

1716

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES is dated as of the 7th day of August, 1989, from RANDAL L. WYATT, a single man, DIANNE WYATT BOOTH, a married woman, and WESLEY C. WYATT, a single man (hereinafter called "Assignor"), to GUARANTY FEDERAL SAVINGS AND LOAN ASSOCIATION, an Alabama corporation (hereinafter called "Assignee");

W I T N E S S E T H:

WHEREAS, pursuant to a Guaranty Agreement of even date herewith, (hereinafter called the "Agreement") between Assignor and Assignee, Assignor has issued and delivered to Assignee that one (1) certain promissory note of Assignor of even date herewith in the aggregate principal amount of Two Hundred Forty-Seven Thousand Dollars (\$247,000.00), bearing interest at a rate per annum as specified therein (said note and any and all renewals, amendments, modifications, increases and extensions thereof being hereinafter collectively called the "Note"), and evidencing that certain Loan (as defined in the Agreement) up to the principal amount of Two Hundred Forty-Seven Thousand Dollars (\$247,000.00) to be made by Assignee to Assignor pursuant to the Agreement; and

WHEREAS, Assignor has executed and delivered a Mortgage of even date (hereinafter called the "Mortgage") conveying that certain property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property") to Assignee as security for the Loan as evidenced by the Note; and

WHEREAS, in order to induce Assignee to make the Loan, Assignor is desirous of assigning to Assignee, as additional security for the Loan as evidenced by the Note, all present and future leases covering all or any part of the Property (hereinafter called the "Leases"), and rentals and other moneys due and to become due to Assignor under the Leases.

NOW, THEREFORE, in consideration of the above and of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by Assignor, Assignor hereby covenants, promises and agrees as follows:

1. Assignor hereby sells, assigns, transfers and sets over unto Assignee and Assignee's successors or assigns, (a) the Leases, together with any extensions or renewals thereof and any guarantees of any tenant's obligations thereunder; and (b) all of the rents, income, receipts, revenues, issues

BOOK 250 PAGE 255

James T. Hatcher

and profits now due or which may hereafter become due under the Leases or any extensions or renewals thereof, as well as all moneys due and to become due to Assignor under the Leases for services, materials or installations supplied whether or not the same were supplied under the terms of the Leases (such rents, income receipts, revenues, issues, profits and other moneys assigned hereby are hereinafter called the "Rents"), together with any and all rights and remedies which Assignor may have against any tenant under any of the Leases or others in possession of the Property or any part thereof for the collection or recovery of moneys so assigned, TO HAVE AND TO HOLD the same unto Assignee, and Assignee's successors or assigns, for the purposes herein recited.

2. These presents are given to additionally secure (a) payment of the Loan and all interest and principal from time to time outstanding thereon as evidenced by the Note (together with all renewals, extensions, amendments, increases or modifications thereof) and the payment of all other sums which Assignor is or may from time to time be obligated to pay or cause to be paid to Assignee, and (b) performance of all obligations thereunder and under the Agreement and any other instrument evidencing or securing the Note, any renewals and extensions thereof and any indebtedness represented thereby.

3. Assignor hereby represents, warrants and agrees that:

(a) Assignor has the right, power and capacity to make this Assignment and that no person, firm or corporation other than Assignor has or will have any right, title or interest in or to the Leases or Rents.

(b) Assignor will, at Assignor's sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases. Assignor will use all reasonable efforts to enforce or secure the performance of each and every obligation and undertaking of the tenants under the Leases and will appear in and prosecute or defend any action or proceeding arising under, or in any manner connected with, the Leases or the obligations and undertakings of the tenants thereunder.

(c) Assignor will not without the prior written consent of Assignee (i) pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents; (ii) waive, excuse, condone or in any manner release or discharge any tenant under any of the Leases; (iii) disaffirm, cancel, terminate or consent to any surrender of any of the Leases;

(iv) modify, extend or in any way alter the terms of any of the Leases so as to reduce or diminish or postpone the payments of Rents; or (v) anticipate Rents more than 31 days prior to accrual.

(d) Any default by Assignor in the performance of any obligation or undertaking hereunder shall constitute and be deemed to be an Event of Default under the Agreement and the Mortgage so as to entitle Assignee to exercise any and all of the rights and remedies thereunder, including the right to declare all sums payable under the Note immediately due and payable without notice or demand.

(e) There are no existing defaults under any of the Leases and Assignor has not performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation.

4. These presents shall not be deemed or construed to constitute Assignee as mortgagee in possession of the Property or to obligate Assignee to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Leases.

