

This Instrument Prepared By:

John G. Lowther, P.C.
3500 Independence Drive
Birmingham, Alabama 35209

ASSIGNMENT OF RENTS AND LEASES

The following terms shall have the meanings set forth below, as used in this instrument:

Lender: **Aliant Bank**

**Lender's Notice
Address:** **P.O. Box 1237
Alexander City, AL 35011-1237**

Loan Amount: **\$2,721,000.00**

Mortgage: **The Mortgage and Security Agreement executed by Owner in favor
of Lender this date to further secure the Obligation (defined below)**

Owner: **Coosa United Properties, L.L.C.**

**Owner's Notice
Address:** **824 Heatherwood Trail
Birmingham, Alabama 35211**

1. **BY THIS ASSIGNMENT**, the Owner, for value received, hereby assigns to the Lender all of Owner's right, title, privileges and interest which Owner has and may have in the leases, operating agreements, management agreements, concession agreements, licenses, and all similar agreements, now existing or hereafter made and affecting the real property and the improvements and equipment thereon described in **Exhibit A** attached hereto and incorporated herein by reference (collectively referred to as the "Property"), together with all extensions, renewals, modifications or replacements of said leases and agreements, and together with any and all guarantees of the obligations of the lessees and other obligors thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. All said leases and all other said agreements described in this Paragraph 1, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter collectively and severally referred to as the "Lease".

2. **OWNER'S PURPOSE** in making this assignment is to relinquish, convey, and assign to Lender its right to collect and enjoy the rents, royalties, issues, profits, income and other benefits at any time accruing by virtue of the Lease (hereinafter called "Rents and Profits") as additional security for the outstanding indebtedness to Lender as evidenced by the note in favor of Lender (herein called the "Obligation") dated this same date, in the aggregate original principal sum equal to the Loan Amount executed by Owner, and as additional security of the Owner's obligations under

Inst # 1997-30075

the Mortgage executed to better secure the Obligation; and to furnish security for the performance of Owner's obligations contained herein, and in the Obligation, and in the other Loan Documents. The Obligation, the Mortgage, and other said loan documents, and all other documents executed in connection with the loan are referred to as the "Loan Documents".

3. THE PARTIES INTEND that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan Documents, the Rents and Profits as they respectively become due and to enforce the Lease, so long as there is no default by Owner in performance of the terms, covenants or provisions of the Obligation, the Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

4. UPON THE OCCURRENCE OF ANY DEFAULT under the terms and conditions of this Assignment or any of the Loan Documents, this Assignment shall constitute a direction to and full authority to any and all obligors under the Lease and any guarantor of the Lease to pay all Rents and Profits to Lender without proof of the default relied upon. Owner hereby irrevocably authorizes any and all obligors under the Lease and any guarantor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any Rents and Profits due or to become due. Any and all obligors under the Lease and any guarantor shall have no right or duty to inquire whether a default has actually occurred and Owner shall have no claim against any obligor under the Lease or any guarantor for any Rents and Profits paid by such obligor Lessee or such guarantor to Lender pursuant to Lender's demand or notice.

5. OWNER WARRANTIES:

- (a) that no default exists on the part of Owner under any Lease;
- (b) that no rent or other payment has been or will be collected under any Lease more than one month in advance;
- (c) that neither the Lease nor any interest therein has been previously or will be assigned or pledged by Owner;
- (d) that no concession has been or will be granted to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent or other payment due or to become due.

All of the foregoing warranties shall be deemed to be reaffirmed on and as of the

time of each Lease executed by Owner on the Property.

