

STATE OF ALABAMA,
SHELBY COUNTY.

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS, dated the 30th day of April, 2001, is by and between BDB PROPERTIES SHELBY, L.L.C., a limited liability company, ("Borrower") and THE BANK ("Lender").

I
Recitals

1.1 **Description of Note.** Borrower has contemporaneously herewith executed and delivered to Lender a note (the "Note") in the principal sum of \$ 430,000.00 payable as provided in the Note and with a final payment of all outstanding indebtedness on October 30, 2001.

1.2 **Description of Security Documents.** The payment of the Note is secured by this Assignment of Leases and Rents and by a property (the "Mortgage") executed by Borrower pertaining to property (the "Mortgaged Premises") described therein and in Exhibit A attached hereto, and certain other security instruments executed of even date herewith, which Mortgage, together with any amendments, modifications, and replacements thereof and any and all other instruments now or hereafter given to secure the payment of the Note, are collectively referred to herein as the "Security Documents".

II
Granting Clauses

To secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the agreements contained herein and in the Note and the Security Documents, Borrower hereby assigns to Lender Borrower's right, title and interest in:

(a) All leases and other oral and written leases and other agreements for use or occupancy made or agreed to by any person or entity (including, without limitation of the foregoing, Borrower and Lender under the powers granted herein) and any and all amendments, extensions, renewals, modifications, and replacements thereof pertaining to all or any part of the Mortgaged Premises or the Improvements (as defined in the Mortgage), whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

(b) The rents, issues, and profits and any other payments by any and all tenants under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Mortgaged Premises;

(c) Any and all moneys, awards, or other payments made or payable by any and all tenants under the Leases in lieu of rent, including, but not limited to, any damages for breach of Lease by tenant (all such moneys, awards, or payments, including, but not limited to, damages are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Mortgaged Premises;

(d) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Borrower under the Leases, including without limitation of the foregoing:

1. the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);
2. the right to make all waivers and agreements, including waivers of obligations of lessees;
3. the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;
4. the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;
5. the right to do any and all other things whatsoever which Borrower is or may become entitled to under the Leases;
6. the right to exercise any option required or permitted; and
7. any and all guaranties (the "Guaranties") of any of the Leases, and the rights, powers, privileges and other benefits of the Borrower under the Guaranties;

and Borrower authorizes Lender:

8. to manage the Mortgaged Premises and let and relet the Mortgaged Premises, or any part thereof according to Lender's own discretion;
9. to prosecute or defend any suits in connection with the Mortgaged Premises in the name of any or all of Lender or Borrower as it may consider desirable;
10. to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Borrower;
11. to make such repairs to the Mortgaged Premises as Lender may deem advisable; and
12. to do anything in or about the Mortgaged Premises that Lender may deem advisable or that the Borrower has the right or power to do.

Although this instrument constitutes a present assignment of the foregoing leases, rights, interests and privileges, Borrower shall have the right to collect all rentals due thereunder until a default occurs under the provisions hereof or under the Note or the Security Documents.

III **Covenants**

3.1 **Power Coupled With Interest.** This Assignment of Leases and Rents confers upon Lender a power coupled with an interest and cannot be revoked by the Borrower.

3.2 **No Other Assignment.** Borrower warrants, represents and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the rents due or to become due thereunder, that there has been no previous outstanding assignment and, without Lender's prior written consent as to form and substance, Borrower will permit no future assignment (as collateral or otherwise) of the lessor's right, title and interest in any of the Leases (other than pursuant to the Security Documents), that the Leases are valid and enforceable in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Lender, that the lessees are not in default under the Leases and, to the best of Borrower's knowledge, have no defenses, set-offs, or counterclaims against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits.

3.3 **Management.** At all times until this Assignment of Leases and Rents is released, or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or constructive possession of the Mortgaged Premises, Borrower shall cause the Mortgaged Premises to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Borrower shall not permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Borrower shall not terminate, alter, modify, amend, change or default under the material terms of any of the Leases or the Guaranties, or give any material consent, concession or waiver under any of the Leases or exercise any material option or election available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Mortgaged Premises, or accept the surrender thereof or consent to any material assignment or subletting under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any and all of the Leases or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights, of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Lender and any such action without such consent shall be null and void and of no force and effect. Borrower shall not make any other assignment of any interest in the Leases or the Rents accruing from such leases or from the Mortgaged Premises, or subordinate any of the Leases to any mortgage or other encumbrance, or permit, consent, or agree to such subordination without the prior written consent of the Lender. Borrower shall cause prompt action, when reasonable to do so in accordance with sound business practices, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder, to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Lender, and in the event Lender requests that a specific action be taken, to cause such reasonable action to be taken promptly. Borrower shall, but only at the reasonable request of Lender, give any consent of lessor under any of the Leases, or exercise any option or election available to lessor under any of the Leases in the event of casualty or condemnation affecting the Mortgaged Premises. Borrower shall not relocate any tenant to a location outside the Mortgaged Premises; provided, however, that Borrower may replace a relocated tenant with another tenant with lease terms no less favorable than those of the relocated tenant. Borrower shall not enter into any Lease which would create a tenancy that is or may become subordinate in any respect to any mortgage other than the Mortgage unless, concurrently with the execution of such Lease, a non-disturbance and attornment agreement is entered into between the lessee under such Lease and the mortgagee under such mortgage. Borrower shall execute and deliver, at the reasonable written

request of Lender, all such further assurances and assignments as Lender from time to time shall require.

