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Inst # 2002-04103

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08:40 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 CH 44.00

STATE OF ALABAMA)
:
COUNTIES OF JEFFERSON, SHELBY, ST. CLAIR AND WALKER)

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") made this 27th day of November, 2001, is by and between **MCCULLOUGH SNAPPY SERVICE OIL CO., INC.**, a Delaware corporation, whose address is P.O. Box 579, Fulondale, Alabama 35068 ("Borrower"), in favor of **SOUTHTRUST BANK**, an Alabama banking corporation ("Lender"), the mailing address of which is Post Office Box 2554, Birmingham, Alabama 35290, Attention: Alan Drennen.

W I T N E S S E T H:

FOR VALUE RECEIVED, Borrower hereby grants, transfers, and assigns to Lender and its successors and assigns all right, title and interest of Borrower in and to (i) any and all leases or operating agreements now or hereafter in effect with respect to occupancy of space located on the land more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"), (ii) any extensions, modifications or renewals of the leases described in (i) hereof, any guarantees of the lessees' obligations thereunder (all of the leases described in (i) hereof, together with all such guarantees, modifications, extensions or renewals thereof, being hereinafter collectively referred to as the "Leases"), and (iii) any and all security deposits received by Borrower or any agent of Borrower in connection therewith, for the purpose of securing (a) payment of all sums now or at any time hereafter due Lender pursuant to that certain Promissory Note in the principal sum of up to **FOUR MILLION and NO/DOLLARS (\$4,000,000.00)**, as the same may hereafter be renewed, extended, modified, or amended, and (b) performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in the other Loan Documents (as such term is defined in that certain Loan Agreement between Borrower and Lender of even date herewith, as the same may hereafter be modified or amended, the "Loan Agreement"). *Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.* This Assignment is intended to be an absolute, present assignment from Borrower to Lender. The rents, issues and profits of the Property are hereby assigned absolutely by Borrower to Lender, contingent only upon the occurrence of an Event of Default as defined hereinbelow.

ARTICLE I WARRANTIES AND COVENANTS

1.01 Warranties of Borrower. Borrower hereby warrants and represents to Lender that:

(a) Borrower is lawfully seized of an indefeasible estate in fee simple in the Property and is the sole owner of landlord's interest under the Leases, is entitled to receive the rents, issues, profits and security deposits under the Leases and from the Property, and have good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers and authorities herein granted and conferred.

(b) Borrower has neither made nor permitted to be made any assignment other than this Assignment of any of its rights under the Leases to any person or entity.

(c) Borrower has not done any act or omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment.

(d) Borrower has not accepted rent under any of the Leases more than thirty (30) days in advance of its due date except as approved in writing by Lender.

(e) To the best knowledge of Borrower, there is no default by any of the lessees under the terms of any of the Leases.

(f) Borrower is not prohibited under any agreement with any other person or entity or under any judgment or decree from the execution and delivery of this Assignment or of the Leases, from the performance of each and every covenant of Borrower hereunder and under the Leases, or from the meeting of each and every condition contained herein or in the Leases.

(g) No action has been brought or threatened which in any way would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations herein contained.

1.02. Covenants of Borrower. Borrower hereby covenants and agrees with Lender as follows:

(a) Borrower shall (i) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Leases; (ii) at the sole cost and expense of Borrower, diligently seek to enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the lessees thereunder; and (iii) appear in and defend any action growing out of, or in any manner connected with, any of the Leases or the obligations or liabilities of Borrower, as lessor thereunder, or of any of the lessees or guarantors thereunder.

(b) Borrower shall not without the prior written consent of Lender (i) materially modify or amend any obligations under or reduce rent or the term of any Lease; (ii) terminate the term or accept the surrender of any of the Leases; (iii) waive, or release the lessees/operators from, the performance or observance by a lessee/operator of any obligation or condition of the Leases which has the effect of reducing rent or the term of any lease; (iv) except as approved in writing by Lender, permit the prepayment of any rents under any of the leases for more than thirty (30) days prior to the accrual; (v) give any consent to any assignment by any of the lessees; or (vi) further assign its interest in the Leases or the Property.

(c) Upon the occurrence of an Event of Default hereunder, Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future lessee/operator under the Leases to pay rental or other amounts due Borrower under the Leases directly to Lender upon receipt of written demand from Lender to pay the same.

(d) Lender shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases, and Borrower agrees to indemnify and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any of the Leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against it by reason of an act of Lender under this Assignment or under any of the Leases; provided, however, that this indemnity shall not extend to any liability, loss, or damage arising solely from Lender's gross negligence or willful misconduct.

