

**PREPARED BY AND RETURN TO:**

Steven A. Pepper, Esq.  
Arnall Golden & Gregory, LLP  
2800 One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3450

Store No 17824

Inst # 2001-17800

05/04/2001-17800  
12:15 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
007 NB 29.00

**ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT OF RENTS AND LEASES (hereinafter referred to as this "Assignment") is made this 27th day of April, 2001, by MESQUITE CREEK DEVELOPMENT, INC., a Georgia corporation (hereinafter referred to as "Assignor"), to SOUTHTRUST BANK, an Alabama banking corporation (hereinafter referred to as "Assignee").

WITNESSETH:

WHEREAS, Assignor is the owner in fee simple of certain real property located in Shelby County, Alabama, being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"), upon which improvements are located (hereinafter referred to as the "Improvements"); and

WHEREAS, Assignee is the holder of a certain Negative Pledge Agreement, of even date herewith, from Assignor to Assignee (hereinafter referred to as the "Security Instrument") which affects the Property and was given in connection with that certain Commercial Promissory Note of even date herewith, made by Assignor to the order of Assignee in the principal amount of set forth therein (hereinafter referred to as the "Note");

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy whereof are hereby acknowledged by Assignor, and as an inducement to the making by Assignee to Assignor of the loan evidenced by the Note and related to the Security Instrument, Assignor does hereby assign, transfer and set over to Assignee all the right, title and interest of Assignor in, under, to, and by virtue of any and all leases, rental agreements, and other tenancy agreements, whether oral or written, now or hereafter entered into by Assignor, as landlord or lessor for premises located on the Property, including, without limitation, that certain Lease Agreement dated September 1, 2000, between Assignor and RaceTrac Petroleum, Inc., and all rents and profits accruing in favor of Assignor from the Property (hereinafter

referred to collectively as the "Assigned Leases," which term shall be deemed to include the leases, rental agreements and other tenancy agreements and all rents and profits from the Property and all extensions or renewals thereof) and any and all such other or further leases of space by Assignor in the Improvements as Assignee shall from time to time determine, including specifically, but not by way of limitation, all the right, power and privilege of Assignor to cancel, terminate or accept the surrender of any of the Assigned Leases, to accept prepayment of more than one (1) periodic installment of rent thereunder, or to modify or abridge any of the terms, covenants and conditions of any of the Assigned Leases so as to reduce the term thereof or the rental payable thereunder or to change any renewal privilege therein contained without the prior written consent of Assignee (except as any such right, power and privilege as to any of the foregoing is expressly permitted to a lessee under the specific provisions of its lease), together with all of the rents, issues and profits which may be or become due, or to which Assignor may now or hereafter become entitled, arising or issuing out of the Assigned Leases, or from or out of the Property or any part thereof, or any interest therein.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, until such time as the indebtedness evidenced by the Note and secured by the Security Instrument shall have been paid in full, for the purpose of further and collaterally securing the payment of the indebtedness evidenced by the Note and secured by the Security Instrument and the performance and discharge of each and every obligation, covenant and agreement of Assignor herein, and in the Note and the Security Instrument contained.

This Assignment is made, given, delivered, and accepted upon the following terms and conditions:

1. Although it is the intention of Assignor and Assignee that this Assignment constitutes a present and absolute assignment of the Assigned Leases to Assignee, so long as no default shall exist under the Note, the Security Instrument, this Assignment, or any other instrument evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the aforementioned documents being hereinafter occasionally collectively referred to as the "Loan Documents"), Assignor shall be entitled to manage and operate the Property and to collect, receive, use, enjoy, and apply for its own account all rents, issues and profits accruing by virtue of the Assigned Leases, and to execute and deliver proper receipts and acquittances therefor.

