

THIS INSTRUMENT PREPARED BY:  
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Birmingham, Alabama 35203  
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STATE OF ALABAMA       )  
SHELBY COUNTY        )

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, made as of the 23 day of August, 1993, is from EFV PROPERTIES, LTD., an Alabama limited partnership (the "Borrower"), to SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (the "Lender").

R E C I T A L S:

This Assignment is made as additional security for the payment of indebtedness due by Borrower to Lender in the principal amount of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) (the "Loan"), or such portion thereof as has been disbursed from time to time under the provisions of a Construction Loan Agreement between Borrower and Lender (the "Construction Loan Agreement"), with interest thereon as evidenced by a Promissory Note of even date herewith in said amount (the "Note"), executed and delivered by Borrower to the order of Lender, and as additional security for the full and faithful performance by Borrower of all the terms and conditions of the Construction Loan Agreement and Note and of a certain Mortgage and Security Agreement of even date herewith securing the Note (the "Mortgage"), executed and delivered by Borrower to Lender on the property described in Exhibit "A"

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*Alabama Title*

attached hereto. This Assignment, the Note, the Construction Loan Agreement and the Mortgage, together with all other instruments or documents heretofore or hereafter executed in connection herewith or therewith, and all amendments, modifications, extensions and renewals hereof or thereof, are sometimes collectively referred to herein as the "Loan Documents."

#### **AGREEMENT**

**NOW, THEREFORE,** in consideration of the foregoing recitals, and as an inducement to the Lender to make the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the Borrower's interest in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the property described in Exhibit "A" attached hereto, and the improvements located or to be located thereon, including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases and agreements.

Borrower agrees to duly operate and maintain the aforesaid property and perform all requisites on its part to keep any and all leases of said property in full force and effect.

Borrower agrees that this agreement shall cover all future leases, whether written or verbal, or any letting of, or any agreement for the use or occupancy of, any part of said property.

Borrower further agrees that it will not assign the rent or any part of the rent of said property, nor collect rents under any

leases or other agreements relating to use of any part of the property, for a period further in advance than one (1) month without the written consent of the Lender, nor do any other act whereby the lien of the Mortgage and this Assignment may, in the opinion of the Lender, be impaired in value or quality.

Borrower agrees that it has not and will not enter into any fictitious lease or any lease for the purpose of avoiding creditors, and any attempt to do so will be void. Borrower represents and warrants that all leases, if any, presently in effect are, and all leases hereafter entered into will be, arms-length leases for a rental rate, which, in Borrower's best judgment, represents a fair market rental.

Borrower further agrees that this Assignment is to remain in full force and effect so long as the Note remains unpaid and that it may be enforced by Lender.

Although it is the intention of the parties that this instrument be a present assignment, it is expressly understood and agreed by Borrower and Lender that said Borrower reserves, and is entitled to collect, said rents, income and profits upon, but not prior to, their accrual under the aforesaid leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default pursuant to (and as defined in) any of the other Loan Documents, or until the violation of any term, condition or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of

Default, Borrower's privilege to collect the rents shall automatically terminate.

Borrower does hereby authorize and empower Lender to collect directly from the lessees, upon demand, after any Event of Default hereunder, all of the rents, issues and profits now due or which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of said property, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Borrower hereby authorizes and directs the lessees under leases to pay to Lender all rents and other sums as the same become due, upon notice from Lender that an Event of Default has occurred hereunder. Any lessee making such payment to Lender shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lender.

Any amount received or collected by Lender by virtue of this agreement shall be applied for the following purposes, but not necessarily in the order named, priority and application of such funds being within the sole discretion of Lender:

(1) to the payment of all necessary expenses for the operation, protection and preservation of the property, including the usual and customary fees for management services;

(2) to the payment of taxes and assessments levied and assessed against the property as said taxes and assessments become due and payable;

(3) to the payment of premiums due and payable on any insurance policy related to the property;



(4) to the payment of installments of principal and interest on the Note as and when they become due and payable pursuant to the terms of the Note whether by acceleration or otherwise;

(5) to the payment of any other sums due to Lender, including those due under the Mortgage and Construction Loan Agreement, and

(6) the balance remaining after payment of the above shall be paid to the then owner of record of said property.

Borrower hereby agrees to indemnify Lender for, and to save it harmless from, any and all liability, loss or damage which Lender might incur under said leases or by virtue of this Assignment, as a result of any act, or failure to act, prior to Lender becoming a mortgagee in possession and prior to foreclosure, and from any and all claims and demands whatsoever which may be asserted against Lender thereunder or hereunder, and, without limiting the generality of the foregoing, covenant that this Assignment shall not operate to place responsibility for the control, care, management or repair of said property upon Lender, nor the carrying out of any of the terms and conditions of said leases; nor shall it operate to make Lender responsible or liable for any waste committed on the property by the tenants or any other party, or for any negligence in the management, upkeep, repair or control of said property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or other person.

This agreement shall be binding upon the Borrower, its successors and assigns and subsequent owners of the property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of the Note.

