

123631

LIBERTY LIFE INSURANCE COMPANY
GREENVILLE, SOUTH CAROLINA

CONDITIONAL ASSIGNMENT OF LEASE

WHEREAS, Vinson Realty Co., Inc.

hereinafter referred to as "OWNER," is the present owner in fee simple of real property located in Shelby County, Alabama, briefly described as follows: As described on attached EXHIBIT A which is incorporated herein by reference

Inst # 1999-29717

07/15/1999-29717
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SHELBY COUNTY JUDGE OF PROBATE
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1003 HRS

WHEREAS, LIBERTY LIFE INSURANCE COMPANY, a corporation of the State of South Carolina having its principal office in the City of Greenville in said State, hereinafter referred to as "MORTGAGEE," is about to become the owner of a mortgage loan to OWNER in the amount of

One Million Four Hundred Thousand (\$1,400,000.00)

Dollars

evidenced by a promissory note and secured by a first mortgage (deed of trust, loan deed or similar instrument) executed by OWNER covering said property, and

WHEREAS, a considerable portion (or all) of said property has been demised to Big B, Inc.,

a corporation of the State of Alabama

under a lease dated June 15, 1998

for a term of years, ~~which term shall be for a period of ten (10) years, commencing on the date of the execution of this lease, and terminating on the date of the expiration of the term of the mortgage loan to OWNER, hereunder referred to as "lease," and~~

~~hereunder referred to as "lease," and~~

WHEREAS, LIBERTY LIFE INSURANCE COMPANY, as a condition to acquiring said mortgage loan has required as additional security for said loan a conditional assignment of OWNER'S interest in said lease,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the foregoing and of the sum of One Dollar (\$1.00) paid by MORTGAGEE to OWNER, the receipt whereof is hereby acknowledged by OWNER, the said OWNER hereby assigns, transfers and sets over unto MORTGAGEE the said lease, as additional security; and for the consideration aforesaid, the OWNER hereby covenants and agrees to and with MORTGAGEE that it will not, without the written consent of MORTGAGEE,

- (a) Cancel said lease or accept a surrender thereof unless the OWNER and said shall execute a new lease which shall go into effect prior to or simultaneously with said cancellation and surrender, said new lease to provide for a rental not less than the rent payable under the cancelled lease and which shall not diminish the tenant's obligation to pay taxes and insurance to the extent that such obligations may exist under the cancelled lease, and which new lease shall run to a date which shall not be prior to the expiration of the said cancelled lease. OWNER covenants and agrees to assign said new lease to MORTGAGEE in the same form and manner as he assigned the said cancelled lease.
- (b) Modify the said lease, either orally or in writing, so as to decrease the term of the lease, reduce the rent or diminish the obligation of the tenant with regard to the payment of taxes and insurance or maintenance of the premises.
- (c) Consent to an assignment of the tenant's interest in said lease which will relieve the tenant of liability for the payment of rent and the performance of the terms and conditions of the lease.
- (d) Permit the payment of rent in any medium other than lawful money of the United States; permit the payment of any rent more than thirty (30) days in advance of the due date thereof or anticipate, discount, compromise, forgive, encumber or assign the rents or any part thereof or any lease or any interest therein.
- (e) Accept a surrender or abandonment or vacation of the premises prior to the end of the term of the lease.

and any of the above acts, if done without the written consent of MORTGAGEE, shall be null and void.

MORTGAGEE, by acceptance of this assignment, covenants and agrees to and with OWNER that, until a default shall occur by OWNER in the performance of the covenants or in the making of the payments provided for in said mortgage or note, OWNER may receive, collect and enjoy the rents, issues and profits accruing to it under said lease; but it is covenanted and agreed by OWNER, for the consideration aforesaid, that, upon the happening of any default in performance of the covenants or in the making of the payments provided for in the said mortgage, or note, MORTGAGEE may, at its option, receive and collect all the said rents, issues and profits. OWNER, in the event of default in any of the payments or in performance of any of the terms, covenants or conditions of the aforesaid mortgage or note, hereby authorizes MORTGAGEE at its option to enter upon the said mortgaged premises by its officers, agents or employees for the collection of the rents and for the operation and maintenance of said mortgaged premises, OWNER hereby authorizing MORTGAGEE in general to perform all acts necessary for the operation and maintenance of said premises in the same manner and to the same extent that OWNER might reasonably so act. MORTGAGEE shall, after payment of all proper charges and expenses, credit the net amount of income which it may receive by virtue of the within assignment and from the mortgaged premises, to any amounts due MORTGAGEE from OWNER under the terms and provisions of the aforesaid note and mortgage. The manner of the application of such net income and the item which shall be credited shall be within the sole discretion of MORTGAGEE.