2. Upon the occurrence of any default under the Loan Documents, all of the income, rents, issues and profits derived from the Property and the Improvements shall thereupon be payable to Assignee. In addition, Assignee is hereby expressly and irrevocably authorized, at its option, if and to the extent then permitted by law, to thereupon enter and take possession of the Property and the Improvements by actual physical possession, or by written notice served personally upon or sent by registered or certified mail, return receipt requested, postage prepaid, to Assignor, as Assignee may elect, and no further authorization shall be required. Following such entry and taking possession, Assignee may:

- (a) manage and operate the Property and the Improvements or any part thereof;
- (b) lease any part or parts thereof for such periods of time, and upon such terms and conditions as Assignee may, in its reasonable discretion, deem proper;
- (c) enforce, cancel or modify any of the Assigned Leases and any other lease hereafter in effect covering the Property and the Improvements or any part thereof;
- (d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents, issues and profits



that may then be or may thereafter become due, owing or payable with respect to the Property and the Improvements or any part thereof from any present or future lessees, tenants, subtenants or occupants thereof;

(e) institute, prosecute to completion or compromise and settle, all summary proceedings, actions for rent or for removing any and all lessees, tenants, subtenants or occupants of the Property and the Improvements or any part or parts thereof;

(f) enforce, enjoin or restrain the violation of any of the terms, provisions and conditions of any of the Assigned Leases, now or hereafter affecting the Property and the Improvements or any part thereof;

(g) make such repairs and alterations to the Property and the Improvements as Assignee may, in its reasonable discretion, deem proper;

(h) pay, from and out of rents, issues and profits collected in respect of the Property and the Improvements or any part thereof, or from or out of any other funds, any taxes, assessments, water rates, sewer rates, or other governmental charges levied, assessed or imposed against the Property or the Improvements or any portion thereof, and also any and all other charges, costs and expenses which it may be necessary or advisable for Assignee to pay in the management or operation of the Property or the Improvements including (without limiting the generality of any rights, powers, privileges and authority hereinbefore or hereinafter conferred) the costs of such repairs and alterations, reasonable commissions for renting the Property and the Improvements or any portions thereof, and reasonable legal expenses in enforcing claims, preparing papers or for any other services which may be required; and

(i) generally do, execute and perform any other act, Security Instrument, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Property and the Improvements, as fully as Assignor might do.

Assignee shall apply the net amount of rents, issues and profits received by it from the Property and the Improvements, after payment of all proper and reasonable costs and charges to the reduction and payment of the indebtedness evidenced by the Note. Assignee shall be accountable to Assignor only for money actually received by Assignee pursuant to this Assignment.

For the purposes of this Paragraph 2, a default shall be deemed to be cured only when Assignor shall have paid in full all sums owing and past due, and/or Assignor shall have performed all other terms, covenants and conditions, failure in the performance of which terminated the right hereinabove mentioned in Paragraph 1.

3. Assignor hereby irrevocably directs each lessee under each of the Assigned Leases and under any other lease which shall hereafter become a part or one of the Assigned Leases, upon written demand and notice from Assignee of Assignor's Default under the Security Instrument, the Note, or this Assignment, to pay to Assignee all rents, issues and profits accruing or due under its lease or tenancy from and after the receipt of such written demand and notice until each lessee has received notice from Assignee that such default has been cured. Any lessee making such payment to Assignee shall be under no obligation to inquire into or determine the actual existence of any such default claimed by the Assignee. Concurrent with the delivery of a written demand and notice to a lessee, Assignee shall provide Assignor a copy of each such written demand and notice.

4. Nothing contained herein shall obligate or be construed to obligate Assignee to perform any of the terms, covenants and conditions contained in any of the Assigned Leases or otherwise to impose any obligation upon Assignee with respect to any of the Assigned Leases. Prior to actual entry into and taking possession of the Property and the Improvements by Assignee, this Assignment shall not operate to place upon Assignee any responsibility for the operation, control, care, management or repair of the Property or the Improvements, and the execution of this Assignment by Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property and the Improvements is and shall be that of Assignor, prior to such actual entry and taking of possession by Assignee.

5. Assignor covenants, agrees, represents and warrants that Assignor shall duly and punctually perform all and singular the terms, conditions and covenants of the Assigned Leases on Assignor's part to be kept, observed and performed; that Assignor has not sold, assigned, transferred, mortgaged or pledged the Assigned Leases or any of the rents, issues and profits from the Property or the Improvements or any part thereof, whether now due or hereafter to become due, to any person, firm or corporation other than Assignee; that no rents, issues or profits of the Property or the Improvements, or any part or parts thereof, becoming due subsequent to the date hereof shall be collected by Assignor more than one (1) periodic installment in advance, nor has payment of any of the same been waived, released, discounted or otherwise discharged or compromised and that there are no defaults under the Assigned Leases which Assignor will not diligently pursue the remedy thereof. Assignor agrees that it will enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by each lessee under each of the Assigned Leases, and any lease which may hereafter become part or one of the Assigned Leases.

