

THIS INSTRUMENT PREPARED BY:  
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Lange, Simpson, Robinson & Somerville LLP  
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Birmingham, Alabama 35203

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STATE OF ALABAMA )

JEFFERSON COUNTY )

Inst # 1999-17278

### ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") is executed by **HOWARD J. BUTLER AND MARY JANE BUTLER**, husband and wife (the "Borrower"), this 16<sup>th</sup> day of April, 1999, for the benefit of **REGIONS BANK**, an Alabama banking corporation (the "Lender").

### RECITALS

A. Borrower and Lender have executed a certain Mortgage of even date herewith, whereby Borrower, as guarantor, has agreed to furnish additional collateral to Lender in the amount of \$1,000,000.00 (the "Loan Agreement"), the terms and provisions of which Loan Agreement are incorporated herein by reference and made a part hereof.

B. Borrower is executing this Assignment in favor of Lender pursuant to the terms of the Loan Agreement.

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrower, Borrower does hereby agree as follows:

1. **Assignment.** Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under any and all lease agreements (the "Leases") affecting the real property (or any portion thereof) described in Exhibit "A" attached hereto and made a part hereof (the "Premises"), whether existing on the date hereof or hereafter entered into, whether oral or written, whether primary leases or subleases, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants (including, without limitation, rights under any guarantees regarding the payment and performance of the Leases), and all the rents (including, without limitation, all cash, security deposits, advance rentals and deposits or payments of a similar nature, and all other sums due to Borrower arising out of the Leases or any guarantees with respect to the Leases; collectively, the "Rents") from the Leases, including those now due, past due or to become due. Borrower

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irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender, at any time and from time to time upon an event of default hereunder, under the Loan Agreement, or under any other Loan Document (as defined in the Loan Agreement), to take possession and control of the Premises, pursuant to Borrower's rights under the Leases, to exercise any of Borrower's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Lender for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Borrower hereby releases Lender from all liability (other than as a result of the gross negligence or willful misconduct of Lender) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Borrower to execute and deliver this Assignment is legally sufficient and will provide a direct economic benefit to Borrower. It is intended by Borrower and Lender that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding, the foregoing, this Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions of Borrower contained in the Leases or otherwise to impose any obligation upon Lender, and, so long as there is no event of default hereunder, under the Loan Agreement, or under any other Loan Document, Borrower shall have a license, revocable upon an event of default, to possess and control the Premises and collect and receive all Rents. Upon an event of default, such license shall be automatically revoked.

2. **Default.** Upon any event of default hereunder, under the Loan Agreement or under any other loan document between Borrower and Lender (an "Event of Default"), Lender may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Premises, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Premises, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Premises, execute or terminate contracts providing for the management or maintenance of the Premises, all on such terms as are deemed best to protect the security of this Assignment, and in Lender's or Borrower's name, sue or otherwise collect Rents as specified in this Assignment as the same become due and payable, including, but not limited to, Rents then due and unpaid. Lender may so sue for or otherwise collect such Rents with or without taking possession of the Premises. Borrower agrees that upon an Event of Default, each tenant of the Premises shall make its rent payable to and pay such rent to Lender (or Lender's agents) on Lender's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower. Additionally, Lender may exercise any and/or all rights and remedies available to it under the Loan Agreement, the Loan Documents, at law, or in equity if an Event of Default shall occur.

3. **Application of Rents.** Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Lender to the costs, if any, of taking



possession and control of and managing the Premises and collecting such amounts, including, but not limited to, reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Borrower with respect to the Leases and to the sums owing to Lender pursuant to the Loan Agreement. Lender or Lender's receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those Rents actually received.

5. **No Liability.** Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Premises by reason of anything done or left undone by Lender hereunder, except to the extent of Lender's gross negligence or willful misconduct.

6. **Entry No Cure.** Any entering upon and taking possession and control of the Premises by Lender or Lender's receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Lender under applicable law, hereunder, or under any other Loan Document. The exercise of Lender's rights hereunder, once exercised, shall continue for so long as Lender shall elect, notwithstanding that the exercise of such rights may have cured the Event of Default prompting Lender to exercise such rights. If Lender shall thereafter elect to discontinue the exercise of its rights hereunder, such rights and/or any other rights or remedies of Lender hereunder or under any other Loan Documents may be reasserted by Lender at any time and from time to time following any subsequent Event of Default.