OWNER hereby covenants and warrants to MORTGAGEE that it has not executed any prior assignment of said lease or rentals, nor has OWNER performed any acts or executed any other instrument which might prevent MORTGAGEE from operating under any of the terms and conditions of this assignment, or which would limit MORTGAGEE in such operation; and OWNER further covenants and warrants to MORTGAGEE that it has not executed or granted any modification whatever of said lease, either orally or in writing, and that the said lease is in full force and effect according to its original terms, and that there are no defaults now existing under the said lease. OWNER further covenants during the full term of the loan in connection with which this assignment is made to comply with all of the terms, conditions and covenants of the lease imposed upon OWNER so as to prevent any termination of the lease because of a default by OWNER.

OWNER irrevocably consents that the tenant under said lease, upon demand and notice from MORTGAGEE of OWNER'S default under the aforesaid mortgage or note, shall pay the rents, issues and profits under said lease to MORTGAGEE without liability to the tenant for the determination of the actual existence of any default claimed by MORTGAGEE.

MORTGAGEE shall have the right to assign the OWNER'S right, title and interest in said lease to any subsequent holder of said mortgage, subject to the provisions of this instrument, and to assign the same to any person acquiring title to the mortgaged premises through foreclosure or otherwise. After OWNER shall have been barred and foreclosed of all right, title and interest and equity of redemption in said premises, no assignee of the OWNER'S interest in said lease shall be liable to account to OWNER for the rents, issues and profits thereafter accruing.

OWNER agrees to indemnify and hold the MORTGAGEE harmless of and from any and all liability, loss or damage which MORTGAGEE may incur under said lease or by reason of this assignment, and of and from any and all claims and demands whatsoever which may be asserted against MORTGAGEE by reason of any alleged obligation or undertaking to be performed or discharged by MORTGAGEE under the said lease or this assignment. Nothing herein contained shall be construed to bind MORTGAGEE to the performance of any of the terms and provisions contained in said lease, or otherwise to impose any obligation on MORTGAGEE. Prior to actual entry and taking possession of the premises by MORTGAGEE, this assignment shall not operate to place responsibility for control, care, management or repair of said premises upon MORTGAGEE, nor for the carrying out of any of the terms and provisions of said lease. Should MORTGAGEE incur any liability mentioned in this paragraph, or loss or damage under said lease or under or by reason of this assignment, or in the defense of any such claims or demands, OWNER shall immediately upon demand reimburse MORTGAGEE for the amount thereof, including costs and expenses and reasonable attorney's fee, and MORTGAGEE may retain possession and collect the rents, income and profits and, from time to time, apply them in or toward satisfaction of or reimbursement for said loss or damage.

OWNER hereby assigns any portion of an award payable by reason of condemnation action under the right of eminent domain and directs that such award shall be paid direct to MORTGAGEE, Greenville, South Carolina.

OWNER, as additional security, specifically assigns to MORTGAGEE, any purchase proceeds receivable by reason of tenant's exercising any first refusal option or any option to purchase the property as may be provided in the above referred to lease, additions, amendments and/or supplements thereto.

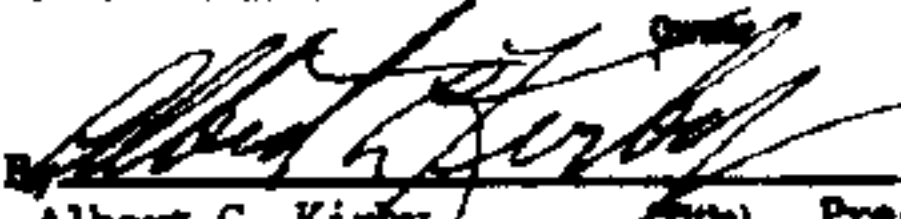
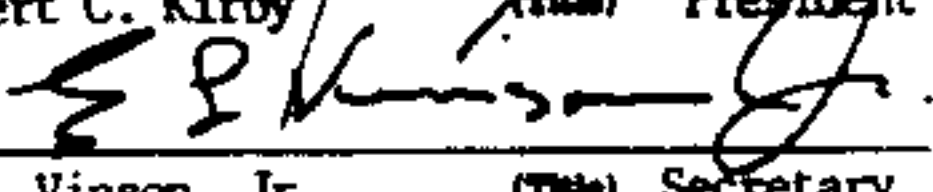
Upon payment in full of the entire indebtedness secured hereby, as evidenced by a recorded satisfaction or release of the basic security instrument, this assignment shall be void and of no effect and said recorded satisfaction or release shall automatically operate to release this assignment of record.

