

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ASSIGNMENT - LEASE AS COLLATERAL**

Assignment agreement made September 18th, 1992, between M&M Equities, Inc., of 1207 First Street North, City of Alabaster, County of Shelby, State of Alabama, herein referred to as assignor, and Bank of Alabama, a corporation organized and existing under the laws of the State of Alabama with principal place of business at 1209 Decatur Highway, Fultondale, County of Jefferson, State of Alabama, herein referred to as assignee.

**SECTION ONE  
ASSIGNMENT OF LEASE**

(a) For value received and the consideration hereafter set forth, assignor grants, transfers, and assigns to assignee, assignor's entire interest, as lessor, in a certain lease of real property commonly known as 1209 First Avenue North, Alabaster, Alabama 35007 and legally described as follows:

Lots 1 and 2, Block 2 according to the survey of Cedar Grove Estates, as recorded in Map Book 3, Page 53, in the Probate Office of Shelby County, Alabama.

(b) The lease entered into between assignor and Shelby Family Medicine and Matt Brunson, lessee, is dated June 10th, 1991, and by its terms is to continue in full force and effect through July 31, 1996.

(c) Assignor further grants, transfer, and assigns to assignee all rents, income, and profits arising from such lease, its options and renewals, together with all rents, income, and profits for the use and occupation of the premises described in the lease or in the mortgage referred to in this assignment and, at the option of assignee, from all leases of the above-described premises which may be executed in the future during the term of this assignment.

**SECTION TWO  
DEBT SECURED**

This assignment is made to secure the following:

(a) Payment of the principal sum and interest evidenced by a promissory note, and any amendments, extensions, or renewals thereof, in the original principal sum of Sixty-Seven Thousand and NO/100 Dollars (\$67,000.00) made by Tumlin's Discount Pharmacy, Inc. in favor of assignee and dated September 18th, 1992, herein referred to as the note and secured by a mortgage on the above-described real property.

(b) Payment of all other sums, with interest, which may become due and payable to assignee under this assignment or under the note and mortgage.

(c) Performance and discharge of every obligation and agreement of Assignor and Borrower under this assignment or under the note and mortgage.

### **SECTION THREE ASSIGNOR'S COVENANTS**

Assignor warrants:

(a) He is the sole owner of the lease herein assigned insofar as it applies to the property covered by this assignment and of all the leasehold rights which the lease purports to create, with full right to convey the same.

(b) The lease is now unencumbered, valid, and in full force and effect in accordance with its terms.

(c) Lessee is not in default under any of the terms, conditions, or covenants of the lease.

(d) The rental property, rental payments, and other sums are free from liens, encumbrances, claims, and setoffs of every kind whatsoever except as follows: Mortgage from Tumlin's Discount Pharmacy, Inc. to Linton Porter, Sr. filed for record 9/10/87 recorded in Real Volume 150, page 286 and corrected by Real Volume 162, page 902, in the Probate Office of Shelby County, Alabama.

(e) The balance of rental payments unpaid as of the date of this assignment is Seventy-Nine Thousand Eight Hundred Ten and NO/100 Dollars (\$79,810.00), plus any increases in monthly payments called for in the lease, commencing with the next payment due on October 1st, 1992.

(f) In the event any payment under the lease hereby assigned is made to assignor, he will promptly transmit such payment to assignee.

### **SECTION FOUR ASSIGNOR'S COVENANTS**

Assignor agrees:

(a) To observe and perform all obligations imposed on lessor under the lease hereby assigned and to indemnify assignee from the consequences of any failure to do so.

(b) Not to collect any rent, income, or profits accruing under the lease or from the premises prior to the time when they shall become due.

(c) To preserve the subject property free and clear of all liens and encumbrances, except as otherwise agreed by the parties hereto.

(d) Not to execute any other assignment of lessor's interest in the lease or assignment of rents accruing under the lease or from the premises.

(e) Not to alter, extend, or modify the terms of the lease or give any consent or exercise any renewal or option required or permitted by the terms of the lease without the prior written consent of assignee.

(f) Not to terminate, cancel, or accept a surrender of the lease, or transfer, or conveyance of the premises so as to cause a termination or changing of the obligations of lessee.

(g) Not to agree or consent to any assignment of or subletting under the lease, whether or not in accordance with its terms, without the prior written consent of assignee.

(h) In the event assignee so requests, to assign to assignee any lease upon any part of the premises described in this lease made subsequent hereto, and to execute and deliver to assignee such further assurances and assignments in the premises as assignee shall from time to time require.

(j) Assignee may proceed against assignor directly and independently of lessee, and the cessation of lessee's liability for any reason other than full payment shall not in any way affect the liability of assignor hereunder, nor shall any extension, forbearance of acceptance, release, or substitution of security, or any impairment or suspension of assignee's remedies or rights against lessee in any way affect the liability of assignor hereunder.