6. Assignor agrees to execute and deliver to Assignee, at any time or times during which this Assignment shall be in effect, such further instruments as Assignee may deem necessary to make effective this Assignment and the several covenants of Assignor herein contained.

7. Failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of Assignee under this instrument are cumulative and are not in lieu of but are in addition to any other rights and remedies which Assignee shall have under or by virtue of the Security Instrument. The rights and remedies of Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient by Assignee.

8. Assignee shall have the right to assign to any subsequent holder of the Security Instrument, or to any person acquiring title to the Property, Assignor's rights, title and interest in any of the Assigned Leases, subject, however, to the provisions of this Assignment.

9. Upon payment in full of all the indebtedness evidenced by the Note and secured by this Assignment, as evidenced by a recorded satisfaction or release of this Assignment, as well as any sums which may be payable hereunder or under the Note and the Loan Documents, this Assignment shall automatically become and be void and of no effect and, in that event, upon the request of Assignor, Assignee covenants to execute and deliver to Assignor instruments effective to evidence the termination of this Assignment and/or the reassignment to Assignor of the rights, powers and authority granted herein. Prior to the payment in full of the indebtedness evidenced by the Note and secured by this Assignment, as to any lessee of any portion of the Property or the Improvements, any affidavit, certificate or other written statement of any officer of Assignee, stating that any part of said indebtedness remains unpaid, shall be and constitute conclusive evidence of the then validity,



effectiveness and continuing force of this Assignment and any person, firm or corporation receiving any such affidavit, certificate or statement, may, and is hereby authorized to, rely thereon.

10. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless Assignee shall have consented thereto in writing.

11. The terms, covenants and conditions contained herein shall inure to the benefit of, and bind, Assignee and Assignor and their respective successors and assigns.

12. This Assignment shall be construed and enforced in accordance with the laws of the state in which the Property is located.

13. Any default under any one or more of the Loan Documents shall constitute a default hereunder.

14. All notices, demands, or requests provided for or permitted to be given pursuant to this Assignment must be in writing and shall be deemed to have been properly given or served by personal delivery or by depositing in the United States Mail, postpaid and registered or certified, return receipt requested, and addressed to the addresses set forth below. All notices, demands and requests mailed shall be effective upon being deposited in the United States Mail; however, the time period in which a response to any notice, demand, or request must be given or cure effected, if any, shall commence to run from the date of receipt of the notice, demand, or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least thirty (30) days' written notice hereof, either party hereto shall have the right from time to time and at any time during the term of this Assignment to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America. For the purposes of this Assignment:

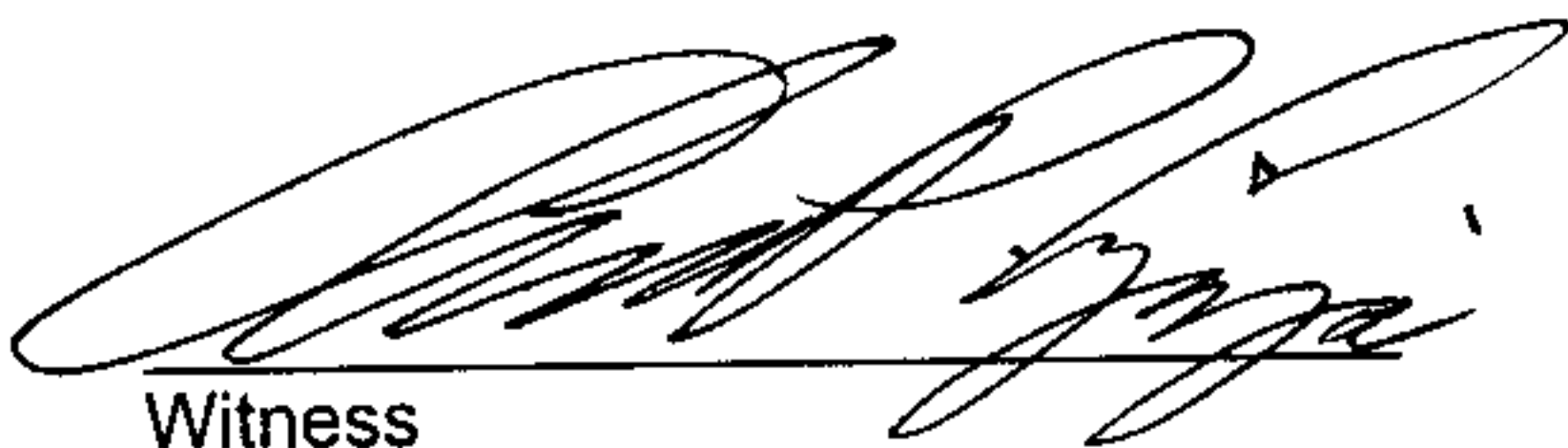
The address of Assignee is: SOUTHTRUST BANK  
One Georgia Center, 27th Floor  
600 West Peachtree Street  
Atlanta, Georgia 30308  
Attn.: Corporate Lending Department