6. Owner agrees that nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Lease. Owner does not delegate or assign to Lender, and Lender does not accept or assume any of the duties, obligations, or liabilities of Borrower as provided in the Lease. Despite the present and absolute assignment by Owner to Lender of the Lease, Lender will not be required to perform any of the agreements or conditions contained in the Lease and nothing in this Agreement will impose any obligation upon Lender (including any liability under any covenant of quiet enjoyment as provided in the Lease). Owner retains and will perform all duties, obligations, and liabilities of Owner as provided in the Lease, provided that Lender, in the sole and absolute option of Lender may cure any default as provided in the Lease on behalf of Owner, and Owner will reimburse Lender on demand for all amounts paid and expended by Lender to cure the defaults of Owner as provided in the Lease.

7. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Loan Documents. Failure of the Lender to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

8. Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Lender in accordance with the terms of this Assignment.

9. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto (including without limitation, in the case of Lender, any third parties now or hereafter acquiring any interest in the Obligation or any part thereof, whether by virtue of assignment, participation or otherwise). The words "Owner", "Lender", "obligor under the Lease", and "guarantor", wherever used herein, shall include the persons and entities named herein or in the Lease or any guaranty and designated as such and their respective heirs, legal representatives, successors, and assigns, provided that any action taken by the named Lender or any successor designated as such by an instrument recorded in the appropriate office of the County in which the Property is located referring to this Assignment shall be sufficient for all purposes notwithstanding that Lender may have theretofore assigned or participated any interest in the Obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

10. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

11. Upon payment to Lender of the full amount of all indebtedness and obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release of the Mortgage, Note, and guarantees, this Assignment shall be void and of no further effect.

12. All notices given hereunder shall be given in the manner set forth in the Mortgage.

13. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

14. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, this document has been executed by the undersigned under seal on this 18th day of September, 1997.

" OWNER"

Coosa United Properties, L.L.C.

By: 

Burnie Higginbotham, Jr., Manager and Member

By: 

G. Barton Rice, Manager and Member

State of Alabama
County of Jefferson

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that G. Barton Rice and Burnie Higginbotham, Jr., whose names as Managers and Members of Coosa United Properties, L.L.C., are signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said instrument, they, as such Managers and Members, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in his capacity as aforesaid. Given under my hand this the 18 day September, 1997.


Notary Public

My Commission Expires: 1-5-99

EXHIBIT "A"

PARCEL I

Commence at the Northeast corner of the Northeast 1/4 of the Southeast 1/4 of Section 4, Township 24 North, Range 12 East; thence run West along the North line of the Northeast 1/4 of the Southeast 1/4 a distance of 253.00 feet; thence turn an angle of 71° 04' to the left and run a distance of 191.46 feet to the point of beginning; thence continue in the same direction a distance of 230.28 feet to the northeast margin of an unpaved street; thence turn an angle of 113° 13' to the right and run along the northeast margin of said street a distance of 245.80 feet to a point on the southeast right of way line of Alabama Highway No. 25; thence turn an angle of 86° 08' to the right and run along the southeast right of way line of said highway, a distance of 202.45 feet; thence turn an angle of 90° 39' to the right and run a distance of 168.76 feet to the point of beginning; being situated in the northeast 1/4 of the southeast 1/4 of Section 4, Township 24 North, Range 12 East. Subject to easements and rights of way of record.

LESS that part of said land acquired by the State of Alabama Highway Department for Project No. S-44 (8).

The remaining tract of land being described as Follows:

Commence at the Northeast corner of the Northeast 1/4 of the Southeast 1/4 of Section 4, Township 24 North, Range 12 East; thence run west along the north line of the northeast 1/4 of the southeast 1/4 a distance of 253.00 feet; thence turn and angle of 71° 04' to the left and run a distance of 191.46 feet to the point of beginning; thence continue in the same direction a distance of 230.28 feet to the northeast margin of an unpaved street; thence turn an angle of 113° 13' to the right and run along the northeast margin of said street a distance of 245.80 feet to a point on the southeast right of way line of Alabama highway No. 25; thence turn an angle of 86° 08' to the right and run along the southeast right of way line of said highway, a distance of 70.45 feet; thence turn 22° 59' 13" right and run northeasterly along said right of way line 33.80 feet to the point of beginning of a curve to the right, thence turn 25° 57' 22" left to the tangent to said curve at said point and run northeasterly along said curve and said right of way line a distance of 100.79 feet to a point; thence turn 87° 17' 06" right from the tangent to said curve at said point and run southeasterly 155.45 feet to the point of beginning.

