

## ASSIGNMENT OF LEASES AND RENTS

DATE: 12/16/94

Assignor's name

David A. Pierce

Co-Assignor's name

Preparer and  
Address for Notices:

LaQuita Dixon  
First Alabama Bank  
417 North 20th Street  
Birmingham, AL 35203

Social Security or Tax I.D. number

417-76-4924

Social Security or Tax I.D. number

### GENERAL

**Definitions.** In this Assignment, *we, us* and *our* mean First Alabama Bank. *You* and *your* mean the assignor(s) named above. You will be individually and together responsible for performance of this Assignment. This *Assignment* means this Assignment of Leases and Rents between you and us. *Real Property* means the real property described below or in an attachment to this Assignment, and all buildings and improvements on the Real Property. *Leases* means every existing or future lease, sublease or

agreement, whether written or oral, for the use or occupancy of any part of the Real Property, and all extensions and renewals. *Rents* means any and all of the rents, charges, fees, expenses, security deposits, reimbursements, and other sums now or hereafter due, or to which you may now or hereafter become entitled to make demand or claim, arising or issuing from the Leases.

### DEBT SECURED

You agree that this Assignment applies to all debts and obligations owed to us by you. You agree that these debts and obligations include every loan and other extension of credit made by us to you, every future advance under such loan or credit, any extensions or renewals of such loan or credit, every note or other document evidencing an obligation to repay any such loan, credit, extension, or renewal, every guaranty of payment entered into by you with us, the payment and performance of all your obligations under this Assignment, and all other indebtedness and other

obligations of you to us, whether any of the foregoing debts and obligations are joint or several, primary or secondary, direct or indirect, otherwise secured or unsecured, now existing or not, and whether originally payable to us or acquired by us from another. You agree that these debts also include any losses, costs, and expenses, including deficiencies and attorneys' fees and expenses, that we incur as a result of your default.

### ASSIGNMENT

By this Assignment, you sell, assign, transfer and set over to us all of your right, title and interest in and to all Leases and Rents, and all guaranties

of the Leases and Rents, relating to the Real Property described below or in an attached exhibit: [insert address or legal description]

Belcher Drive  
Pelham, Alabama 35124

Inst # 1994-37512

This Assignment grants to us an absolute, immediate, and continuing right to receive and collect the Rents

☒ [Check box if applicable] This Assignment is additional security for the full and faithful performance by you of all terms and conditions of that mortgage dated December 16, 1994, executed and delivered by you to us.

### YOUR OBLIGATIONS

You covenant, represent and warrant to us as follows:

- You are the owner of the Leases and Rents, free and clear of all liens and encumbrances, and have the full right and power to assign the Leases and Rents to us. No other person, corporation or entity has any right, title or interest in the Leases and Rents. You will not pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents during the term of this Assignment without our prior written consent. You have duly and punctually performed, kept, and observed all of the terms, covenants, conditions and warranties of the Leases applicable to you. No Rents due for any period more than 30 days subsequent to the date of this Assignment have been collected, and no payment of any of the Rents has been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised. No lessee under any Lease is in default in the payment of Rents. You are the owner of the Real Property free and clear of any mortgages, liens, or encumbrances except as identified by you as follows:
- Upon our request, you agree to deliver a copy of the Leases to us at your expense. Each amount owing to you which is a part of the Rents and all names of all lessees and tenants, amounts owing, due dates, and other facts appearing on the Leases relating to such amounts, are true, correct and genuine and are what they purport to be, and each such amount arises out of a bona fide lease of all or part of the Real Property by you to the lessee so indicated. You agree to promptly

notify us in writing in the event of the bankruptcy, insolvency, or cessation of business of or by any such lessee, and of any claim asserted against you for credit allowance, adjustment, offset or counterclaim by any such lessee.

- You will (i) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by you and give prompt notice to us in the event you fail to observe, perform and discharge those terms; (ii) enforce or secure the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases; (iii) appear in and defend any action or proceeding arising under, or occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of you and any lessee under the Leases and, upon request by us, to do so in our name and on our behalf, but at your expense, and to pay all of our costs and expenses, including reasonable attorney's fees and expenses, in any action or proceeding in which we may appear with regard to the Leases; (iv) not excuse or in any manner release or discharge any lessee of the Real Property of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay Rents in the manner and at the place and time specified in the Leases, without our prior written consent.
- You agree to the additional provisions on the reverse.

