

STATE OF ALABAMA)

JEFFERSON COUNTY)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is entered into by and between HIGGINBOTHAM OIL COMPANY, INC., an Alabama corporation (the "Debtor"), and FIRST ALABAMA BANK, an Alabama banking corporation (the "Lender"), to secure an indebtedness owing by the Debtor to the Lender, as evidenced by that certain promissory note (the "Note") of even date herewith, in the principal sum of ONE MILLION, ONE HUNDRED FIFTY THOUSAND AND NO/100 (\$1,150,000.00) DOLLARS, payable to the order of the Lender and executed by the Debtor, which indebtedness is described in a Loan Agreement (the "Loan Agreement") of even date therewith executed by the Debtor, and the Lender, and which is described in and secured by a Mortgage (the "Mortgage") of even date therewith executed by the Debtor to the Lender, covering the Debtor's interest, in and to the real property described in Exhibit "A" attached hereto and made a part hereof (the "Subject Property"). Said indebtedness is hereinafter collectively referred to as the "Indebtedness." The Mortgage, this Assignment of Leases and Rents, the Loan Agreement, and all other instruments executed by the Debtor further securing the Indebtedness are hereinafter collectively referred to as the "Security Documents."

For and in consideration of the Loan made to the Debtor by the Lender as evidenced by the Note, the Debtor has granted, transferred and assigned and by these presents does grant, transfer and assign unto the Lender all of his right, title and interest in and to the following:

1. All leases and subleases, whether written or oral, of the Subject Property, or any portion thereof, including, but not limited to, those leases described on Exhibit "B" attached hereto and made a part hereof, which Leases have today been assigned to the Debtor; any and all extensions and renewals of said leases, and any and all further leases or subleases now existing or hereafter made, including subleases thereunder, upon or covering all or any part of the Subject Property, all such leases, subleases, and tenancies heretofore mentioned being hereinafter collectively referred to as the "Leases";
2. Any and all guarantees of the lessee's performance under any of the Leases; and
3. The immediate and continuing right to collect and receive all of the rents and all other sums now due or which may become due or to which the Debtor may now or shall hereafter become entitled or make demand or claim, arising or issuing from or out of the Leases (collectively hereinafter referred to as the "Rents").

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The Debtor represents and warrants that:

(a) The Debtor has good title to the Leases and Rents hereby assigned and good right to assign the same;

(b) No other person, corporation or entity has any right, title or interest in the Leases or Rents hereby assigned;

(c) All and singular the material: terms, covenants, conditions and warranties of the existing Leases on the part of the lessor thereunder have been duly and punctually performed, kept, and observed;

(d) No previous sale, assignment, transfer, mortgage or pledge of the Leases or the Rents, is superior to the assignment of the Leases and Rents hereunder.

(e) 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; and

(f) No lessee under any existing Lease is in default in the payment of rent.

To protect the security of this assignment, the Debtor covenants and agrees:

1. To observe, perform and discharge all material: obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the lessor, thereunder and to give prompt notice to the Lender in the event Debtor fails to observe, perform and discharge the same;

2. To enforce or secure the performance of each and every material: obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of any Lease;

3. To 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 the Debtor and any lessee 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 Debtor, and to pay all reasonable and actual costs and reasonable and actual expenses of the Lender, including reasonable attorney's fees, in any action or proceeding in which the Lender may appear with regard to the Leases;

4. Not to pledge, transfer, mortgage or otherwise encumber or assign future payment of the Rents during the term hereof;

5. Not to waive, excuse, condone, discount, set-off, compromise, or in any manner release or discharge any lessee of the Subject Property of and from any material 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 any Lease;

It is a condition of the granting of these powers, benefits and privileges, and of the making of the assignment, and the Lender by the acceptance of this instrument so agrees, that, until an act of default shall be made by the Debtor in the performance of any of the agreements, covenants and promises in the Note, the Mortgage, the Loan Agreement or any of the Security Documents, including the making of the payments as set out in said Note, and until the expiration of any applicable cure period, the Debtor has the license to receive and collect the rents from the Leases.

The Debtor, however, covenants and agrees, for the consideration aforesaid, upon or at any time after default in the payment of any Indebtedness secured hereby or in the observance or performance of any obligation, covenant or warranty set forth herein, in the Loan Agreement, or in any Security Document, or the occurrence of any event of default under the terms of any of the Note, the Loan Agreement, or any Security Document, and following the expiration of any applicable cure period, including prior written notice by Lender of any non-monetary default hereunder or expiration of a 14-day cure period, that the Lender, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies:

- (a) To collect the Rents as aforesaid, and, in the Lender's own name,
- (b) to demand, collect, receive, sue for, attach and levy on the Rents,
- (c) to give proper receipts, releases and acquittance therefor, after deducting all actual, necessary and reasonable costs and expenses of collection, including reasonable and actual attorney's fees,
- (d) to apply the net proceeds thereof, together with any funds of the Debtor deposited with the Lender, upon any Indebtedness secured hereby, or by the Security Documents and in such order as required in the Security Documents;
- (e) and to declare all sums secured hereby immediately due and payable and, at its option, to exercise all of the rights and remedies provided for in the Note, in the Loan Agreement, in the Security Documents, or under the terms hereof.

The collection of the Rents and application thereof as aforesaid shall not cure or waive any default or waive, modify or affect any notice of default under the Note, the Loan Agreement, the Security Documents or hereunder, or invalidate any act done pursuant to such notice. 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 aforesaid 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 and expiration of any applicable cure period.

This assignment shall remain in effect as long as any part of the Indebtedness remains unpaid and upon the payment in full of said Indebtedness the Lender shall execute a release of this assignment upon the written request and at the expense of the Debtor. This assignment shall run with the land described in Exhibit "A" hereto and shall inure to the benefit of and bind the parties hereto and their respective heirs, successors and assigns.

EXECUTED this 22nd day of January, 1996.

ATTEST:

HIGGINBOTHAM OIL COMPANY, INC.

Its Secretary

By: 

Its Vice President

This Instrument Prepared By:

Stephen P. Leara, Esq.
Lange, Simpson, Robinson & Somerville
1700 First Alabama Bank Building
Birmingham, Alabama 35203

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Burnie A. Higginbotham, Jr., whose name as President of Higginbotham Oil Company, Inc., an Alabama corporation, is signed to the foregoing Assignment of Leases and Rents, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 22nd day of January, 1996.

Sharon C. Mathemer
Notary Public
My Commission Expires: 11-26-96

EXHIBIT "A"

ASSIGNMENT OF LEASES AND RENTS

[Insert Property Description]

Lot No. 1, according to the Plat of CHESSER SURVEY, a commercial subdivision, as recorded in Map Book 10, Page 1, in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

ASSIGNMENT OF LEASES AND RENTS

Lease dated January, 1996 between Sunny Stores, Inc., an Alabama corporation ("Tenant") and Higginbotham Oil Company, Inc., an Alabama corporation ("Landlord") for 4,000 square feet of the gasoline station and convenience store to be constructed on the Property.

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