

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is made and entered into this 18<sup>th</sup> day of September, 1995, by **RAMON A. CROCKETT, JR. and wife NATALIE A. CROCKETT** (herein together called the "Assignors") and **BANK OF ALABAMA**, a state banking corporation (herein called the "Lender").

### RECITALS

Simultaneously with the execution hereof, the Lender is making a loan to the Assignors and to Home Systems, Inc., an Alabama corporation (herein called the "Company"), all the outstanding capital stock of which is owned by Ramon A. Crockett, Jr., in the principal amount of \$150,000 (herein called the "Loan") evidenced by a Note of even date herewith (herein called the "Note"). The Loan is being made for the purpose of acquiring the land described on Exhibit A attached hereto and made a part hereof and constructing on said land certain improvements for use by Home Systems, Inc. In consideration of the Loan and as security therefor the Assignors and the Company have executed various documents in favor of the Lender including, without limitation, the Note, a Construction Loan Agreement, a Mortgage (herein called "Mortgage"), a Security Agreement, this Assignment and various other security agreements. All the foregoing documents executed by the Assignors and the Company in favor of the Lender as security for the Loan or related to the Loan and all loan and security documents hereafter executed by the Assignors, the Company and any other parties in favor of the Lender as security for or related to the Loan are referred to collectively herein as the "Loan Documents".

### WITNESSETH:

**NOW, THEREFORE**, in consideration of the Loan and the promises and covenants contained herein, the Assignors hereby covenant and agree with the Lender as follows:

**Section 1. Assignment.** As additional security for (a) all obligations which are evidenced and secured by the Loan Documents and (b) the performance and discharge of all obligations, covenants and agreements of the Assignors and the Company contained in the Loan Documents, the Assignors hereby grant, transfer and assign to the Lender and its successors and assigns the following:

(a) All leases and subleases, written or oral, and all operating agreements, management agreements, concession agreements, licenses and all similar agreements, whether now existing or hereafter made (herein together called the "Leases"), together with all

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extensions, renewals, substitutions, modifications and replacements of the Leases, affecting or concerning the land described on Exhibit A attached hereto and made a part hereof and all improvements at any time situated on said land (said land and improvements being herein together called the "Project");

(b) Any and all guaranties of performance by any lessee or obligor under any of the Leases and all extensions, renewals, substitutions, modifications and replacements thereof; and

(c) The immediate and continuing right to collect and receive all the rents, income, receipts, revenues, royalties, issues and profits (herein together called the "Rents") now due or which may become due or to which the Assignors may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of any of the Leases or from or out of any part of the Project, including, without limitation, minimum rents, additional rents, percentage rents, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by and lessee upon the exercise of any cancellation privilege provided in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to any part of the Project, together with any and all rights and claims of any kind which the Assignors may have against any lessees under the Leases or against any subtenants or occupants of any part of the Project; provided that so long as no Event of Default hereunder shall have occurred and be continuing, the Assignors shall have the right under a license granted hereby (but limited as provided in Section 5 hereof) to collect, receive and retain, but not prior to accrual, all the Rents.

**PROVIDED, HOWEVER,** that upon the payment and performance in full of all obligations evidenced and secured by the Loan Documents, the assignment made herein shall be void.

**Section 2. Representations and Warranties.** The Assignors hereby represent and warrant as follows:

(a) The Assignors have, or will have, good title to the Leases and Rents hereby assigned and good right to assign the same, and no other party has any right, title or interest therein.

(b) The Assignors have, or will have, duly and punctually observed and performed all the terms, covenants, conditions and warranties of the Leases on the part of the Assignors to be observed and performed.

(c) The Assignors have not previously sold, assigned, transferred, mortgaged or pledged the Leases or Rents, whether now due or hereafter to become due, except as provided herein.

(d) No Rents due for any period subsequent to the date hereof have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

(e) The Assignors has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

(f) No default exists under any of the existing Leases.

All the foregoing representations and warranties shall be deemed to be reaffirmed upon the execution of each of the Leases by the Assignors.

**Section 3. Covenants of the Assignors.** To protect the security of this Agreement and the assignment made hereby, the Assignors covenant and agree:

(a) To observe and perform all obligations, covenants and warranties provided for under the terms of the Leases to be observed and performed by the Assignors, and to give prompt notice to the Lender in the event the Assignors fails to observe and perform the same.

(b) To enforce or secure in the name of the Lender the performance of each obligation, term, covenant, condition and agreement to be performed by any lessee, guarantor or other obligor under the Leases.

(c) To appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Assignors and any lessee, guarantor or obligor thereunder, and, upon request by the Lender to do so in the name and on behalf of the Lender but at the expense of the Assignors, and to pay all costs and expenses of the Lender, including reasonable attorneys' fees, in any action or proceeding in which the Lender may appear.

(d) Not to further assign, pledge, transfer, mortgage or otherwise encumber the Leases or the Rents.

(e) Not to receive or collect any Rents from any present or future lessee of the Project or any part thereof for a period of more than one month in advance or discount any Rents.