## **SECTION FIVE TERMS AND CONDITIONS**

(a) *Collection of Payments and Rents by Assignor.* Until such time as assignor may default in payment of the principal, interest, or other indebtedness secured by the note mortgage or in performance of any other obligation hereunder, assignor may collect all rents, income, and profits arising under the lease or from the premises, when the same are due and payable, and retain the same.

(b) *Assignee's Option to Take Possession and Manage Premises.* In the event of assignor's default herein, assignee may, at its option, without notice or regard to the adequacy of the security, personally or by its agents, take possession of the above-described premises and hold, lease, and manage the same on such terms and for such period of time as assignee deems proper and, with or without taking possession of the premises, make demand and sue for all rents, income, and profits of the premises, with power to make from time to time such alterations, repairs, and renovations as may seem proper to assignee, and to apply such rents, income, and profits to payment of all expenses of operating, managing, and maintaining the premises, and the principal, interest, and other indebtedness secured by the note and mortgage, together with costs and attorney's fees, in such priority as assignee in its sole discretion may determine. However, the exercise or nonexercise by assignee of the options granted in this paragraph shall not be considered a waiver of any default by assignor under the note and mortgage or under the lease or this assignment.



(c) *Indemnification of Assignee.* Assignee shall not be liable for any loss sustained by assignor resulting from assignee's failure to let the premises or from any other act or omission of assignee in managing the premises, unless such loss is caused by the wilful misconduct or bad faith of assignee. Assignee shall further not be obligated to perform or discharge any obligation or duty under the lease, or under this assignment and assignor agrees to indemnify assignee for any liability, loss, or damage which may be incurred under the lease or by reason of this assignment. In the event assignee incurs any such liability above referred to or in defense of any such claims or demands, the amount thereof, including costs and reasonable attorney's fees shall be secured by this assignment and assignor shall reimburse assignee immediately therefor upon the demand of assignee. Further this assignment shall not make assignee responsible for any waste committed on the property by the tenants or any other parties, or for any dangerous or defective condition of the premises, or for any negligence in the management, repair, or control of the premises.

(d) *Evidence of Unpaid Indebtedness.* Upon payment in full of the principal, interest, and all other indebtedness secured by this assignment or other instruments referred to herein, this assignment shall cease, but the affidavit or statement of assignee or any agent, officer, or attorney of assignee showing any part of the principal, interest, or other indebtedness remaining unpaid shall constitute conclusive evidence of the effectiveness and force of this assignment and any person is hereby authorized to rely thereon.

(e) *Notice to Lessee of Assignor's Default.* Assignor is authorized to direct lessee, on receipt of written notice from assignee in the event assignor defaults under this assignment, to pay to assignee all rents, income, and profits accruing under the lease and continue to do so until otherwise notified by assignee.

(f) *Releases by Assignee.* Assignee may take or release other security for payment of the secured principal, interest, or other indebtedness, and may further release any party primarily or secondarily liable, and may apply any other security held by assignee to the satisfaction of the secured principal, interest, or other indebtedness without prejudice to any rights under this assignment.

(g) *Remedies of Assignee Not Exclusive.* Nothing contained in this assignment, nor any act done or omitted by assignee pursuant to the terms of this assignment shall be deemed a waiver by assignee of any of the rights or remedies under the note and mortgage, and this assignment is executed without prejudice to any rights or remedies possessed by assignee under the terms of any other instruments referred to herein. The right of assignee to collect the secured principal, interest, and other indebtedness, and to enforce any other security may be exercised by assignee prior or subsequent to any action taken under this assignment.

## **SECTION SIX WAIVERS OF ASSIGNOR**

Assignor waives the following:

(a) The right, if any to obtain the benefit of or to direct the application of any security hypothecated to assignee until all indebtedness of lessee to assignee arising hereunder which is assigned to assignee by assignor shall have been paid.

(b) The right to require assignee to proceed against lessee, or to pursue any other remedy.

### SECTION SEVEN POWER OF ATTORNEY

Assignor appoints assignee his attorney in fact to demand, receive and enforce payment and to give receipts, releases, and satisfactions and to sue for all sums payable either in the name of assignor or in the name of assignee, with the same force and effect as assignor could have done if this agreement had not been made.

### SECTION EIGHT EFFECT OF ASSIGNMENT

This assignment, together with the agreements, covenants, and warranties contained herein, shall inure to the benefit of assignee and any subsequent holder of the note and mortgage and shall be binding upon assignor and any subsequent owner of the mortgaged premises.

In witness whereof, the parties hereto have executed this agreement at Townes & Woods, 3518 Decatur Highway, Gardendale, Alabama 35071 the day and year first above written.

M & M Equities, Inc.

By: Robert W. Tumlin  
Robert W. Tumlin  
Its: President

### STATE OF ALABAMA JEFFERSON COUNTY

I the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert W. Tumlin, as President of M & M Equities, Inc. whose name(s) is signed to the foregoing conveyance, and who is is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 18th day of September, 19 92

Notary Public

Inst # 1992-21247

005 MJS  
SHELBY COUNTY JUDGE OF PROBATE  
16:50  
09/25/1992  
10:30 AM CERTIFIED  
# 1992-21247