PARCEL II

From the SW corner of the SW 1/4 of the SE 1/4 of Section 15, Township 19 South, Range 2 East, run thence East along the south boundary of said SW 1/4 of SE 1/4 a distance of 502.94 feet; thence turn 89° 32' 20" left and run 41.04 feet to a point on the North boundary of County Hwy. #62 (80' ROW), being the point of beginning of herein described lot; thence turn 90° 00' right and run 325.46 feet along said Hwy. boundary to a point on the west boundary of an Alabama Power Company 100' right of way; thence turn 114° 00' 43" left and run 312.84 feet along said R.O.W. boundary to a point on the Easterly boundary of Alabama Hwy. #25 (70' ROW); thence turn 117° 01' 17" left and run 287.40 feet along said Hwy. boundary; thence turn 23° 21' 00" left and run 64.70 feet to the point of beginning of herein described lot, situated in the SW 1/4 of the SE 1/4 of Section 15, Township 19 South, Range 2 East, Shelby County, Alabama.

PARCEL III

From the NE corner of Section 33, Township 19 South, Range 2 East, run thence west along the north boundary of said Section 33 a distance of 1064.69 feet; thence turn 143° 13' 10" left and run 268.43 feet to a concrete monument on the north boundary of U. S. Highway #280 (120' ROW); thence continue along said Hwy. boundary a distance of 494.70 feet to the point of beginning of the herein described lot; thence turn 00° 07' 02" right and continue along said Hwy. boundary a distance of 264.96 feet; thence turn 117° 41' 50" left and run 163.50 feet; thence turn 99° 45' 31" left and run 238.04 feet to the point of beginning of herein described lot.

Situated in the NE 1/4 of the NE 1/4 of Section 33, Township 19 South, Range 2 East, Shelby County, Alabama.

Continued . . .

PARCEL IV

Commence at the Southwest corner of the Southeast 1/4 of the Northeast 1/4 of Section 28, Township 19 South, Range 1 East Shelby County, Alabama, and run in an Easterly direction along the South line of said 1/4-1/4 Section a distance of 110.00 feet to the point of beginning; thence turn a deflection angle of $89^{\circ} 03' 39''$ ($89^{\circ} 02' 47''$ map) to the left and run in a Northerly direction a distance of 117.06 feet (116.36 feet deed) to a point on the Southerly right of way line of U.S. Highway #280; thence turn an interior angle of $97^{\circ} 12' 01''$ ($97^{\circ} 03' 30''$ deed) and run to the right in an Easterly direction along the Southerly right of way line of U. S. Highway #280 a distance of 94.18 feet to the PC of a curve; thence continue in an easterly direction along the Southerly right of way line of U.S. Highway #280 along the arc of a curve to the left having a central angle of $0^{\circ} 15' 43''$ and a radius of 8594.37 feet, a distance of 39.30 feet to a point on the curve; thence turn an interior angle of $82^{\circ} 33' 11''$ ($82^{\circ} 40' 30''$ deed) angle measured from tangent, and run to the right in a Southerly direction a distance of 131.72 feet (130.65 feet deed) to a point on the South line of the Southeast 1/4 of the Northeast 1/4 of Section 28; thence turn an interior angle of $90^{\circ} 55' 26''$ ($90^{\circ} 57' 30''$ deed) and run to the right in a westerly direction along the South line of said 1/4-1/4 section a distance of 132.47 feet to the point of beginning. Situated in the Southeast 1/4 of the Northeast 1/4 of Section 28, Township 19 South, Range 1 East, Shelby County, Alabama.

Inst # 1997-30075

09/18/1997-30075
11:45 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00