

THE STATE OF ALABAMA )

COUNTY OF SHELBY )

ASSIGNMENT OF RENTS AND LEASES

1. BY THIS AGREEMENT, Dyess Outdoor Advertising, Inc., an Alabama Corporation, (hereinafter referred to as "Owner"), for value received, hereby assigns to SouthTrust Bank, a National Association, (hereinafter referred to as "Lender"), all of Owner's right, title, privileges and interest which Owner has and may have in the sales contracts, purchase agreements, 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 sales contracts, purchase agreement, 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 purchase price, 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 of TWENTY THOUSAND ONE HUNDRED THIRTEEN AND 63/100 DOLLARS (\$20,113.63), executed by Owner, and as additional security for the Owner's obligations under the Security Agreement executed to better secure the Obligation; and to furnish security for the performance of Owner's Obligations contained herein, in the Obligation, and made by Owner in favor of Lender executed concurrently with this Agreement. The Obligation and other said Loan Documents, and all other documents executed in connection with this loan and described in the Note are referred to as the "Loan Agreement".

3. The parties intend that this Agreement 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, so long as there is no default 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 "mortgage-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 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. However, Lender shall give notice in the event of a default by Borrower in the performance of any of

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Borrower's obligation, covenants or agreements hereunder, Lender shall give Borrower notice in writing setting out the default and giving to Borrower a period of thirty (30) days within which to cure said default. If such default by Borrower cannot reasonably be cured within said thirty (30) day period after notice, then, if Borrower diligently attempts to cure said default, Borrower shall have, in addition to said thirty (30) days an additional thirty (30) days to cure such default. 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 on the part of Owner under any Lease;

(B) That neither the Lease nor any interest therein has been previously or will be assigned or pledged;

(C) 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.

All the 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 or earnest money paid by lessee to Owner, this Assignment transfers to the Lender all of Owner's right, title and interest in and to the security deposit or earnest money, provided the Owner shall have the right to retain said security deposit or earnest money so long as Owner is not in default 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 or money;

(B) To provide executed originals and/or copies of all Leases to Lender upon demand;

(C) 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;

(D) 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;

(E) Owner shall faithfully perform and discharge its obligations under the lease, and shall give prompt written notice to Lender of any notice of Owner's default received from any obligor under the lease or any other person and furnish Lender with a compete copy of said notice, 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;

(F) Owner shall give Lender written notice immediately upon entering into any lease or other agreement respecting any part of the property, and 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 Agreement automatically as though originally listed herein, and the term "Lease" as used herein shall include such lease or agreement;

(G) Owner shall deliver to Lender, promptly upon request, a duly executed estoppel certificate from any obligor under the Lease as required by lender attesting that the lease is in full force and effect with no default thereunder on the part of any party.

(H) 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 liabilities, losses and damages which Lender may incur under the Lease or by reason of this Agreement, and Owner shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and reasonable attorney's 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) 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) Upon default by Owner, Lender shall have the right to assign owner's right, title and interest in the Lease 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 attorney's 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 attorney's fees, to the Note.

(E) Upon any default by Owner under this Assignment or under the Loan Documents, and with notice to or consent of Owner, Lender shall have the following rights (none of which shall be construed to the obligations of the Lender):

(i) Lender shall have the right under this Agreement to use and possess, without rental or charge, the fur-

niture, 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 Leases; and

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 Agreement 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 Agreement 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 any phrases shall be taken to include the singular or plural number, and the mascu-



line, 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 in writing and shall be personally served on the party to whom addressed or be sent by first-class or certified U. S. Mail, postage prepaid, addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforesaid.

OWNER:

Dyess Outdoor Advertising, Inc.  
5161 Atlanta Highway  
Post Office Box 11447  
Montgomery, Alabama 36111

LENDER:

SouthTrust Bank, National Association  
2520 Eastern By-Pass  
Post Office Box 230517  
Montgomery, Alabama 36123-0517  
ATTN: Noble Jones

14. Neither this Assignment nor any memorandum thereof shall be recorded without the prior written approval of Lender.

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

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

17. Notwithstanding the foregoing, Lender shall be obligated to release lots from the lien hereof upon fulfillment by Owner of the conditions precedent to such releases set forth in the Mortgage.

IN WITNESS WHEREOF the Owner has executed this instrument under seal the 20th day of March, 1990.

BORROWER:

DYESS OUTDOOR ADVERTISING, INC.

BY:   
ITS PRESIDENT

THE STATE OF ALABAMA )

COUNTY OF MONTGOMERY )

I, the undersigned authority, a Notary Public, in and for said State and County, hereby certify that Elton G. Dyess, Jr. whose names as President of Dyess Outdoor Advertising, Inc., an Alabama Corporation, are signed to the foregoing Assignment of Rents and Leases, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the

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Assignments of Rents and Leases, he as such officer and with full authority, executed the same voluntarily for and as the part of said Corporation.

Given under my hand and official seal this the 30<sup>th</sup> day of March, 1990.

S E A L

  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 27, 1992

THIS INSTRUMENT PREPARED BY:

ROBERT B. CRUMPTON, JR.  
Webb, Crumpton, McGregor,  
Sasser, Davis & Alley  
One Commerce Street  
Post Office Box 238  
Montgomery, Alabama 36123-0238

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LEASE FOR BILLBOARD SPACE

Dyess Advertising, Inc.

Lease of ground for billboard space and advertising purposes made this the 6th day of January, 19 89 between

Nichols Concrete Co.

("Lessor") and Dyess Advertising, Inc., an Alabama corporation, its successors and assigns ("Lessee").

