

STATE OF ALABAMA
COUNTY OF SHELBY

ASSIGNMENT OF LEASE AND RENTS BY LESSOR

KNOW ALL MEN BY THESE PRESENTS that ACTIVE INVESTMENT, an Alabama General Partnership (hereinafter called the Assignor), in consideration of ONE AND NO/100 DOLLAR (\$1.00) paid by BANK OF ALABAMA (hereinafter called Assignee) and to induce the Assignee to make a loan to Assignor does hereby assign unto the Assignee the following leases;

- (1) Lease (hereinafter "Lease Agreement") between Assignor as Lessor and ACTIVE BUILDING CONTRACTORS, INC., as Lessee, on the property described on Exhibit "A" attached hereto and incorporated herein by this reference.
- (2) Any and all other leases, be they verbal or written, by and between Assignor as Lessor and any individual or entity as Lessee on or concerning the property described on Exhibit "A" attached hereto and incorporated herein by this reference.

Together with any and all options to purchase, modifications, extensions, and renewals thereof and together with all rights to the possession thereof.

Also, together with any and all other leases now existing or hereafter made during the term of this Assignment for the whole or any part of the above-described leased premises, and any modification, extension or renewal thereof.

1. **RENTAL PAYMENTS.** It is expressly understood and agreed by the Assignor and the Assignee hereof that said Assignor reserves and is entitled to the possession of said leased premises and to retain, use, and enjoy the same unless and until the Assignor defaults in the performance of the terms and conditions of its agreements to the Assignee.

In the Event of Default by the Assignor in the performance of any of the terms and conditions of said Agreement with the Assignee, or this Assignment, the Assignor hereby authorizes the Assignee, at its option, to enter and take possession of the leased premises and to exercise all of the rights and privileges of the Assignor under the terms of the lease assigned. If the Assignee shall exercise such option and the Assignor shall thereafter remedy such default, of which fact judgment of the Assignee shall be conclusive, the Assignor and Assignee shall be restored to their respective rights and estates as if no default had occurred. Said option may be exercised by

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said Assignee as often as any such default occurs, and a failure to exercise said option shall not impair the future rights of the Assignee hereunder. Upon payment in full of all indebtedness secured hereby, as evidenced by the records of the Assignee, the assignment shall be null, void, and of no effect.

2. **WARRANTY.** Assignor warrants that title to all property subject to the Lease Agreement is in Assignor; that Assignor is the lawful owner of the entire Lessor's interest in the Lease Agreement; that the Lease Agreement is genuine; that Lessee has full capacity to contract; that Assignor has the right to make this Assignment; that full title and right to receive all rents and other sums due or to become due under the Lease Agreements are vested in Assignee by this Assignment; that no rentals payments have been made nor will be made thirty (30) days prior to the date such payments are due under the Lease Agreement; and that the rental property and rental payments and other sums are free from liens, encumbrances, claims, and set-offs of every kind whatsoever, and that, as of the date of this Assignment, the Lease Agreement is not in default.

3. **POWER OF ATTORNEY.** Assignor appoints Assignee its true, lawful, and irrevocable attorney to demand, receive, and enforce payment, to give receipts, releases, and satisfactions, and to sue, either in the name of Assignor or in the name of Assignee, for all rents and sums payable under the Lease Agreement.

4. **CONSENT.** Assignor consents that, without further notice and without releasing the liability of Assignor, Assignee may, at Assignee's discretion, give grace or indulgence in the collection of all rents and sums due or to become due under the Lease Agreement and grant extensions of time for the payment of the same before, at, or after maturity.

5. **OBLIGATIONS OF ASSIGNOR.** Assignee does not assume any of the Lessor's obligations under the Lease Agreement, and Assignor agrees: (a) to keep and perform all obligations of the Lessor under the Lease Agreement and to save Assignee harmless from the consequences of any failure to do so; and (b) to preserve the property subject to the Lease Agreement free and clear of liens and encumbrances, except to or with the consent of Assignee.

6. **NOTICE OF ASSIGNMENT AND PAYMENTS AFTER NOTICE OR DEFAULT.** Assignor agrees that Assignor will not assign any other interest in the Lease or Lease Agreement; that notice of this Assignment may be given to at any time at Assignee's option; and that upon such notice or a default hereunder, all payment under the Lease Agreement shall be made to Assignee, and if any are made to Assignor, Assignor will hold such payment in trust for Assignee and promptly transmit such payment to Assignee in the same form as it is received by Assignor except that Assignor will endorse instruments which are payable to Assignor.

7. **DURATION.** This Assignment is irrevocable and shall remain in full force and effect until and unless there is payment in full of all obligations secured by it or it is released by Assignee.

WITNESS its hand and seal this 5th day of August, 1994.

ACTIVE INVESTMENT, an Alabama
General Partnership

By: John Donald Gilbert
John Donald Gilbert
(Its General Partner)

By: Carolyn O. Gilbert
Carolyn O. Gilbert
(Its General Partner)

ACKNOWLEDGED AND AGREED TO
BY LESSEE:

ACTIVE BUILDING CONTRACTORS, INC.

BY: John Donald Gilbert
John Donald Gilbert
(Its President)

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John Donald Gilbert and Carolyn O. Gilbert, whose name as General Partners of ACTIVE INVESTMENT, an Alabama General Partnership, 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 said instrument, they, as such general partners, and with full authority, executed the same voluntarily, as an act of said partnership, acting in their capacity as aforesaid.

Given under my hand and official seal, this the 9th day of August, 1994.

William B. Hairston, III
NOTARY PUBLIC
My Commission Expires: 6/7/95

THIS INSTRUMENT PREPARED BY:
William B. Hairston, III
ENGEL, HAIRSTON & JOHANSON, P.C.
P.O. Box 370027
Birmingham, Alabama 35237
(205)328-4600

EXHIBIT "A"

TO

ASSIGNMENT OF LEASE AND RENTS

A parcel of land situated in the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, said parcel being more particularly described as follows:

Commence at the Northwest corner of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama thence proceed South $0^{\circ}19'52''$ West along the West line of said Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, 654.74 feet to a point; thence proceed South $87^{\circ}49'10''$ East 658.14 feet to an iron pin set, said point being the point of beginning.

Thence continue along previous course, bearing South $87^{\circ}49'10''$ East, 100.00 feet to an iron pin set; thence proceed South $2^{\circ}08'18''$ West, 161.35 feet to an iron pin set; thence proceed North $87^{\circ}51'42''$ West, 100.00 feet to an iron pin set; thence proceed North $2^{\circ}08'18''$ East, 161.42 feet to the point of beginning.

Situated in Shelby County, Alabama.

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