(f) Not to waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee, guarantor or obligor under the Leases of any from any obligations, covenants, conditions and agreements by said lessee, guarantor or obligor to be observed and performed, including the obligation to pay Rents in the manner and at the place and time specified in any Leases.

(g) Not to cancel, terminate or consent to all surrender of any Leases, or modify or in any way alter the terms thereof without the prior written consent of the Lender.

(h) To secure the approval of the Lender of any Leases before the execution thereof and promptly upon the execution by the Assignors of any Leases (i) to furnish the Lender a copy thereof and (ii) to execute all such further assignments of such Leases and the Rents therefrom as the Lender may require.

(i) To secure from each lessee simultaneously with the execution of any Lease, a subordination, non-disturbance and attornment agreement satisfactory to the Lender.

(j) To pay over to the Lender immediately upon receipt all sums received by the Assignors as creditor with respect to an assignment for the benefit of creditors in bankruptcy, reorganization, arrangement, insolvency, dissolution or receivership proceedings, or as payment, premium or other consideration in connection with the cancellation or modification of any Leases whereupon the Lender shall apply any funds so received to the payment of rentals due under the Leases or the payment of any part of the indebtedness secured hereby or by the Mortgage.

**Section 4. Events of Default.** The occurrence of any of the following shall be an "Event of Default" hereunder:

(a) the failure of the Assignors or the Company to perform or observe any obligation or covenant contained herein;

(b) a default or an Event of Default under any of the other Loan Documents;

(c) any warranty of the Assignors or the Company contained herein or in any of the Loan Documents being false or misleading in any material respect when made; or

(d) the failure of the Assignors to perform any condition precedent to the obligation of any party to any of the Leases and the continuation of such failure after ten (10) days' written notice thereof to the Assignors by the Lender.

**Section 5. Remedies of the Lender.** Upon the occurrence and continuation of an Event of Default hereunder, the Lender may:

(a) declare all or any part of the indebtedness evidenced or secured by the Note, the Mortgage, this Agreement or any of the other Loan Documents immediately due and payable;

(b) exercise any other right and remedy granted to the Lender hereunder or under the Mortgage or any of the other Loan Documents or at law or in equity;

(c) terminate the license hereby granted to the Assignors to collect, receive and retain the Rents as aforesaid, and, without taking possession, in the Lender's own name, to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the payment of any part of the indebtedness secured hereby or by the Mortgage and the other Loan Documents;

(d) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by a court, and irrespective of the Assignors' possession, enter upon, take possession of, manage and operate the Project or any part thereof for the account of the Assignors, execute, modify, enforce, cancel or accept surrender of any Leases, take possession of and use the books of account and financial records of the Assignors relating to the Project, remove and evict any lessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expense the Lender shall deem proper to protect the security hereof as fully and to the same extent as the Assignors could do if in possession, and in such event to apply any funds so collected to the operation and management of the Project (including payment of reasonable management, brokerage and attorney's fees) and to the payment of any part of the indebtedness secured hereby or by the Mortgage and the other Loan Documents; or

(e) take all other actions which the Lender may deem necessary or desirable to protect its security.

The collection of the Rents and application thereof as aforesaid or the entry upon and taking possession of the Project or both shall not cure or waive any Event of Default or waive, modify or affect any notice of any Event of Default, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application of the Rents may have cured the original default. If the Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default. Nothing contained herein nor any collection of the Rents by the Lender or by a receiver shall be construed to make the Lender a "mortgagee-in-possession" of the Project so long as the Lender has not itself entered into actual possession of the Project. The Assignors irrevocably appoint the Lender as their attorney-in-fact, with full power of substitution, to execute any leases in the name of the Assignors.

**Section 6. Direction to Lessees.** Upon the occurrence of any Event of Default hereunder, this Agreement shall constitute a direction and full authority to any and all lessees and other obligors under the Leases and all guarantors of the Leases to pay all Rents to the Lender without proof of the default relied upon. The Assignors hereby irrevocably authorize all lessees and other obligors under the Leases and all guarantors thereof to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any Rents due or to become due. All obligors under the Leases and all guarantors thereof shall have no right or duty to inquire whether any Event of Default has actually occurred, and the Assignors shall have no claim against any lessees or other obligors under the Leases or any guarantors for any rents paid by such lessees or other obligors or guarantors to the Lender pursuant to demand or notice by the Lender.

**Section 7. Rights of the Lender.** (a) The Lender shall be deemed to be the creditor of any lessee or other obligor under the Leases in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee or other obligor (without obligation on the part of the Lender, however, to file timely claims in such proceedings or otherwise pursue creditors' rights therein).

(b) The Lender shall have the right to assign the Assignors' right, title and interest in the Leases to any subsequent holder of the Mortgage or any participating interest therein or to any party acquiring title to all or any part of the Project through foreclosure or otherwise, and any subsequent assignee shall have all the rights and powers herein provided to the Lender.