### JURY WAIVER AND ARBITRATION

You and we irrevocably waive all right to trial by jury in any court in any action: (a) we bring against you to enforce our rights under this Assignment or any agreement modified by this Assignment; (b) alleging that (i) we have breached this Assignment or any agreement modified by this Assignment, (ii) we have breached any other agreement, express or implied, (iii) we or any of our officers, employees or agents have acted wrongfully, negligently or otherwise tortiously with respect to you; or (c) between the parties. This waiver of trial by jury does not waive your or our right to bring a lawsuit that a judge, without a jury, would decide. To the extent that any court of

competent jurisdiction determines that such jury waiver is inapplicable or unenforceable with respect to any claim or dispute, such claim or dispute shall be submitted to and settled by final and binding arbitration under the Federal Arbitration Act or other applicable law pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Such proceeding shall be held before a single arbitrator who is an active attorney or retired judge. The party against which the decision is rendered shall pay the costs and reasonable attorneys' fees and expenses of the prevailing party for any arbitration proceeding.

### SIGNATURES

By signing this Assignment under seal, you acknowledge that you have read and understand and agree to all the terms of this Assignment, including the JURY WAIVER and ARBITRATION section above, and other terms on the reverse side. You also acknowledge that we've given you a completed copy of this Assignment.

Address for notices:

Assignor:

X

David A. Pierce

L.S.

X

L.S.

*David A. Pierce*

## Additional Terms

**Simple English.** We've written this Assignment in language that we hope is easy for you to understand. You should read the entire document.

**Collection of Rents.** If you are in default under this Assignment, we, without notice to you, may notify any or all lessees under the Leases to pay Rents directly to us at our address, or to pay Rents to an address not controlled by you. To the extent we, at any time, are not collecting the Rents, we grant you a license to receive and collect, and you agree to receive and collect, the Rents for our sole benefit. Upon our request, (i) you agree not to mingle any Rents collected with any of your own funds, goods or property, and at all times to hold such Rents as trustee upon an express trust for our benefit until delivery is made to us; and (ii) you agree to deliver all such Rents to us upon receipt, in precisely the form as received by you, and further agree that we may endorse and negotiate any check or other item in your name where necessary to permit the collection of such Rents. We, in our discretion, may apply such Rents (less the costs of collection, including, without limitation, reasonable attorneys' fees and expenses incurred) to any debt secured by this Assignment, whether or not such debt shall have matured by its terms, or we may, at our option, release such Rents to you for use in your business. We need not apply nor give credit for any item included in such Rents until we have received final payment in cash or equivalents acceptable to us. We may charge back uncollected items or collateral. Weekly, or at such other intervals as we may designate, you will deliver to us lists and agings of the Rents in such form and in such detail as we shall require.

**Insurance.** You agree to keep the Real Property insured against fire, theft and any other risks. Upon our request, you agree to provide insurance against loss of Rents and business interruption. The insurance will be in the form and for any period we require. You may apply for insurance through any insurer you choose, or our requirements may be satisfied by insurance you already have in place. We have the right to reject an insurer for reasonable cause. Benefits under the insurance will be payable to you and to us according to our interest in the Rents. All policies of insurance must contain a lender's loss payable clause in favor of us and provide for at least 10 days written notice of cancellation to us at our address on the reverse side. At our request, you agree to deliver the policies, or certificates of the policies, to us. If you don't or can't insure the Real Property or Rents, we have the right to buy insurance that insures only our interest or insures both you and our interest, neither of which shall be deemed a waiver of your obligation to maintain such insurance or a cure of your default in failing to provide insurance. In either case, we may demand reimbursement from you or add the costs to the unpaid principal balance of any debt secured by this Assignment. We have no obligation, however, to acquire, maintain, or replace any insurance.

## Miscellaneous

- You will deliver all ledger sheets, files, records, documents, instruments, computer programs, tapes, software, and other information retrieval or storage systems holding any of your records concerning the Real Property, Leases or Rents or any part specified by us, to us upon request. All such items shall be accurately maintained. You agree that we may enter the Real Property or any other location where such items are kept at any reasonable time to inspect, audit, or take possession of the Leases or such items, and that our entry will not constitute a trespass and our taking of the Leases or such items will not constitute a trespass or a conversion.
- You irrevocably authorize and grant a power of attorney to us (i) to receive and give receipt for the Rents and to endorse and negotiate in your name any check or other item issued in payment or on account of the Leases and Rents; (ii) to open mail addressed to you, remove any enclosed Rents, and deliver the remainder of such mail to you; and (iii) to do all acts and things deemed by us to be appropriate to protect, preserve and realize upon the Leases and Rents assigned; but we will not be under any duty to exercise such authority or power or to collect upon the Rents.
- You agree to execute any additional documents that we may request in order to further secure, perfect and protect our interest in the Leases and Rents. By this Assignment, you grant a security interest in the Leases and Rents to us to the extent either is deemed subject to the Alabama Uniform Commercial Code. A reproduction of this Assignment is a sufficient financing statement. You agree to pay the cost of filing this Assignment, other financing statements, and any other documents in all public offices where filing is deemed by us to be necessary or desirable.
- We may choose to take steps to make sure your obligations to us are fulfilled. If we do, you agree to repay our expenses, including attorneys' fees and expenses. If you do not pay upon demand, you agree we can add the amount to the unpaid principal balance of any debt secured hereby.

