

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that

WHEREAS, BIRMINGHAM REALTY COMPANY, an Alabama corporation, hereinafter referred to as "OWNER," is the present owner in fee simple of that certain real estate located in the County of Shelby and State of Alabama legally described in Exhibit "A" attached hereto and made a part hereof, and

WHEREAS, THE FRANKLIN LIFE INSURANCE COMPANY, a corporation of the State of Illinois, having its principal office in the City of Springfield, Illinois, hereinafter referred to as "ASSIGNEE," is about to become the owner and holder of a first mortgage executed by OWNER, covering the above-mentioned real estate, which mortgage secures a note in the principal sum of THREE MILLION, SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS, (\$3,700,000.00), and

WHEREAS, a portion or all of said mortgaged premises has been demised under lease(s) to the various tenants under the leases shown on Exhibit "B" which are hereafter collectively hereinafter referred to as the "LEASE," and

WHEREAS, ASSIGNEE, as a condition to making the aforesaid mortgage loan, has required an assignment of OWNER'S interest in said LEASE as additional security for said mortgage loan.

NOW, THEREFORE, THESE PRESENTS WITNESS, that in consideration of the foregoing and of the sum of One Dollar (\$1.00) paid by ASSIGNEE to OWNER, the receipt whereof is hereby acknowledged by OWNER, the said OWNER hereby assigns, transfers and sets over unto ASSIGNEE all of OWNER's right, title and interest in and to said LEASE, together with any guarantees, extensions or renewals thereof, as additional security for the aforesaid mortgage loan and any extensions or renewals thereof; and for the consideration aforesaid, the OWNER hereby covenants and agrees to and with ASSIGNEE that it will not, without written consent of ASSIGNEE, cancel the Winn-Dixie Montgomery, Inc. and Big B, Inc. leases; accept a surrender thereof; materially reduce the rent; materially modify the Winn-Dixie Montgomery, Inc. and Big B, Inc. leases in any way, either orally or in writing; grant any concession in connection with the Winn-Dixie Montgomery, Inc. and Big B, Inc. leases, either orally or in writing; consent to an assignment of the lessee's interest in the Winn-Dixie Montgomery, Inc. and Big B, Inc. leases, or to a sub-letting; accept rental more than 2 months in advance of due dates; or transfer or convey title to the demised premises to the lessee; and any of the above acts, if done without the written consent of ASSIGNEE, shall be null and void.

09/28/1994-29414  
08:28 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
- 1 - 005 MCD 18.50

This instrument prepared by and after recording should be returned to: James C. Rundblom, Associate Counsel, The Franklin Life Insurance Company, #1 Franklin Square, Springfield, IL 62713-0001.

*Palaha*

*[Signature]*

Inst # 1994-29414

The OWNER, hereby authorizes ASSIGNEE, at its option, at any time after default shall occur under the terms and provisions of this assignment or of the note, mortgage or other security instruments, without making entry upon the mortgaged premises and upon notice to the lessee, to collect and receive all rents payable under said LEASE and all other benefits to be derived therefrom and to hold and receive them unto ASSIGNEE. This assignment shall constitute a direction to and full authority to the lessee to pay upon demand by ASSIGNEE all such rents and other benefits to ASSIGNEE or to whomsoever ASSIGNEE shall empower. Further, the OWNER, hereby authorizes ASSIGNEE, at its option, at any time after default shall occur under the terms and provisions of this assignment or of the note, mortgage or other security instruments, to enter upon the said mortgaged premises by its officers, agents or employees for the operation and maintenance of said mortgaged premises, the OWNER hereby authorizing ASSIGNEE in general to perform all acts in the operation and maintenance of said premises in the same manner and to the same extent the OWNER may reasonably so act. ASSIGNEE shall, after payment of all proper charges and expenses, credit the net amount of income which it may receive by virtue of the within assignment and from the mortgaged premises to any amounts due ASSIGNEE from the OWNER under the terms or provisions of the aforesaid note and mortgage. The manner of the application of such net income and the item which shall be credited shall be within the sole discretion of ASSIGNEE.

In no event shall this assignment operate to impose any duty or obligation upon ASSIGNEE to demand, sue for or make collection of rents or other sums from time to time due and owing by the lessee under said LEASE.

This assignment, prior to entry upon the premises by ASSIGNEE, shall not operate to make ASSIGNEE a mortgagee in possession nor to place responsibility for the control, care, management or repair of said premises upon ASSIGNEE, nor for the carrying out of any of the terms and conditions of said LEASE, nor shall it operate to make ASSIGNEE responsible or liable for any waste committed on the property by any lessee or other party, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any lessee, licensee, employee or stranger. No liability shall be asserted or enforced against ASSIGNEE, all such liability being hereby expressly waived and released by OWNER and should any such action be brought against ASSIGNEE by reason of this assignment, then OWNER agrees to reimburse ASSIGNEE, immediately upon demand, for all costs, expenses and reasonable attorney fees incurred.

The OWNER hereby covenants and warrants to ASSIGNEE that it has not executed any prior assignment of said LEASE or rentals therefrom, nor has the OWNER performed any acts, or executed any other instrument which might prevent ASSIGNEE from operating under any of the terms and conditions of this assignment, or which would limit ASSIGNEE in such operation; and OWNER further covenants and warrants to ASSIGNEE that it has not executed or granted any modification whatever of said LEASE, either orally or in writing, and that the said LEASE is in full force and effect according to its original terms, and that there are no defaults now existing under the said LEASE.

It is agreed by OWNER that none of the rights or remedies of ASSIGNEE under the mortgage shall be delayed or in any way

prejudiced by virtue of this assignment and that this assignment is intended to be supplementary to and not in substitution for any assignment of rents contained in the mortgage.