(1) Lessor hereby grants exclusively to Lessee the right to construct, erect, and maintain billboard and advertising sign structures, including necessary supporting structures, devices, illumination facilities and connections, service ladders, and other appurtenances and to display advertising copy thereon, on the following described property (hereinafter "Premises") with free access to, from and upon the Premises and neighboring property owned or controlled by Lessor, to wit: 1380 McCain Parkway - Pelham, AL  
Interstate 65

such property lying and being in the City of Pelham, in the County of Shelby, in the State of Alabama \*See remarks under Paragraph 13.

(2) The term of this Lease is for 10 years, beginning the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(3) Prior to construction of display boards and for periods during which no advertising copy is being displayed on such boards by Lessee, the rental shall be \$ 0.00 per month, payable on the 1st day of each month any portion of which is covered by this sentence. After construction of display boards, and for periods during which advertising copy is being displayed, Lessee shall pay to Lessor as rent the sum of \$ 3600.00 yearly, in Monthly installment(s), to be paid on the 1st day of each month during these periods.

(4) Lessee is granted the sole right to erect, place, maintain, repair, and remove advertising sign structures and equipment therefor on the Premises and to post, paint, illuminate, maintain, replace, and remove advertising copy on such structures. Lessee may use the Premises for storage purposes and may control vegetation on the Premises that would in any way obstruct visibility of Lessee's sign structures.

(5) It is agreed between the parties that all structures, equipment, and improvements placed upon the Premises by Lessee shall always remain the property of Lessee, notwithstanding that the same may constitute real estate fixtures, and that such structures, equipment, and improvements may be removed by Lessee at any time prior to or within a reasonable time after the expiration of the term of this Lease or any extension hereof.

(6) This Lease shall terminate at the option of Lessee after at least thirty (30) days written notice of cancellation to Lessor in the event any one of the following events occur:

- (a) The signs or structures of Lessee on the Premises are or shall become entirely or partially obscured, destroyed, or impaired in any way.
- (b) The Premises are or shall become unsafe for the construction, maintenance or support of Lessee's structures thereon.
- (c) The value of the location of the Premises for advertising purposes shall become diminished for any reason.
- (d) Lessee is unable to obtain from the authorities having jurisdiction of the Premises any necessary permit or approval for the erection and/or maintenance of such advertising structures as Lessee may desire to construct and/or maintain.
- (e) The use of any such signs or structures is prevented or restricted by any present or future law or ordinance.
- (f) Lessor has misrepresented any fact herein stated or violates any covenant herein made.

If any of the conditions described in this paragraph shall at any time temporarily exist, Lessee may, at its option, instead of terminating this Lease, be entitled to an equitable abatement of rent payable hereunder during the period that such conditions or any of them exist, and to the refund of any rent paid in advance for the period of such abatement. Upon termination for any reason Lessor agrees to promptly refund all rent paid for the unexpired term.

(7) Lessor represents and warrants that he is the Owner [Owner], [Agent], or [Tenant] of the Premises and has full right and authority to make this Lease.

(8) Lessor covenants that he will not allow the Premises or neighboring property owned or controlled by him to be used for advertising purposes, nor will he, his tenants, agents, employees, or other persons acting in his or their behalf place or maintain any object on the Premises or on any neighboring property owned or controlled by him that would obstruct or impair the view of Lessee's sign structures.

(9) Lessee is given no estate or interest in or control over or right of possession of the Premises except the license or permission herein specified.

(10) Lessor hereby grants to Lessee the right to sell or assign all of Lessee's rights under this Lease. Upon the assumption by an assignee, Lessee shall be fully discharged from all obligations under this Lease.

(11) In the event of any change in ownership of the Premises, Lessor agrees to promptly notify Lessee of such change and Lessor further agrees to give the new owner advance written notice of the existence of this Lease and to mail a copy of such notice to Lessee.

(12) Upon condemnation or threat of condemnation by any lawful governmental authority, Lessee shall have the right to participate in the negotiation and trial, and in the condemnation award or settlement to the extent of Lessee's damages for the loss of use of its signs and structures, and the cost of removal or replacement from or upon the Premises. Lessor agrees to fully cooperate with Lessee and to take such steps as may be reasonably necessary to meet the requirements of any governmental authority with respect to Lessee's use of the Premises.

(13) Other conditions or provisions not mentioned above:

\*Payment shall begin as soon as appropriate permits are obtained.

\*There will be a 5. year option period after the original term at the rate of \$350.00 per month.

\*Billboard sign will not obstruct vision of the buildings or existing signage on the property.

(14) This Lease shall constitute the sole agreement of the parties and is binding upon and inures to the benefit of the heirs, personal representatives, successors, and assigns of Lessee and Lessor. All notices, requests, and payments shall be mailed to the address given by Lessor below until Lessor otherwise notifies Lessee in writing.

IN WITNESS WHEREOF, Lessor, after complete understanding and agreement, has executed the same on the day shown. This Lease shall be binding on Lessee only after acceptance by a duly authorized officer of Lessee.

LESSOR(S): Gary Nichols Witness: James R. Nichols

Mailing Address: P.O. Box 454  
Pelham 1 AL. 35124

ACCEPTED, DYESS ADVERTISING, INC. by: [Signature]

Witness: [Signature]

My Commission expires 5-25-92.

Kristi Dyess

90 APR -4 AM 8:08  
JUDGE OF PROBATE

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Total \$515.00  
1. Notary Fee \$10.00  
2. Recording Fee \$10.00  
3. Indexing Fee \$10.00  
4. No Tax Fee \$10.00  
5. Certified Fee \$10.00