1.03 **Covenants of Lender.** Lender, by acceptance hereof, covenants and agrees with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits of the Property, so long as there shall exist no Event of Default as hereinafter defined Borrower shall have the right (i) to collect, but not more than thirty (30) days prior to accrual (except as approved in writing by Lender), all such rents, issues and profits from the Property and to retain, use and enjoy the same, and (ii) to maintain the security deposits in a separate, identifiable account in a bank in which funds are federally insured acceptable to Lender.

(b) Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage without the recording of another mortgage in favor of Lender affecting the Property, this Assignment shall become and be void and of no further effect.

ARTICLE II **DEFAULT**

2.01 **Event of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) any failure by Borrower to observe any covenant, condition or agreement under the terms of this Assignment, which default or failure is not cured within thirty (30) days after receipt of written notice thereof from Lender to Borrower, (provided that if a cure of such default is being diligently pursued by Borrower, within an additional period of thirty (30) days);

(b) The occurrence of a default or "Event of Default" under any of the Loan Documents.

2.02 **Remedies.** Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind (except as may be provided in any of the Loan Documents), exercise any or all of the following remedies:

(a) Declare any part or all of the indebtedness evidenced by the Loan Documents to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or

all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Property on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the indebtedness secured by the Loan Documents, shall bear interest from the incurrence thereof at the Default Rate, and shall be due and payable on demand;

(c) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein; or

(d) Collect the rents, issues and profits and any other sums due under the Leases with respect to the Property, and apply the same in such order as Lender in its sole discretion may elect to pay (i) all costs and expenses, including reasonable attorneys' fees, in connection with the operation of the Property, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all costs and expenses, including reasonable attorneys' fees, in the collection of any or all of the indebtedness secured by the Loan Documents, including all costs, expenses and reasonable attorneys' fees in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the indebtedness secured by the Loan Documents; and (iii) any or all unpaid principal, interest or other charges due under or secured by the Loan Documents. Any amounts remaining after such application shall be applied to the payment of the indebtedness secured by the Loan Documents or to monthly payments thereof, and upon the payment in full of the indebtedness secured by the Loan Documents; then this Assignment and all rights of Lender hereunder shall cease and terminate.

The exercise of any remedies by Lender and the collection of the rents and the application thereof as aforesaid, shall in no wise operate to cure or waive any default or Event of Default hereunder or under any other of the Loan Documents, or prohibit the taking of any other action by Lender under any of the Loan Documents or at law or in equity to enforce the payment of such indebtedness or to realize on any other security. Lender shall have the full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness, and to the extent permitted by applicable law, with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and to the extent permitted by applicable law, shall have the full right to enter upon, take possession of, use and operate all or any portion of the Property which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies. In no event shall Lender be liable to any lessee under any of the Leases for the return of any security deposit in any amount in excess of the amount delivered to Lender by Borrower.

ARTICLE III **GENERAL PROVISIONS**

3.01 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.02 **Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.03 **Severability.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04 **Applicable Law.** This Assignment shall be interpreted, construed and enforced according to the laws of the State of Alabama.

3.05 **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Lender and its assigns. No tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.06 **No Oral Modifications.** Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.07 **Cumulative Remedies.** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the indebtedness evidenced by the Loan Documents shall have been paid in full.

3.08 **Further Assurances.** At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues, profits and security deposits from the Property. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.09 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment shall be made in accordance with the provisions relating to notice set forth in the Loan Agreement.

3.10 **Modifications, etc.** Borrower hereby consents and agrees that Lender may at any time and from time to time, without notice to or further consent from Borrower, either with or without

consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing the indebtedness evidenced by the Loan Documents; extend or renew the Note or any other of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or any other of the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note, or any other of the Loan Documents; or take or fail to take any action of any type whatsoever, and no such action with Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the indebtedness evidenced by the Loan Documents or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

3.11 WAIVER OF JURY TRIAL. BORROWER AND LENDER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREE THAT EACH MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF THE OTHER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

3.12 Counterparts. This Assignment may be executed and recorded in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

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IN WITNESS WHEREOF, the Borrower has caused this Assignment to be properly executed on the day and year first above written.

BORROWER:

MCCULLOUGH SNAPPY SERVICE OIL CO., INC.,
a Delaware corporation

By: D. Lloyd Bowers
Name: D. LLOYD BOWERS
Title: PRESIDENT

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that D. Lloyd Bowers, the President of McCullough Snappy Service Oil Co., Inc., a Delaware corporation, whose name is signed to the foregoing Assignment and who is known to me, acknowledged before me on this day that, being informed of the contents of the Assignment, he, as such President, executed the same as the voluntary act of said corporation on the day the same bears date.

Given under my hand and seal this the 27th day of November, 2001.