The address of Assignor is: MESQUITE CREEK DEVELOPMENT, INC.  
300 Technology Court  
Smyrna, Georgia 30082  
Attn: Chief Financial Officer

with a copy to: MESQUITE CREEK DEVELOPMENT, INC  
300 Technology Court  
Smyrna, Georgia 30082  
Attn: General Counsel

15 **Notice and Right to Cure.** Notwithstanding anything stated to the contrary in this Assignment or in any other instrument evidencing, securing, or otherwise relating to the indebtedness evidenced by the Note, prior to the occurrence of any **NONMONETARY** default and the exercise of any remedy granted in the Loan Documents following a **NONMONETARY** default, including, without limitation the right to accelerate the maturity of the indebtedness evidenced by the Note, both of the following two (2) conditions shall have been satisfied: (a) Assignor shall have received written notice of any event or condition which, if not cured, will give rise to a **NONMONETARY** default ("default condition") hereunder, which notice shall specify the default condition which will result in a **NONMONETARY** default and set forth the requirements to cure such default condition; and (b) Borrower shall have failed to cure such default condition within fifteen (15) days following the receipt of said written notice, unless such default condition cannot reasonably be cured within fifteen (15) days, in which event Assignor shall commence the cure within fifteen (15) days and thereafter diligently prosecute said cure to completion; **provided, however, that no such notice shall be required as to any monetary default.**

IN WITNESS WHEREOF, Assignor has executed this Assignment under seal, the day and year first above written.

  
Witness

  
Witness

MESQUITE CREEK DEVELOPMENT, INC.,  
a Georgia corporation

By:   
Name: Robert Dumbacher  
Title: Chief Financial Officer

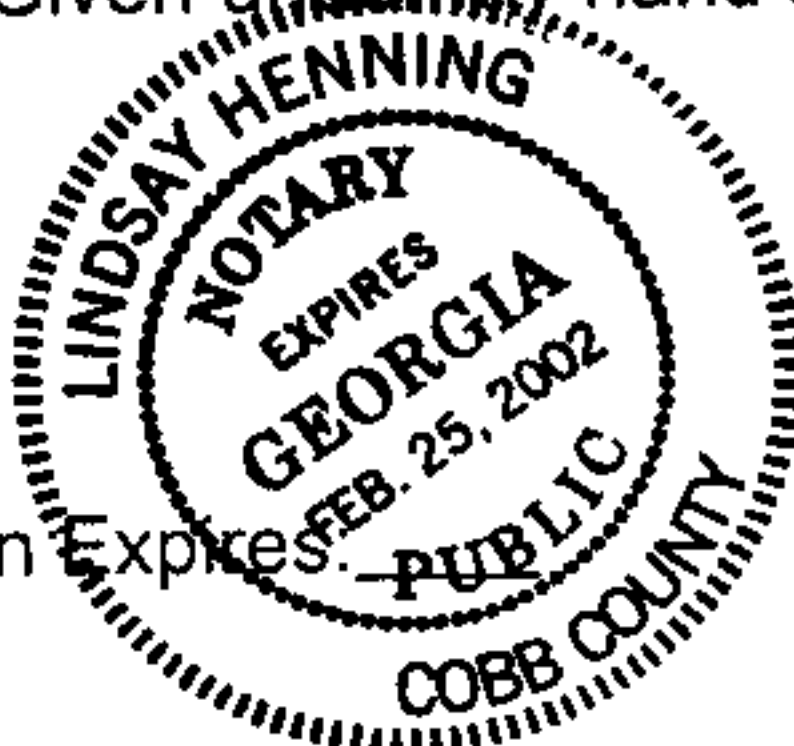
[CORPORATE SEAL]