7. **Representations and Warranties.** Borrower represents and warrants that:

(a) Borrower 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 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; except an assignment to National Bank of Commerce;

(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, setoff or otherwise discharged or compromised; and

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

8. **Covenants and Agreements of Borrower.** Borrower covenants and agrees:

(a) To observe, perform and discharge all 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 Lender in the event Borrower fails to observe, perform and discharge the same;

(b) To 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 any Lease;

(c) 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 Borrower and any lessee thereunder, and, upon request by Lender, to do so in the name and on behalf of Lender but at the expense of Borrower, and to pay all costs and expenses of Lender, including reasonable attorney's fees, in any action or proceeding in which Lender may appear with regard to the Leases;

(d) Not to pledge, transfer, mortgage or otherwise encumber or assign future payment of the Rents during the term hereof; and

(e) Not to waive, excuse, condone, discount, setoff, compromise, or in any manner release or discharge any lessee of the Premises, or any portion thereof, of or 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 any Lease.

9. **Default Hereunder.** It shall be an event of default under this Assignment if Borrower breaches any term, provision, warranty or representation under this Assignment, under the Loan Agreement, or under any other Loan Document, or if there otherwise occurs any event of default under the Loan Agreement or any other Loan Document.

10. **Waiver.** No provision of this Assignment shall be deemed to have been waived by Lender unless such waiver is in writing and is signed by Lender, and any such waiver shall be effective only for the specific purpose for which it is given and in the specific instance in which given. The failure of Lender to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Assignment in any instance shall not be construed as a waiver or relinquishment for the future performance of such obligations, and such obligations shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

11. **Modification and Amendment.** This Assignment shall not be modified or amended in any respect except by a written instrument executed in the same manner as this Assignment is executed.

12. **Other Documentation.** Borrower shall, at the request of Lender, execute such other agreements, documents, instruments, or financing statements in connection with this Assignment as Lender may deem necessary or desirable to carry out the purposes of this Assignment.

13. **Notices.** All notices and demands to be given or made hereunder shall be given or made in accordance with the terms of the Loan Agreement.

14. **Costs of Enforcement.** In the event of any action by Lender to enforce this Assignment, Borrower agrees to pay immediately to Lender any and all costs and expenses thereof, together with reasonable attorneys' fees.

15. **Remedies Cumulative.** All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law or by other agreements. Any single or partial exercise of any right or remedy shall not preclude the further exercise thereof or the exercise of any other right or remedy.

16. **Construction.** Borrower is experienced in sophisticated and complex matters similar to the transaction contemplated by this Assignment and agrees that this Assignment shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Borrower and Lender were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

17. **Captions and Headings.** The captions and headings contained in this Assignment are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Assignment.

18. **Pronouns and Plurals.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.

19. **Severability.** If any provision of this Assignment or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

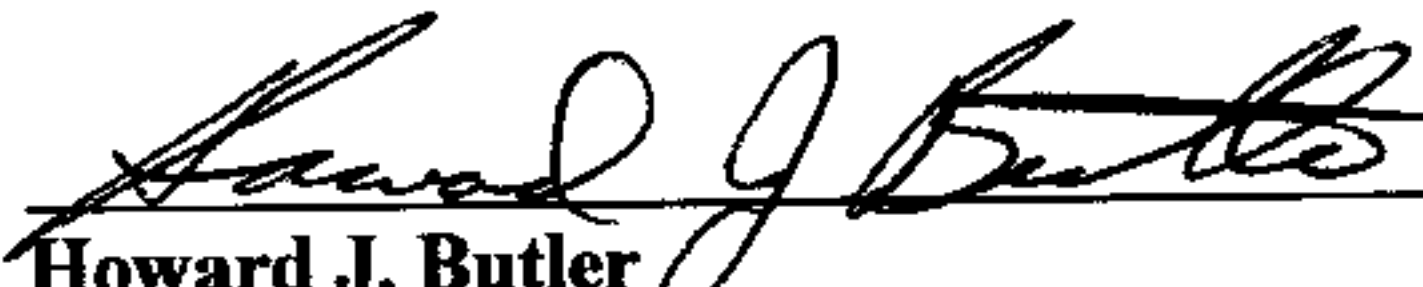


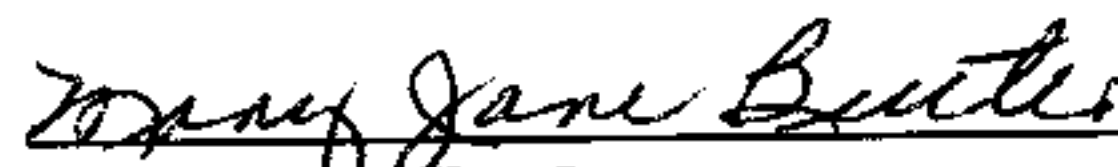
20. **Successors and Assigns.** This Assignment shall inure to the benefit of Lender, its successors and assigns, and shall be binding upon Borrower, its successors and assigns; provided that Borrower shall not assign or delegate any of its rights or obligations hereunder without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

21. **Term.** This terms of this Assignment shall run with the land described in Exhibit "A"; provided, that upon the full and faithful payment and performance of all obligations of Borrower to Lender arising out of the Loan Agreement, Lender shall execute a release of this Assignment upon the written request and at the expense of Borrower, its successors or assigns.