Borrower and Lender hereby waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action (a) arising out of or in any way pertaining or relating to this Assignment, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith, or (b) in any way connected with or pertaining or relating to or incidental to any dealings of the parties hereto with respect to this Assignment, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith or in connection with any transactions related thereto or contemplated thereby or the exercise of either party's rights and remedies thereunder, in all of the foregoing cases whether now existing or hereafter arising, and whether sounding in contract, tort or otherwise. Borrower and Lender agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury. Borrower hereby certifies that no representative or agent of Lender, including Lender's counsel, has represented, expressly or otherwise, that Lender would not, in the event of such dispute or controversy, seek to enforce the provisions of this paragraph, and Borrower acknowledges that Lender has, in part, been induced to

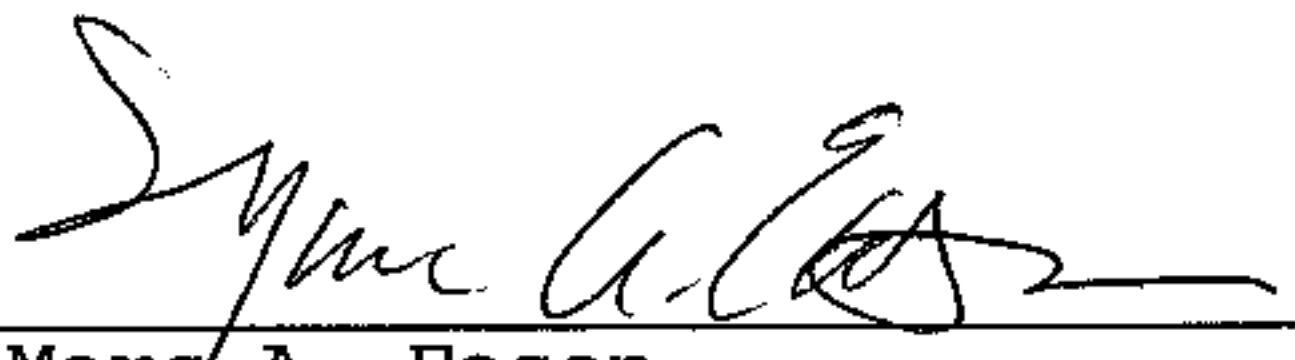
make the extension of credit evidenced by the Note in reliance on the provisions of this paragraph.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed by its duly authorized general partner as of the day and year first above written.

**BORROWER:**

EFV PROPERTIES, LTD., an Alabama limited partnership

By: EFV PROPERTIES, INC., an Alabama corporation, its sole general partner

By:   
Marc A. Eason  
Its President

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Marc A. Eason, whose name as President of EFV Properties, Inc., an Alabama corporation, in its capacity as sole general partner of EFV Properties, Ltd., an Alabama limited 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner as aforesaid.

Given under my hand and official seal this 23 day of August, 1993.

  
NOTARY PUBLIC  
My Commission Expires: 7/24/95

EXHIBIT A

STATE OF ALABAMA  
SHELBY COUNTY

A PARCEL OF LAND LOCATED IN SECTION 2, TOWNSHIP 21 SOUTH, RANGE 3 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF 6TH AVENUE SW AND THE EASTERLY RIGHT OF WAY LINE OF THE L&N RAILROAD; THENCE RUN SOUTHWESTERLY ALONG SAID RAILROAD RIGHT OF WAY LINE, A DISTANCE OF 603.00 FEET; THENCE 88 DEGREES, 37 MINUTES LEFT, IN A SOUTHEASTERLY DIRECTION, A DISTANCE OF 257.00 FEET; THENCE 90 DEGREES RIGHT, IN A SOUTHWESTERLY DIRECTION, A DISTANCE OF 15.00 FEET; THENCE 90 DEGREES, 04 MINUTES, 19 SECONDS LEFT, IN A SOUTHEASTERLY DIRECTION, A DISTANCE OF 187.28 FEET TO A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF ALABAMA HIGHWAY NO. 119, SAID POINT BEING ON A CURVE, HAVING A RADIUS OF 1352.49 FEET; THENCE 70 DEGREES, 11 MINUTES, 08 SECONDS LEFT TO TANGENT OF SAID CURVE, IN A NORTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE TO THE RIGHT AND ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 259.97 FEET TO END OF SAID CURVE; THENCE 13 DEGREES, 40 MINUTES, 48 SECONDS RIGHT FROM TANGENT OF SAID CURVE, IN A NORTHEASTERLY DIRECTION ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 119.83 FEET; THENCE 89 DEGREES, 06 MINUTES, 48 SECONDS LEFT, IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 328.80 FEET; THENCE 22 DEGREES, 08 MINUTES RIGHT, IN A NORTHERLY DIRECTION, A DISTANCE OF 219.24 FEET TO A POINT ON SAID SOUTH RIGHT OF WAY LINE OF 6TH AVE SW; THENCE 89 DEGREES, 48 MINUTES LEFT, IN A WESTERLY DIRECTION ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 365.68 FEET TO THE POINT OF BEGINNING.

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