Daniel M. Kelly
NOTARY PUBLIC
My Commission expires: 4-20-04

Legal Description
A-1
Jefferson County
7583 U.S. Highway No. 78
Dora, Alabama 35062

Commence at the Northeast corner of the Southeast quarter of the Southwest quarter of Section 13, Township 15 South, Range 5 West and South along the East line of said quarter Section for a distance of 165.50' for the POINT OF BEGINNING, thence continue South along the last described course for a distance of 403.69' to the northerly right of way line of US Highway 78; thence run North 45 degrees 33'30" West along said right of way for a distance of 345.0'; said point being on the east right of way line of Turner Road; thence run North 08 degrees 59'30" West, along the east right of way line of Turner Road, for a distance of 132.30' to a point; thence North 83 degrees 16'35" East (Deed) North 83 degrees 16'53" East (Measured) for a distance of 268.86' (Deed) 268.84' (Measured) to the POINT OF BEGINNING and containing 67,487.79 square feet or 1.5493 acres.

Legal Description
A-2
Jefferson County
290 Cane Creek Road
Warrior, Alabama 35180

A part of the Northwest quarter of the Northeast quarter of Section 23, Township 14 South, Range 3 West, situated in Jefferson County, Alabama, more particularly described as follows:

Commence at the southwest corner of the northwest quarter of the northeast quarter of Section 23, Township 14 South, Range 3 West and run North along the west line thereof for 643.7' to the southerly right of way line of Cane Creek Road; thence 96 degrees 33 minutes 52 seconds right and run East along said right of way for 20.13' to the POINT OF BEGINNING; thence continue along the last described course and along said right of way for 210.0', thence 83 degrees 26'08" right and run South for 208.71', thence 96 degrees 33'52" right and run West for 210.0'; thence 83 degrees 26'08" right and run North for 208.71' to the POINT OF BEGINNING and containing 1.0 acres more or less.

LESS AND EXCEPT any part within the right of way of New Cane Creek Road.

Legal Description
A-3
Shelby County
132 Shelby County Highway No. 87
Calera, Alabama 35040

Being Lot 1, in Airport Plaza, as recorded in Map Book 19, Page 36, in the Probate Office of Shelby County, Alabama, containing 1.35 acres, more or less.

Legal Description
A-4
St. Clair County
780 Mineral Springs Road
Pell City, Alabama 35125

From the Southeast corner of the Southwest quarter of the Northwest quarter of Section 34, Township 16 South, Range 3 East go North 0 degrees 16 minutes 17 seconds West, 89.56 feet for the point of beginning; thence South 74 degrees 51 minutes 00 seconds East 201.4 feet; thence North 05 degrees 47 minutes 48 seconds West, 479.41 feet; thence South 34 degrees 12 minutes 24 seconds West 199.75 feet; thence South 81 degrees 56 minutes 48 seconds West, 264.83 feet to the Southeast right of way of Eden Cut off Road; thence left 135.7 feet along an arc of a curve which has a delta angle of 5 degrees 39 minutes 16 seconds and a radius of 1375 feet, and a chord bearing of South 24 degrees 05 minutes 45 seconds West; thence South 68 degrees 59 minutes 52 seconds East, 200.79 feet to a point; thence South 74 degrees 46 minutes 52 seconds East, a distance of 99.96 feet to the point of beginning and containing 2.6 acres and lying in the Southwest quarter of the Northwest quarter, and in the Southeast quarter of the Northwest quarter of Section 34, Township 16 South, Range 3 East, St. Clair County, Alabama.

Legal Description
A-5
Walker County
5500 Highway No. 78 West
Jasper, Alabama 35501

A parcel of land located in the East half of the Northwest quarter of the Southwest quarter of Section 1, Township 14 South, Range 8 West, Walker County, Alabama, being more particularly described as follows:

Starting at the Northeast corner of said East half, thence N 89°46'51" W along the north boundary of the East half a distance of 206.59'; thence S 46°14'15" W a distance of 479.88' to the East right of way of Gamble Road; thence S 39°19'05" E along said right of way a distance of 60.00' to the POINT OF BEGINNING; thence, continue S 39°19'05" E along said right of way a distance of 88.62' to a point; thence S 03°16'33" W along said right of way a distance of 177.99' to a found right of way marker; thence S 41°31'03" E Deed, S 36°21'19" E Measured a distance of 38.99' to the North right of way of Highway 78; thence S 86°43'01" E along said North right of way a distance of 206.29' thence N 03°16'59" E a distance of 318.16', thence N 86°43'01" W a distance of 249.35', thence S 46°14'15" W a distance of 61.37' to thence POINT OF BEGINNING and containing 1.7651 acres.

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