment, there has been no anticipation or prepayment of any rents by any of the tenants occupying the above described property or by any of the lessees in any of the above described leases except one (1) month in advance.

Assignor shall not at any time and for any reason accept prepayment of rental on any lease affecting the real property described in Exhibit "A" for more than one (1) month in advance without the written consent of assignee.

It is further covenanted and agreed that Assignor and his successors and assigns, shall have no right, power or authority to (and Assignor covenants and agrees with Assignee that Assignor will not) alter, modify, or amend the terms or any of them, of any of the leases above described or future leases in any particular, whatsoever, without first obtaining the consent of Assignee in writing to such alteration, modification or amendment, except in the ordinary course of business.

The provisions of this instrument shall be binding upon and shall inure to the benefit of Assignor, his heirs, personal representatives, successors and assigns, and upon Assignee, its successors and assigns.

Nothing herein contained shall be construed as making the Assignee a mortgagee in possession, nor shall said Assignee be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits and it is understood that said Assignee is to account only for such sums as are actually collected. Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or

discharged by Assignor under said lease or leases, and Assignor hereby agrees to indemnify Assignee for, and to save it harmless from, any and all liability arising from said lease or leases, or from this Assignment, and this Assignment shall not place any responsibility for the control, care, management or repair of said premises upon Assignee, or make 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.

Assignor covenants and agrees with Assignee that no tenant need determine whether or not a default has occurred making this Assignment operative, but shall pay over the rent to Assignee upon notice from it to do so and upon so doing, shall be relieved from liability therefor to Assignor in all respects.

It is further covenanted and agreed that Assignor shall keep, observe and perform all of the covenants on the part of the Lessor to be kept, observed and performed in any lease affecting any portion of the premises. If Assignor fails to keep, observe and perform any covenant of any such lease, Assignee shall have the right, at its option, to keep, observe and perform such covenant on behalf of Assignor, or to declare with or without notice, all sums and debts secured by the First Mortgage and Security Agreement referred to herein to be immediately due and payable and avail itself of any and all remedies provided for in said First Mortgage and Security Agreement in the event of default. In the event that Assignee should exercise its option to keep, observe or perform any of the Lessor's obligations under any lease affecting the premises, it shall be entitled to recover from Assignor immediately upon demand any expenses incurred or amounts advanced in performing such covenants, together with interest at a rate equal to three (3%) percent per annum in excess of the then applicable rate from the date of such advance. Should Assignor fail to repay Assignee any such expenses or advances as herein provided, Assignee may, at its option, with or without notice, declare all sums and debts secured by said First Mortgage and Security Agreement to be immediately due and payable and avail itself of any and all remedies provided for therein in the event of default.

The undersigned Assignor covenants and agrees that unless a tenant under any of said leases transferred and assigned hereby has the right to pay any rent covering a period of time expiring more than forty-five (45) days subsequent to the date of such payment (herein called "rental prepayment") that he will not accept such rental prepayment without the prior written consent of Assignee, except in the ordinary course of business; and in case of such rental prepayment where the tenant has a right to pay the same under any of said leases, the undersigned recipient thereof agrees to notify the Assignee promptly in writing upon receipt thereof, and if required by Assignee, to promptly transmit such rental prepayment for application as a prepayment against the debt secured hereby.

IT IS UNDERSTOOD AND AGREED that neither the existence of this Assignment nor the exercise of its privilege to collect said rents, issues, profits, revenues, royalties, rights and benefits hereunder, shall be construed as a waiver by Assignee or its successors and assigns of the right to enforce payment of the indebtedness hereinabove mentioned, in strict accordance with the terms and provisions of the Note and the First Mortgage and Security Agreement securing said Note, for which this Assignment is given as additional security.

If more than one party shall execute this Assignment, the term "Undersigned" shall mean all parties signing this Assignment and each of them, and all such parties shall be jointly and severally obligated hereunder. The neuter pronoun, when used herein shall include the masculine and feminine and also the plural.

As used herein, the term "Loan Documents" shall be deemed to include the Note, the First Mortgage and Security Agreement and UCC Financing Statements.

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

The law of the State of Alabama shall control the interpretation of this First Assignment of Lessor's Interest in Leases, and shall govern this transaction.