3.4 Execution of Leases. Borrower shall not permit any Leases to be made of all or any portion of the Mortgaged Premises except as provided in the Mortgage.

3.5 Notice of Lessor's Default. Borrower shall cause notice to be given to Lender of any material default by the lessor under any of the Leases promptly upon the occurrence of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.6 Lender to be Creditor of Lessee. Lender shall be deemed to be the creditor of each lessee in the Leases in respect to any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution of receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Borrower hereby assigns to Lender, to the extent permitted by law, any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Lender to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Lender as such creditor in payment of the principal and interest installments secured by or to be paid under the Mortgage next falling due. Borrower hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

IV **Defaults and Remedies**

4.1 Defaults. Each of the following shall constitute a default ("Default") under this Assignment of Leases and Rents:

(a) The untruth of any representation made by Borrower herein, the failure by Borrower to perform in a full and timely manner any of Borrower's obligations under this Assignment of Leases and Rents or the Note, or the breach of any of Borrower's covenants contained in this Assignment of Leases and Rents which untruth or failure or breach is material and, with respect to a breach, such breach continues for thirty (30) days after written notice by Mortgagee to Mortgagor;

(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter, for any reason, relinquishes to the Borrower such rights, this Assignment of Leases and Rents shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender shall, from time to time upon the occurrence of any Default under this Assignment of Leases and Rents, have all the rights granted hereby.

4.3 Nature of Remedies. No delay or omission on the part of Lender in the exercise of any remedy for a Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment of Leases and Rents shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the Security Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively, or together against sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

4.4 Application of Rents. Lender shall have the power to apply the Rents and Damages, in such order as Lender may determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note or any and all renewals, extensions, modifications, or replacements thereof, and also toward the payment of all advances and expenses incurred by Lender under the Mortgage and all expenses for the care and management of the Mortgaged Premises, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collection agents, and the reasonable expenses and fees of all attorneys, agents, and servants, which expenses Lender may reasonably deem to be necessary to exercise the powers granted to the Lender hereunder. The receipt by Lender of any Rents pursuant to this Assignment of Leases and Rents following a Default and the exercise of any remedies provided for in the Note or the Security Documents shall not cure such Default or affect or prejudice the exercise of such remedies.

4.5 Limitation of Lender's Obligations. Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment of Leases and Rents. Lender shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Lender's management of the Mortgaged Premises other than for damages arising from Lender's gross negligence or other than for damages arising from Lender's gross negligence or willful misconduct. Subject to the provisions of any applicable law, Lender shall not be liable to any lessee for the return of any security deposit made under any lease of any portion of the Mortgaged Premises unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment of Leases and Rents or the exercise of any granted herein be obligated to perform any obligation of the Lessor under any of the Leases, nor shall Lender be responsible for any act committed by the lessor or

any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Lender a mortgagee in possession of the Mortgaged Premises or any part thereof.

4.6 Reimbursement. Subject to the provisions of Section 5.5 hereof, Borrower shall reimburse, indemnify and hold harmless Lender for and from any and all expenses, losses, damages and liabilities which Lender may incur by reason of this Assignment of Leases and Rents, any of the Leases, or expenses, losses, damages and liabilities incurred in exercising any of the rights granted in this Assignment of Leases and Rents. Any and all amounts due to Lender under this Section 4.6 shall be due and payable immediately, and shall be added to the principal amount of the Note and secured by this Assignment of Leases and Rents and the Security Documents.

4.7 Authorization to Lessees. Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that a default has occurred under this Assignment of Leases and Rents without inquiry as to whether any such Default has occurred or whether Lender is rightfully entitled to such rent.

V **Miscellaneous**

5.1 Modification of Loan Terms. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Note be renewed, modified, or replaced, or if any security for the Note be released, Borrower and any other parties now or hereafter liable therefor or interested in the Mortgaged Premises shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and of the Security Documents shall not be released and the rights created hereby and thereby shall continue in full force.

5.2 Successors and Assigns. This Assignment of Leases and Rents shall inure to the benefit of and be binding upon the respective successors and assigns of Borrower and Lender and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Mortgaged Premises.

5.3 No Merger. Notwithstanding the conveyance or transfer of title to any or all of the Mortgaged Premises to any lessee under any of the Leases, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment of Leases and Rents.