**Default.** You will be in default under this Assignment if:

- a default occurs in connection with a debt secured by this Assignment;

STATE OF ALABAMA )

Jefferson COUNTY ) INDIVIDUAL

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David A. Pierce, whose name(s) is (are) signed to the foregoing document and who is (are) known to me, acknowledged before me on this day that, being informed of the contents of the document, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 16th day of December, 1994.

Notary Public  
My commission expires

COMMISSION EXPIRES FEBRUARY 22, 1998

- you fail to perform one or more of your obligations to us under this Assignment or any other agreement or note with us;
- you are bankrupt or insolvent, or a monetary judgment, tax lien or garnishment is applied to you, or any of your property is attached or levied upon;
- there is a change in the financial affairs of anyone who is liable for any of the debt secured by this Assignment that we reasonably believe will increase our risk of not receiving the benefits of this Assignment;
- the Real Property is damaged, destroyed, sold, encumbered, seized or attached;
- we believe that the security of this Assignment is endangered or that our ability to collect the Rents is impaired;
- an individual liable for the debt and obligations secured by this Assignment dies or is declared legally incompetent;
- a corporation, partnership or other entity liable for the debt and obligations secured by this Assignment ceases doing business, or is dissolved or merged; or
- there is any assignment for the benefit of creditors by you.

**Remedies on default.** If you are in default you agree that we may do one or more of the following without notice to you:

- choose not to exercise any of our remedies on default. You agree that we still have the right to do so at any time;
- choose to declare any and all debt and obligations secured by this Assignment due at once;
- exercise any or all of the rights of a secured party under the Alabama Uniform Commercial Code or other applicable law;
- immediately apply or set off any deposits or security held by us toward payment of any of the debt secured by this Assignment;
- require you to give additional security in form and amounts satisfactory to us;
- take possession of, rent, and manage the Real Property from time to time, and apply the Rents, after deducting all expenses for the care, management and preservation of the Real Property and collection of the Rents (including without limitation, commissions and attorneys fees and expenses), to the debt secured by this Assignment;
- enforce in our name or yours payment due from all lessees by suit or otherwise; compromise, settle, discharge, or extend the time of payment; commence proceedings to evict any of the lessees; file claims or participate in bankruptcy proceedings; and otherwise deal in and with the Leases and Rents; or
- exercise any other rights available to us under this Assignment.

**We are not a fiduciary.** This Assignment, made at arm's length, contains no express or implied promise that we will act in your best interests or as your fiduciary; rather, you agree that we may act to protect our own interests.

**Collection costs and attorney's fees.** If you are in default and we have to sue or take other steps to enforce our rights under this Assignment, you agree to pay our reasonable costs. If the original principal amount of the debt secured is greater than \$300 and if we refer the debt to an attorney who is not our salaried employee, you agree that these costs include reasonable attorney's fees and expenses. For any debt that is primarily for a consumer's personal, family, or household use, a reasonable attorney's fee will not exceed 15% of the unpaid debt.

**Your compliance.** You agree that if we do not insist upon strict compliance with the terms of this Assignment, we shall not have waived or otherwise given up our right to insist upon your strict compliance at a later date.

**Governing law.** You agree that this Assignment will be interpreted under and governed by the internal law of Alabama. The headings in this Assignment are inserted for your convenience only and do not control the meaning or effect of any of its terms. Our rights and remedies under this Assignment, under other agreements between you and us, and under law, are cumulative, and not exclusive.

**Entire Assignment; amendments.** You agree that this Assignment plus any other documents that you signed when you signed this Assignment contain the entire agreement between you and us. We have not made any promises or representations to you that are not stated in this Assignment or those other documents. No amendments or modifications of any provision of this Assignment shall be effective unless in writing signed by both you and us.

**Unenforceable provisions.** If any section of this Assignment is not enforceable, that will not affect the validity of any other section. However, if the enactment or expiration of any applicable law has the effect of rendering any provision of this Assignment unenforceable according to its terms, at our option, we may choose to declare any of the debt secured by this Assignment due at once.

**Successors and assigns.** This Assignment shall bind you and your heirs, executors and administrators, successors, representatives, receivers, trustees, and assigns, but you may not assign or transfer your obligations under this Assignment without our prior written consent.

STATE OF ALABAMA )

\_\_\_\_\_ COUNTY ) CORPORATE

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_

of \_\_\_\_\_, a corporation, is signed to the foregoing document and who is known to me, acknowledged before me on this day that, being informed of the contents of said document, \_\_\_\_\_ as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, on the day the same bears date.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public  
My commission expires

Notary Public  
My commission expires