**Section 8. Performance by the Lender.** If the Assignors fail to perform or observe any covenant or comply with any condition contained in any of the Leases, without notice to or demand on the Assignors and without releasing the Assignors from their obligations to do so, the Lender may perform such covenant or condition, or it may appear in any action or proceeding. The Lender shall not be obligated to perform or discharge any obligation of the Assignors under any of the Leases either before or after the occurrence of an Event of Default. To the extent that the Lender shall incur any costs or expenses or pay any moneys in connection therewith, including any costs or expenses of litigation, such costs, expenses or payments will be additional indebtedness of the Assignors to the Lender secured by this Agreement, the Mortgage and the other Loan Documents, will bear interest at the after-maturity rate specified in the Note and will be payable upon demand.

**Section 9. Indemnity.** The Assignors agree to indemnify and hold harmless the Lender from all claims, demands, liabilities, losses, costs, damages, fees and expenses which



the Lender may incur under any of the Leases or under or by reason of this Agreement by reason of any act of the Lender under this Agreement or under any of the Leases.

**Section 10. Waiver of Jury Trial. THE ASSIGNORS HEREBY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN, THE NOTE, OR ANY OTHER INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION THEREWITH, INCLUDING THE MORTGAGE. THE Assignors CERTIFY THAT NO REPRESENTATIVE OR AGENT OF THE LENDER OR THE LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF THE Assignors RIGHT TO A TRIAL BY JURY. THE ASSIGNORS ACKNOWLEDGE THAT THIS WAIVER IS KNOWINGLY MADE AND IS BARGAINED FOR AND THAT THE LENDER HAS BEEN INDUCED TO MAKE THE LOAN IN PART BY THE PROVISIONS OF THIS SECTION.**

**Section 11. Miscellaneous.** The assignment made herein is intended to be supplementary of and not in substitution for or in derogation of any similar assignment contained in any of the other Loan Documents. It is intended that this Agreement and the assignment made herein shall run with the land. The recordation of a satisfaction or release of the Mortgage shall operate automatically as a satisfaction and release of this Agreement and the assignment made herein. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in the Lender in any of the other Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by the Lender, and the remedies herein provided or otherwise available to the Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall the use of any of the remedies hereby provided prevent the subsequent or concurrent resort to any other remedy or remedies. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, heirs and legal representatives of the parties hereto. The provisions of this Agreement are severable, and the invalidity or unenforceability of any one or more of the provisions hereof will in no way affect any other provision. This Agreement constitutes the entire agreement between the Assignors and the Lender with respect to the subject matter hereof, and this Agreement may be amended only by an instrument in writing executed by the parties. This Agreement shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the Assignors have hereunto set their hands and seals and have caused this Assignment to be dated the day and year first written above.

Ramon A. Crockett, Jr. (SEAL)  
Ramon A. Crockett, Jr.

Natalie A. Crockett (SEAL)  
Natalie A. Crockett

ADDRESS:

231 Commerce Parkway  
Pelham, Alabama 35124

STATE OF ALABAMA   )  
                             :  
JEFFERSON COUNTY   )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that RAMON A. CROCKETT, JR., whose name 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 such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 18<sup>th</sup> day of September, 1995.

Judith Walther  
Notary Public

[ NOTARIAL SEAL ]

My Commission Expires: 5-24-98



STATE OF ALABAMA   )  
                                  :  
JEFFERSON COUNTY   )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that NATALIE A. CROCKETT, whose name 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 such instrument, she executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 18<sup>th</sup> day of September, 1995.

  
Notary Public

[ NOTARIAL SEAL ]

My Commission Expires: 5-24-98

This instrument was prepared by:

Meade Whitaker, Jr.  
2500 SouthTrust Tower  
Birmingham, Alabama 35203

## EXHIBIT A

Part of Lot 7, Oak Mountain Commerce Place as recorded in Map Book 18 page 58 in the Office of the Judge of Probate of Shelby County, Alabama, being located in the SW 1/4 of the SW 1/4 of Section 31, Township 19 South, Range 2 West, more particularly described as follows: Commence at the NW corner of said 1/4 1/4 section said point being the Northwest corner of said Lot 7; thence in an Easterly direction along the Northerly line of said Lot 7, a distance of 514.26 feet to the Northeast corner of said Lot 7; thence 95 deg. 55 min. 44 sec. right in a Southerly direction along the Easterly line of said Lot 7, a distance of 471.27 feet to the point of beginning; thence continue along last described course a distance of 160.0 feet to the beginning of a curve to the right having a radius of 25.0 feet and central angle of 90 deg.; thence in a Southwesterly direction along said curve a distance of 39.27 feet; thence in a Westerly 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 25.0 feet and a central angle of 82 deg. 00 min. 06 sec.; thence in a Northwesterly direction along arc of said curve a distance of 35.78 feet to a point on the Easterly right of way line of Commerce Parkway; thence in a Northerly direction along line tangent to said curve and along said right of way line a distance of 94.84 feet to the beginning of a curve to the left having a radius of 553.32 feet and a central angle of 6 deg. 30 min. 00 sec.; thence in a Northerly direction along said curve and right of way line a distance of 62.77 feet; thence in a Northerly direction along a line tangent to said curve and along said right of way line a distance of 8.29 feet; thence 104 deg. 29 min. 51 sec. right, in an Easterly direction, a distance of 172.98 feet to the point of beginning; being situated in Shelby County, Alabama.

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