5.4 Notices. Whenever Lender or Borrower desires to give any notice to the other, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified United States mail, postage prepaid, addressed to the intended recipient at the last address theretofore specified by the addressee in a written notice given to sender. In case no other address has been so specified, notices hereunder shall be delivered or mailed in the following manner:

Lender: THE BANK
Post Office Box 1288
Sylacauga, Alabama 35150

Borrower: BDB PROPERTIES SHELBY, L.L.C.
3 Mountain Ridge Road
Sylacauga, Alabama 35150

Any notice given in the manner specified herein shall be deemed to have been given on the day it is personally delivered or two business days after it is deposited in the United States mail as set forth above.

5.5 Exculpation. Lender, except as otherwise provided in the Note, herein waives any right to any money judgment, whether by an action brought upon the Note or an action brought for a deficiency judgment against Borrower, any successor of the Borrower entitled to the Mortgaged Premises or any partner thereof (except as such right arises out of a Guaranty or other Agreement by any partner of the Borrower to the Lender) and the extent of liability on the part of said Borrower, or its successor in title is limited to the Mortgaged Premises and other security granted to the Lender hereof under the Security Documents any and instrument now or hereafter further securing the Note, including, without limitation, policies of hazard insurance maintained on the Mortgaged Premises and any proceeds thereof and any award of damages on account of any condemnation for public use of or injury to the Mortgaged Premises; the Lender hereby agrees to look solely to the Mortgaged Premises and security, policies, proceeds, and awards in satisfaction of the indebtedness evidenced by the Note in the case of a default or an Event of Default herein or therein, or in any instrument now or hereafter further securing the Note.

5.6 Governing Law. This Assignment of Leases and Rents shall be governed by and construed in accordance with the laws of the State of Alabama.

5.7 Severability. If any term, restriction or covenant of this Assignment of Leases and Rents is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by law.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed for and in its name by its duly authorized Member on this the 27th day of April, 2001.

BDB PROPERTIES SHELBY, L.L.C.,
A Limited Liability Company.

By: Beverly D. Bass
Beverly D. Bass
Its Managing Member

THE BANK

By: W.P. Riley
W.P. Riley
Its President & CEO

STATE OF ALABAMA,

TALLADEGA COUNTY.

I, the undersigned authority, a Notary Public for said County and State, hereby certify that Beverly D. Bass, whose name as Managing Member of BDB PROPERTIES SHELBY, L.L.C., a limited liability company, 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 instrument, she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 30th day of April, 2001.

J. Dan Wilkins
NOTARY PUBLIC

My commission expires: 9/21/03

STATE OF ALABAMA,

TALLADEGA COUNTY.

I, a Notary Public in and for said county and said state, hereby certify that W. P. Riley, whose name as President & CEO of THE BANK, 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 the conveyance, he, as such officer, executed the same voluntarily and with full authority on behalf of said Bank in its capacity as aforesaid on the day the same bears date.

Given under my hand and official seal this the 30th day of April, 2001.

J. Dan Wilkins
NOTARY PUBLIC

My commission expires: 9/21/03

This instrument prepared by:
RUMSEY AND WILKINS
Post Office Drawer 1325
Sylacauga, Alabama 35150
(256) 245-1930

Exhibit "A"

A parcel of land situated in the Southwest quarter of Section 24, Township 20 South, Range 3 West; Commence at the Northwest corner of the Northwest quarter of the Southwest quarter of Section 24, Township 20 South, Range 3 West; thence North 89 degrees 50 minutes 27 seconds East along said quarter-quarter line a distance of 191.88 feet to a point lying on the East right-of-way line of L & N Railroad; thence South 2 degrees 22 minutes 35 seconds East along the right-of-way line a distance of 331.33 feet; thence North 89 degrees 50 minutes 30 seconds East a distance of 127.82 feet to the point of beginning; thence North 0 degrees 09 minutes 30 seconds West a distance of 127.00 feet; thence North 89 degrees 50 minutes 30 seconds East a distance of 213.61 feet to a point on the Westerly line of a 30 foot easement; thence South 8 degrees 19 minutes 27 seconds West a distance of 128.40 feet; thence South 89 degrees 50 minutes 30 seconds West a distance of 194.67 feet to the point of beginning, containing 25.925 square feet, more or less.

ALSO: A perpetual non-exclusive easement for ingress and egress over, along and across the property of Sherman Holland, Jr. allowing BDB Properties Shelby, L.L.C. access to U.S. Highway 31 and a perpetual non-exclusive 20 foot easement for sewage and utilities, all as shown on the recorded plat.

LESS AND EXCEPT: Sherman Holland, Jr. reserves the right of access across the above described real property to reach the 20 foot perpetual non-exclusive easement granted herein. Sherman Holland, Jr. reserves the right to also use all easements granted herein.

FOR IDENTIFICATION PURPOSES:

BDB PROPERTIES SHELBY, L.L.C.

By: 
Beverly D. Bass, Its Managing Member

Inst # 2001-18036

05/07/2001-18036
02:17 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MB 26.00