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This instrument prepared by  
and to be returned to:  
Ray D. Gibbons  
Gordon, Silberman, Wiggins & Childs, P.C.  
1400 SouthTrust Tower  
Birmingham, Alabama 35203  
(205) 328-0640

STATE OF ALABAMA           )  
COUNTY OF SHELBY        )

### ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES is made effective as of the 15<sup>th</sup> day of December, 1995, by CRYSTAL TREE I LIMITED PARTNERSHIP, a Texas limited partnership (the "Borrower") in favor of SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (the "Lender").

Inst # 1995-36412

### 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 Twenty-One Million Seven Hundred Eight Thousand and No/100 Dollars (\$21,708,000.00) (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 of even date herewith (the "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 Lender, and as additional security for the full and faithful performance by Borrower of all the terms and conditions of the Loan Agreement, the Note, and each of the other "Loan Documents" (as defined in the Loan Agreement), including, without limitation, that certain Mortgage and Security Agreement of even date herewith (the "Mortgage") executed and delivered by Borrower to Lender on the property described in Exhibit "A" to secure the payment of the Note.

### 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,

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*Calabazas Little*

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 Assignment 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.

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 their accrual under the aforesaid leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default (after the giving of any required notice and the expiration of any applicable grace or cure period) pursuant to (and as defined in) the Loan Agreement, the Note, the Mortgage, or any of the other Loan Documents, or until the violation of any term, condition or agreement of this Assignment, which violation is not cured within thirty (30)

days after written notice from Lender, each of which shall constitute an "Event of Default" hereunder.

Borrower does hereby authorize and empower Lender to collect, upon demand, after any Event of Default hereunder (after the giving of any required notice and the expiration of any applicable grace or cure period), 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. 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 Assignment 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, the Loan Agreement, and/or any of the other Loan Documents; and

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

The terms "Note", "Mortgage", "Loan Agreement" and "Loan Documents" shall refer to such instruments as they may hereafter be amended by Borrower and Lender. 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.

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

**BORROWER:**

CRYSTAL TREE I LIMITED PARTNERSHIP

By: CRYSTAL TREE CORPORATION,  
Its General Partner

By: [Signature]  
Its: President

STATE OF TEXAS )  
COUNTY OF HARRIS )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that President, whose name as Alan E. Ferris of Crystal Tree Corporation, a Texas corporation, as general partner of Crystal Tree I Limited Partnership, a Texas limited partnership, is signed to the foregoing Assignment, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Assignment, 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 of said limited partnership as aforesaid.

Given under my hand and official seal, this the 10th day of December, 1995.



Anne Arreaga  
Notary Public  
My Commission Expires: 10/8/96

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EXHIBIT A

PARCEL I

A parcel of land situated in the S.W. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West and in the N.W. 1/4 of the N.E. 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the S.W. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West and run N0°13'48"W along the West line of said 1/4-1/4 section a distance of 1310.96 feet to the Northwest corner of said 1/4-1/4 section; thence S87°54'49"E along the North line of said 1/4-1/4 section a distance of 1320.29 feet to the Northeast corner of said 1/4-1/4 section; thence South along the East line of said 1/4-1/4 section a distance of 1315.03 feet to the Northeast corner of the N.W. 1/4 of the N.E. 1/4 of Section 36, Township 18 South, Range 2 West; thence S0°02'48"W along the East line of said 1/4-1/4 section a distance of 313.00 feet to a point; thence N60°11'03"W a distance of 676.92 feet to a point; thence S43°33'21"W a distance of 166.93 feet to a point; thence N67°47'59"W a distance of 157.66 feet to a point; thence S31°24'01"W a distance of 204.08 feet to a point; thence N68°17'59"W a distance of 119.33 feet to a point; thence S22°23'31"W a distance of 135.37 feet; thence S15°03'29"E a distance of 33.17 feet to a point; thence N87°40'24"W a distance of 207.65 feet to a point on the West line of said 1/4-1/4 section; thence N0°19'01"E along the West line of said 1/4-1/4 section a distance of 368.81 feet to the POINT OF BEGINNING.

Parcel II

A 60 foot non-exclusive roadway easement(s) for ingress and egress to East Inverness Parkway as described in the instruments recorded in Real Volume 13 page 426; Real Volume 28 page 673; Real Volume 30 page 85 and Deed 342 page 479, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

EXHIBIT A  
(CONTINUED)

Parcel IV

An easement for the right to construct and maintain, a limited access roadway and temporary construction access, as set out in the Access Roadway Easement dated December 7, 1995 from The Water Works and Sewer Board of the City of Birmingham, a public corporation, to Crystal Tree I, a Texas Limited Partnership, recorded as Instrument No. \_\_\_\_\_ in the Probate Office of Shelby County, Alabama, and subject to the terms, covenants, and conditions therein, over and across the following described parcel:

Begin at the Southeast corner of the NW 1/4 of the SE 1/4 of Section 25, Township 18 South, Range 2 West and run in a Westerly direction along the South line of said 1/4 1/4 section a distance of 80.00 feet to a point; thence right in a Northeasterly direction a distance of 93 feet, more or less, to a point on the East line of said 1/4 1/4 section, said point being 50.04 feet Northerly of the Southeast corner of said 1/4 1/4 section; thence right in a Southerly direction along the East line of said 1/4 1/4 section a distance of 50.04 feet to the point of beginning; being situated in Shelby County, Alabama.

Parcel V

An easement for, and rights to construct and maintain, a dam embankment as set out in the Dam Embankment Easement dated December 7, 1995, from The Water Works and Sewer Board of the City of Birmingham, a public corporation, to Crystal Tree I, a Texas Limited Partnership, recorded as Instrument No. \_\_\_\_\_ in the Probate Office of Jefferson County, Alabama, and subject to the terms, covenants, and conditions therein, over and across the following described parcel:

Commence at the Southeast corner of the SE 1/4 of the SW 1/4 of Section 25, Township 18 South, Range 2 West, and run in a distance of 34.86 feet to the point of beginning; thence continue in a Northerly direction along the last stated course a distance of 558.69 feet to a point; thence 170 deg. 11 min. 13 sec. to the left in a Southwesterly direction a distance of 245.83 feet to a point; thence 170 deg. 21 min. 18 sec. to the left in a Southeasterly direction a distance of 319.22 feet to the point of beginning; being situated in Jefferson County, Alabama.

EXHIBIT A  
(CONTINUED)

Parcel VI

An easement, and rights to enter, to construct a dam embankment, access road and sanitary force main, as set out in the Temporary Construction Easement dated December 7, 1995, from The Water Works and Sewer Board of The City of Birmingham, a public corporation, to Crystal Tree I, a Texas Limited Partnership, recorded as Instrument No. \_\_\_\_\_ in the Probate Office of Jefferson County, Alabama, and subject to the terms, covenants and conditions set out therein, over and across the following described parcel:

Commence at the Southeast corner of the S.E. 1/4 of the S.W. 1/4 of Section 25, Township 18 South, Range 2 West and run in a distance of 34.86 feet to the POINT OF BEGINNING; thence 7 32'31" to the left in a Northwesterly direction a distance of 319.22 feet to a point; then 17 21'18" to the right in a Northeasterly direction a distance of 245.83 feet to a point on the East line of said 1/4-1/4 section; thence 9 48'47" to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 205.36 feet to a point; thence 170 11'13" to the left in a Southwesterly direction a distance of 453.52 feet to a point; thence 17 21'18" to a point; thence 82 13'41" to the left in an Easterly direction a distance of 35.32 feet to the POINT OF BEGINNING.

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