All the covenants and agreements hereinabove contained on the part of either party shall apply to and bind their heirs, executors or administrators, successors or assigns.

IN WITNESS WHEREOF, OWNER has executed this assignment on this 15th day of July, 1999.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

VINSON REALTY CO., INC. (SEAL)

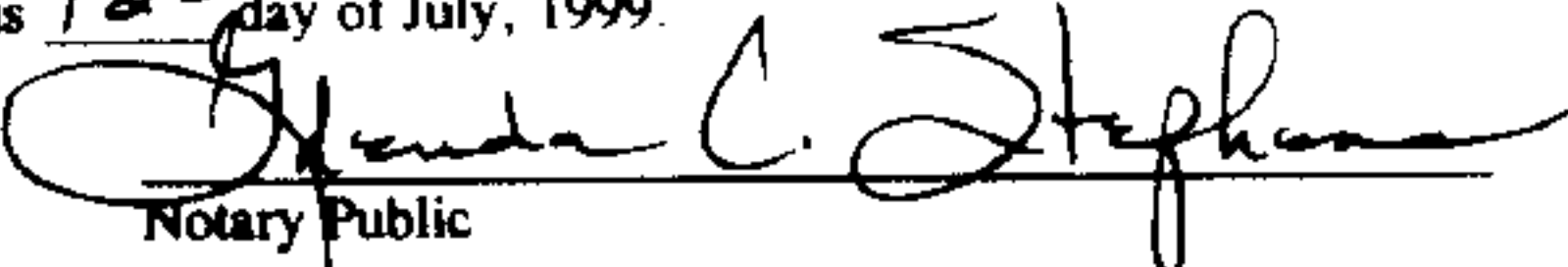

Albert C. Kirby (Title) President
and 
E.L. Vinson, Jr. (Title) Secretary

NOTE: The assignment should be executed, witnessed and acknowledged or probated so as to be in form for recording in accordance with the law of the state in which it will be recorded. The assignment and the assigned lease or a memorandum thereof should be recorded in the county records.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, the undersigned a Notary Public in and for said County and State, hereby certify that Albert C. Kirby and E.L. Vinson, Jr. whose names as President and Secretary, respectively, of Vinson Realty Co., Inc. (a North Carolina corporation duly qualified to do business in Alabama) 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 the foregoing instrument, they - as such officers and with full authority - executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this 15th day of July, 1999.


Notary Public (STAMP/SEAL)

My Commission Expires: 9/7/2001

Exhibit A - Property Description

Being all of that property located in the City of Pelham, County of Shelby, State of Alabama, as shown on survey thereof by Frank B. Garrett, Jr., Land Surveyor, dated June 1, 1999, entitled "Property to be acquired by Vinson Realty Co., Inc., As-Built Survey," more particularly described as follows:

Commence at the NW corner of the SW 1/4 of the NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama; thence along North line of the SW 1/4 of the NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama South 88 deg. 33 min. 49 sec. East a distance of 485.52 feet to a steel pin, also being the point of beginning; thence continue along said 1/4 line South 88 deg. 33 min. 49 sec. East a distance of 397.04 feet to a steel pin on the West right of way of U.S. Highway 31 South; thence along said West right of way South 27 deg. 19 min. 11 sec. West a distance of 222.30 feet to a steel pin on the North right of way of Cross Creek Trail; thence along said North right of way, North 88 deg. 33 min. 50 sec. West a distance of 300.00 feet to a steel pin; thence leaving said right of way North 01 deg. 26 min. 11 sec. East a distance of 200.00 feet to the point of beginning. All lying and being situated in the SW 1/4 of the NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama.

Being all of that property conveyed to BHM ES TU MALADE?#2, L.L.C. by Statutory Warranty Deed recorded in the Office of the Judge of Probate in Shelby County, Alabama, as Instrument No. 1998-23288, and being all of that property conveyed to Vinson Realty Co., Inc. by Warranty Deed dated the 14th day of July, 1999, filed for record in said Office as Instrument No. 1999-29714

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