5. Until the Loan and all indebtedness evidenced by the Note shall have been paid in full, Assignor will from time to time execute and deliver unto Assignee upon demand any and all writings that Assignee may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Assignee to enforce any right or rights hereunder.

6. So long as no Event of Default (herein so called) under the Agreement or Mortgage shall occur and shall be continuing, Assignor may collect for Assignor's own account all of the Rents. From and after the occurrence of an Event of Default and so long as such Event of Default shall be continuing (whether or not Assignee shall have exercised Assignee's option to declare the Note immediately due and payable), all Rents assigned hereunder shall be paid directly to Assignee; and Assignee may notify the tenants under the Leases or any other parties in possession of the Property to pay all of the Rents directly to Assignee at the address specified in Paragraph 12 hereof, for which this Assignment shall be sufficient warrant. Rents so paid to Assignee shall be applied by Assignee, at Assignee's sole discretion, to the payment of the costs and expenses of the operation of the Property, to the payment of current interest and principal on the Loan as represented by the Note and/or to the prepayment

BOOK 250 PAGE 257

of the Loan as represented by the Note, all in such order and in such respective amounts as Assignee shall from time to time determine.

7. Anything to the contrary notwithstanding, (a) Assignor hereby assigns to Assignee any award made hereafter to Assignor in any court proceeding involving any of the Tenants under the Leases in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court and any and all payments made by said tenants in lieu of rent; and (b) Assignor hereby appoints Assignee as Assignor's irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment; any such assignment and appointment to become operative upon the occurrence of an Event of Default and to remain in full force and effect so long as any such Event of Default continues.

8. Assignor, upon the occurrence of an Event of Default, hereby authorizes Assignee, at Assignee's option, but at Assignor's sole cost and expense, to enter and take possession of the Property and to manage and operate the same; to collect as hereunder stated all or any rents accruing therefrom and from the Leases; to let or relet the Property or any part thereof; to cancel and modify leases, evict tenants, bring or defend any suits in connection with the possession of the Property, in Assignee's own name or Assignor's name; to make repairs as Assignee deems appropriate; and to perform such other acts in connection with the management and operation of the Property as Assignee, in Assignee's discretion, may deem proper.

9. The receipt by Assignee of any Rents pursuant to this Assignment after the institution of foreclosure proceedings under the Mortgage shall not cure any such Event of Default nor affect proceedings or any sale pursuant thereto.

10. Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under any of the Leases; and Assignor hereby agrees to indemnify Assignee for, and to save Assignee harmless from, any and all liability arising from any of the Leases or from this Assignment. This Assignment shall not place responsibility for the control, care, management or repair of the Property upon Assignee, or make Assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or damage or injury or death to any tenant, licensee, employee or stranger; provided, however, the aforesaid indemnity and save harmless of Assignor shall not apply to any liability caused by Assignee's negligence or

BOOK 250 PAGE 258

willful misconduct occurring while Assignee has actual possession of the Property and is operating same pursuant hereto, upon foreclosure or otherwise.

11. The failure of Assignee to enforce any of the terms, covenants and conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

12. Any notice required or permitted to be given hereunder shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering such in person to the intended addressee or by prepaid telegram. Notice so mailed shall be effective upon the expiration of three (3) business days after its deposit. Notice given in any other manner shall be effective only if and when received by addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change such party's address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to all other parties in the manner set forth hereinabove:

If to Assignor: Randal L. Wyatt, Dianne Wyatt
Booth or Wesley C. Wyatt
621 Lorna Road
Birmingham, Alabama 35124

If to Assignee: Guaranty Federal Savings and
Loan Association
2030 1st Avenue North
Birmingham, Alabama 35203

13. The full performance of the Mortgage and the duly recorded release or reconveyance of the property described therein shall render this Assignment void.

14. This Assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns, as well as any subsequent owner of the Property (or any portion thereof) and any assignee of the Mortgage. Any provisions in any other agreement creating rights in Assignee other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes.

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed as of the date first above written.

Randal L. Wyatt
Randal L. Wyatt

Dianne Wyatt Booth
Dianne Wyatt Booth

Wesley C. Wyatt
Wesley C. Wyatt

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Randal L. Wyatt, a single man, Dianne Wyatt Booth, a married woman, and Wesley C. Wyatt, a single man whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 7th day of August, 1989.

Walter H. Stetson
Notary Public

BOOK 250 PAGE 260

89 AUG -8 AM 11:00

NOTARY PUBLIC

RECORDING FEES

Recording Fee	\$ 15.00
Index Fee	4.00
TOTAL	19.00