Simultaneously upon satisfaction of the indebtedness hereby collaterally secured, evidenced by recordation of a release of the hereinabove mentioned first mortgage, then this assignment shall be deemed null and void and of no force or effect.

All the covenants and agreements hereinabove contained on the part of either party shall apply to and bind their heirs, executors or administrators, successors or assigns. The word "OWNER," if applied to a natural person, shall be construed to mean any one or more persons or parties who are holders of the legal title or equity of redemption to or in the aforesaid mortgaged premises. The word "mortgage" shall be construed to mean the instrument, be it a mortgage, loan deed, trust deed, vendor's lien, or otherwise; and the word "note" shall be construed to mean the instrument, whether note or bond. The word "he" where it appears in this instrument as relating to the OWNER shall be construed to mean the OWNER whether it be a corporation or a natural person or persons, either male or female. The word "LEASE" as used herein shall be construed where appropriate to mean all leases described herein and the word "lessee" as used herein shall be construed where appropriate to mean lessees, tenant or tenants.

IN WITNESS WHEREOF, OWNER has set his hand and seal this 27<sup>th</sup> day of September, 1994, and in the event OWNER is a corporation, it has caused this assignment to be signed by its duly authorized officer or officers and its corporate seal to be hereunto affixed.

Attest  
R. L. Lee Brown  
Secretary

Birmingham Realty Company, an  
Alabama corporation

By: Russell M. Cunningham, III

Russell M. Cunningham, III  
Its President

(ACKNOWLEDGMENT)

STATE OF }  
COUNTY OF } ss

I, John E. Hazekamp Jr., a Notary Public in and for said county in said state, hereby certify that Russell M. Cunningham, III, whose name as President of Birmingham Realty Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 27<sup>th</sup> day of September, 1994.

John E. Hazekamp Jr.  
Notary Public

My Commission Expires:

11-13-94

EXHIBIT "A"

(LEGAL DESCRIPTION OF REAL ESTATE)

Lot 1, Oak Mountain Commerce Place, as recorded in Map Book 18, Page 58, Instrument # 1994-11733 in the Office of the Judge of Probate Shelby County, Alabama. Said lot being located in the S.W. 1/4 of the S.W. 1/4 of Section 31, Township 18 South, Range 2 West, more particularly described as follows: Commence at the Northwest corner of said 1/4 - 1/4 Section; thence in an easterly direction along the northerly line of said 1/4 - 1/4 Section, a distance of 514.26 feet to the Point of Beginning; thence 95 degrees, 55 minutes, 44 seconds right, in a southwesterly direction, a distance of 631.27 feet to the beginning of a curve to the right having a radius of 25.00 feet and a central angle of 90 degrees, 00 minutes, 00 seconds; thence in a Southwesterly direction along said curve a distance of 39.27 feet to end of said curve; thence in a Northwesterly direction along a line tangent to said curve a distance of 95.71 feet to the beginning of a curve to the right having a radius of 25.00 feet and a central angle of 82 degrees, 00 minutes, 06 seconds; thence in a northwesterly direction along said curve a distance of 35.78 feet to end of said curve; thence 180 degrees, 00 minutes, 00 seconds left in a Southerly direction a distance of 100.97 feet to the beginning of a curve having a radius of 25.00 feet and a central angle of 98 degrees, 00 minutes, 00 seconds; thence 180 degrees, 00 minutes, 00 seconds right to the tangent of said curve in a northeasterly direction along the arc of said curve to the right, a distance of 42.76 feet to end of said curve; thence in a Southeasterly direction along a line tangent to said curve, a distance of 816.65 feet to a point on the westerly right-of-way line of U.S. Highway 31 South; thence 90 degrees left, in a northeasterly direction along said right-of-way line, a distance of 385.00 feet; thence 90 degrees left, in a northwesterly direction, a distance of 200.00 feet; thence 90 degrees right, in a northeasterly direction, a distance of 190.00 feet; thence 90 degrees right, in an southeasterly direction, a distance of 200.00 feet to a point on the westerly right-of-way line of U.S. Highway 31 South; thence 90 degrees left, in a northeasterly direction along said right-of-way line, a distance of 37.00 feet; thence 90 degrees left, in a northwesterly direction, a distance of 250.00 feet; thence 90 degrees right, in a northeasterly direction, a distance of 142.04 feet to the northerly line of aforesaid 1/4 - 1/4 Section; thence 95 degrees, 55 minutes, 44 seconds left in a westerly direction along aforesaid 1/4 - 1/4 Section line a distance of 462.48 feet to the Point of Beginning.



EXHIBIT "B"  
(SCHEDULE OF LEASES)

Leases between Birmingham Realty Company, as Landlord, on premises located and addressed as Oak Mountain Marketplace Shopping Center, and the following parties as Tenant:

1. Winn-Dixie Montgomery, Inc. by Lease dated September 1, 1993, First Amendment to Lease and Short Form Lease dated August 19, 1994 and Supplemental Lease Agreement dated August 19, 1994.
2. Lisa M. Frank, dba Johnny Rays by Lease dated March 11, 1994.
3. Head Start Family Hair Salon, Inc. by Lease dated September 28, 1993.
4. Big B, Inc. by Lease dated August 25, 1993 and First Amendment to Lease Agreement dated August 25, 1994.
5. MGA, Inc., dba Movie Gallery by Lease dated November 18, 1993.
6. Little Caesar Enterprises, Inc. by Lease and Addendum to Lease dated \_\_\_\_\_.
7. Selco, Inc. by Lease dated October 9, 1993.
8. Andrea Fowler, dba SAS Comfort Store by Lease and Addendum dated February 25, 1994.
9. Balam America, Inc. by Lease and Addendum dated January 27, 1994.

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