IN WITNESS WHEREOF, Assignor has caused this First Assignment of Lessor's Interest in Leases to be duly executed on this 12th day of January, 1989.

WITNESS:

May Douglas Hankins Lester C. Wyatt (SEAL)
LESTER C. WYATT, Individually

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Lester C. Wyatt, whose name is signed to the foregoing First Assignment of Lessor's Interest In Leases and who is known to me, acknowledged before me on this day that, being informed of the contents of same, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 12 day of January, 1989.

Norma M. Davis
NOTARY PUBLIC

My Commission Expires July 2, 1992

My commission expires: _____

EXHIBIT "A"

A parcel of land located in the North Half of the SW quarter of Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the NW corner of the SE quarter of the NW quarter of Section 31; Township 19 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said 1/4-1/4 section, a distance of 452.73 feet to a point; thence turn a deflection angle of 86 degrees 31 minutes 40 seconds to the right and run in a southerly direction, a distance of 1321.78 feet to a point; thence turn a deflection angle of 47 degrees 06 minutes to the right and run in a southwesterly direction, a distance of 250.20 feet to a point on the center line of a road; thence turn a deflection angle of 79 degrees 55 minutes 15 seconds to the right and run in a northwesterly direction along the center line of said road, a distance of 34.06 feet to the point of beginning; thence turn a deflection angle of 89 degrees 58 minutes 30 seconds to the left and run in a southwesterly direction, a distance of 146.00 feet to a point; thence turn an interior angle of 142 degrees 00 minutes and run to the right in a westerly direction, a distance of 152.97 feet to a point on the East right-of-way line of U. S. Highway 31, said point being a point on a curve; thence turn an interior angle of 91 degrees 18 minutes 15 seconds (angle measured to chord) and run to the right in a northerly direction along the East right-of-way line of U. S. Highway 31 and along the arc of a curve to the left having a central angle of 5 degrees 40 minutes 20 seconds and a radius of 2010.08 feet, a distance of 199.00 feet to a point on the center line of a road; thence turn an interior angle of 103 degrees 33 minutes 15 seconds (angle measured from chord) and run to the right, in a northeasterly direction along the center line of said road, a distance of 85.50 feet to the PC of a curve; thence continue in a northeasterly to southeasterly direction along the arc of a curve to the right having a central angle of 66 degrees 50 minutes and a radius of 113.67 feet, a distance of 132.59 feet to the PT of said curve; thence continue in a southeasterly direction along the projection of the tangent to the last described curve and along the center line of said road, a distance of 115.60 feet to the point of beginning, containing 1.07 acres, more or less.

L.C. 10

EXHIBIT "B"

1. That certain Lease by and between Wyatt Companies, Inc., which said Lease has been assigned to Lester C. Wyatt, as Lessor, and Syed Hussaini, d/b/a Industrial Training Consultants, as Lessee, dated April 1, 1986, as amended May 16, 1988, for an extension of one (1) year covering premises known as 2189 Highway 31 South, in the City of Pelham, Shelby County, Alabama.
2. That certain Lease by and between Wyatt Companies, Inc., which said Lease has been assigned to Lester C. Wyatt, as Lessor, and Henry B. Wrench, d/b/a Henry's Interiors, as Lessee, dated March 10, 1988, for a primary term of five (5) years covering premises known as 2201 Highway 31 South, in the City of Pelham, Shelby County, Alabama.
3. That certain Lease by and between Wyatt Companies, Inc., which said Lease has been assigned to Lester C. Wyatt, as Lessor, and Charlotte F. Thornton, d/b/a Dixie Textiles, as Lessee, dated September 12, 1988, for a primary term of one (1) year covering premises known as 2201 Highway 31 South, in the City of Pelham, Shelby County, Alabama.

All future leases, oral or written covering all or any part of the real property described in Exhibit "A".

BOOK 222 PAGE 28

CLERK OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
89 JAN 12 PM 1:45
[Signature]
JUDGE OF PROBATE

RECORDING FEES	
Recording Fee	\$ <u>17 50</u>
Index Fee	<u>1 00</u>
TOTAL	<u>18 50</u>

Rec'd