22. **Governing Law.** This Assignment shall governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict of laws principles.

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed under seal by its duly authorized representative as of the date first above written.

  
Howard J. Butler


  
Mary Jane Butler

STATE OF ALABAMA     )

A. CLAIR COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **HOWARD J. BUTLER, AND MARY JANE BUTLER**, husband and wife, whose names 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 the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16<sup>th</sup> day of April, 1999.

  
\_\_\_\_\_  
Notary Public  
My Commission expires: 11-5-99

## EXHIBIT "A"

### PARCEL I

Part of Lot D in the Survey of Walker Lands map of which is recorded in Deed Book 104, page 94, in the Probate Office of Shelby County, Alabama, and being more particularly described as follows:

From the SW corner of the NW  $\frac{1}{4}$  of Section 13, Township 20 South, Range 3 West, run thence East along the South line of said  $\frac{1}{4}$  section a distance of 126.08 feet to the point of beginning of the property hereby described; from the point of beginning thus obtained, turn thence left with an angle of  $81^{\circ}53'40''$ , and run Northerly a distance of 275.0 feet; thence turn right an angle of  $82^{\circ}24'$  and run a distance of 225.0 feet to the West line of the present U.S. Highway #31; thence right and along the West line of said highway a distance of 275 feet to the South line of said NW  $\frac{1}{4}$ ; thence Westerly 225.0 feet to the point of beginning.

Situated in Shelby County, Alabama.

### PARCEL II

Lot 300, according to the Survey of Butler Lot 300, as recorded in Map Book 162, page 13, in the Probate Office of Jefferson County, Alabama.

### PARCEL III

Part of the NW Quarter of Section 30, Township 16 South, Range 1 East situated in Jefferson County, Alabama, more particularly described as follows:

Begin at the NW corner of Section 30, Township 16 South, Range 1 East the point of beginning; thence run East along the North line of said Section 30 a distance of 2721.6 feet to the Northeast corner of the Northwest Quarter of said Section 30 turn right an angle of  $91^{\circ}51'28''$  and run South along the East line of said Northwest Quarter a distance of 1663.8 feet; thence turn right an angle of  $54^{\circ}30'$  and run Southwesterly a distance of 491.67 feet to the North boundary of County Road turn right an angle of  $49^{\circ}01'52''$  and follow said boundary as it now meanders along the following courses; run a distance of 587.74 feet; thence turn left an angle of  $15^{\circ}53'30''$  a distance of 451.97 feet turn left an angle of  $17^{\circ}27'$  a distance of 376.66 feet turn left an angle of  $13^{\circ}43'$  a distance of 577.74 feet turn right an angle of  $4^{\circ}20''$  a distance of 299.98 feet; turn right an angle of  $5^{\circ}36'28''$  a distance of 209.80 feet to point at which said boundary of said road intersects West line of said Section 30 turn right an angle of  $113^{\circ}29'42''$  and run North along West line a distance of 2419.48 feet to point of beginning.

# PARCEL IV

Part of Lot 13 of First Addition to Roebuck Plaza, as recorded in Map Book 26, page 68, in the Probate Office of Jefferson County, Alabama, more particularly described as follows:

Commence at the Northeast corner of said Lot 13; thence run Westerly along the North line of said Lot 13 for a distance of 535.58 feet to a point on the Easterly right of way line of the Irondale Road, said point being the Northwest corner of said Lot 13; thence reverse last stated course and run Easterly along the North line of said Lot 13 for a distance of 264.5 feet to the point of beginning, said point of beginning being 271.08 feet West of the Northeast corner of said Lot 13; thence from the point of beginning thus obtained at an angle to the right of 901051 and run Southeasterly for a distance of 234.24 feet to a point on the Northerly right of way of the Alabama Great Southern Railroad; thence at an angle to the right of 73'5513011 and in a Southwesterly direction along the Northerly right of way line of said railroad for a distance of 52.03 feet; thence at an angle to the right of 106104,3011 and in a Northwesterly direction for a distance of 138.58 feet; thence at an angle to the left of 801501 and in a Northwesterly direction for a distance of 236.95 feet to a point on the Easterly right of way line of the Irondale Road; thence Northerly along the Easterly right of way line of the Irondale Road for a distance of 74.78 feet to the Northwest corner of said Lot 13 for said survey; thence in an Easterly direction along said Northerly line of said Lot 13 for a distance of 264.5 feet to the point of beginning.

State of Alabama - Jefferson County

I certify this instrument filed on:

1999 APR 22 A.M. 09:30

Recorded and \$

Mtg. Tax

and \$

Deed Tax and Fee Amt.

\$ 22.00 Total \$ 22.00

GEORGE R. REYNOLDS, Judge of Probate



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