STATE OF GEORGIA       )  
                                      )  
COUNTY OF FULTON     )

ACKNOWLEDGMENT

I the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Robert Dumbacher, whose named as Chief Financial Officer of MESQUITE DEVELOPMENT, INC., a Georgia corporation, 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 said instrument, Robert Dumbacher, 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 27 day of April, 2001.



My Commission Expires

1354576v1

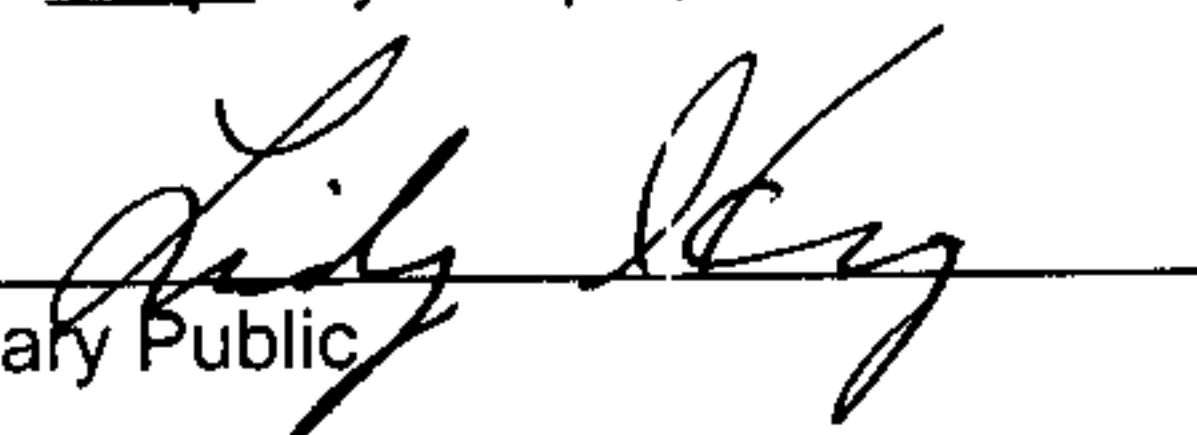
  
Notary Public

Exhibit "A"

STATE OF ALABAMA  
COUNTY OF SHELBY

Inst # 2001-17800

05/04/2001-17800  
12:15 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
007 MB 29.00

PARCEL - 2

Commence at the southwest corner of the southwest quarter of the northeast quarter of Section 3, Township 24 north, Range 12 east, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter a distance of 312.57' to a point on the east line of Melton Street in the Town of Montevallo, Alabama; Thence run North 01 degree 24 minutes 44 seconds West a distance of 261.11' to a rebar corner; Thence run North 01 degrees 01 minute 29 seconds West along said east line of said Melton Street a distance of 390.80' to a found property corner; Thence run North 01 degrees 35 minutes 03 seconds East along east line of Melton Street a distance of 103.67' to a concrete monument on the south margin of Alabama Highway No. 25; Thence run North 00 degrees 24 minutes 18 seconds West a distance of 115.77' to a found rebar corner on the northerly margin of said Highway 25 and the point of beginning of the property being described; Thence run North 06 degrees 11 minutes 12 seconds East along an existing fence line a distance of 172.58' to a steel corner at a fence corner; Thence run North 16 degrees 26 minutes 22 seconds East along an existing fence line a distance of 76.35' to a found nail in concrete corner; Thence run North 85 degrees 08 minutes 10 seconds East along an existing fence line a distance of 126.78' to a found rebar corner; Thence run South 01 degree 15 minutes 46 seconds East part way along an existing fence line a distance of 273.20' to a set rebar corner on the north margin of Alabama Highway No. 25; Thence run North 84 degrees 10 minutes 55 seconds West along the north margin of said Highway 25 a distance of 173.44' to the point of beginning, containing 39,929 square feet, more or less.

