

ASSIGNMENT OF RENTS AND LEASES

The following terms shall have the meanings set forth below, as used in this instrument:

Lender: AmSouth Bank
Lender's Notice Address: P.O. Box 11007
Birmingham, Alabama 35288
Loan Amount: \$1,125,000.00
Mortgage: The Mortgage and Security Agreement executed by
Owner in favor of Lender this date to further secure
the Obligation (defined below).
Owner: Mark D. Robinson (aka Mark Robinson) and Jamie
Higdon
Owner's Notice Address: 731 Middle Street
Montevallo, Alabama 35115

1. **BY THIS ASSIGNMENT**, the Owner, for value received, hereby assigns to the Lender all of Owner's right, title, privileges and interest which Owner has and may have in the leases, operating agreements, management agreements, concession agreements, licenses, and all similar agreements, now existing or hereafter made and affecting the real property and the improvements and equipment thereon described in Exhibit A attached hereto and incorporated herein by reference (collectively referred to as the "Property"), together with all extensions, renewals, modifications or replacements of said leases and agreements, and together with any and all guarantees of the obligations of the lessees and other obligors thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. All said leases and all other said agreements described in this Paragraph 1, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter collectively and severally referred to as the "Lease".

2. **OWNER'S PURPOSE** in making this assignment is to relinquish, convey, and assign to Lender its right to collect and enjoy the rents, royalties, issues, profits, income and other benefits at any time accruing by virtue of the Lease (hereinafter called "Rents and Profits") as additional security for the outstanding indebtedness to Lender in connection with a loan (the "Loan") as evidenced by the note in favor of Lender (herein called the "Obligation") dated on or about this same date, in the aggregate original principal sum equal to the Loan Amount executed by Owner, and as additional security for the Owner's obligations under the Mortgage executed to better secure the Obligation; and to furnish security for the performance of Owner's obligations contained herein, and in the Obligation, and in all of the other documents executed by Owner in connection with the making or closing of the Loan. The Obligation, the Mortgage, and the other documents executed in connection with the making or closing of the Loan are sometimes referred to for convenience as the "Loan Documents".

3. **THE PARTIES INTEND** that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan Documents, the Rents and Profits as they respectively become due and to enforce the Lease, so long as there is no default by Owner in performance of the terms, covenants or provisions of the Obligation, the

Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

4. **UPON THE OCCURRENCE OF ANY DEFAULT** under the terms and conditions of this Assignment or any of the Loan Documents, this Assignment shall constitute a direction to and full authority to any and all obligors under the Lease and any guarantor of the Lease to pay all Rents and Profits to Lender without proof of the default relied upon. Owner hereby irrevocably authorizes any and all obligors under the Lease and any guarantor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any Rents and Profits due or to become due. Any and all obligors under the Lease and any guarantor shall have no right or duty to inquire whether a default has actually occurred and Owner shall have no claim against any obligor under the Lease or any guarantor for any Rents and Profits paid by such obligor Lessee or such guarantor to Lender pursuant to Lender's demand or notice.

5. **OWNER WARRANTIES:**

- (a) that no default exists on the part of Owner under any Lease;
- (b) that no rent or other payment has been or will be collected under any Lease more than one month in advance;
- (c) that neither the Lease nor any interest therein has been previously or will be assigned or pledged by Owner;
- (d) that no concession has been or will be granted to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent or other payment due or to become due.

All of the foregoing warranties shall be deemed to be reaffirmed on and as of the time of each Lease executed by Owner on the Property.

6. Owner agrees that nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Lease. Owner does not delegate or assign to Lender, and Lender does not accept or assume any of the duties, obligations, or liabilities of Owner as provided in the Lease. Despite the present and absolute assignment by Owner to Lender of the Lease, Lender will not be required to perform any of the agreements or conditions contained in the Lease and nothing in this Agreement will impose any obligation upon Lender (including any liability under any covenant of quiet enjoyment as provided in the Lease). Owner retains and will perform all duties, obligations, and liabilities of Owner as provided in the Lease, provided that Lender, in the sole and absolute option of Lender may cure any default as provided in the Lease on behalf of Owner, and Owner will reimburse Lender on demand for all amounts paid and expended by Lender to cure the defaults of Owner as provided in the Lease.

7. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Loan Documents. Failure of the Lender to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

8. Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Lender in accordance with the terms of this Assignment.

9. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto (including without limitation, in the case of Lender, any third parties now or hereafter acquiring any interest in the Obligation or any part thereof, whether by virtue of assignment, participation or otherwise). The words "Owner", "Lender", "obligor under the Lease", and "guarantor", wherever used herein, shall include the persons and entities named herein or in the Lease or any guaranty and designated as such and their respective heirs, legal representatives, successors, and assigns, provided that any action taken by the named Lender or any successor designated as such by an instrument recorded in the appropriate office of the County in which the Property is located referring to this Assignment shall be sufficient for all purposes notwithstanding that Lender may have theretofore assigned or participated any interest in the Obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

10. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

11. Upon payment to Lender of the full amount of all indebtedness and obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release of the Mortgage, Note, and guarantees, this Assignment shall be void and of no further effect.

12. All notices given hereunder shall be given in the manner set forth in the Mortgage.

13. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

14. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

15. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, OWNER HEREBY WAIVES 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. OWNER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF OWNER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN OWNER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, this document has been executed by the undersigned under seal as of the 12 day of July, 2004.

"OWNER":

Mark D. Robinson
Mark D. Robinson

Jamie Higdon
Jamie Higdon

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Mark D. Robinson** whose name 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, he, executed the same voluntarily.

Given under my hand this 12 day of July, 2004.

Jennifer L. Luna
Notary Public
My commission expires: 10-2-04

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Jamie Higdon** whose name 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, he, executed the same voluntarily.

Given under my hand this 12 day of July, 2004.

Jennifer L. Luna
Notary Public
My commission expires: 10-2-04

EXHIBIT A

Legal Description of Property

Parcel I:

Lot 2, in Block F, according to Lyman's Addition to the Town of Montevallo, Alabama as recorded in Map Book 3, Page 27, in the Probate Office of Shelby County, Alabama, being situated in Shelby County, Alabama.

Parcel II:

A part of Lot 1, Block F, Lyman's Addition to Montevallo, as recorded in Map Book 3, Page 27, in the Office of the Judge of Probate of Shelby County, Alabama, more particularly described as follows: Begin at the most Northerly corner of Lot 1, Block F, Lyman's Addition to Montevallo, as recorded in Map Book 3, Page 27, Shelby County, Alabama and run Southwesterly along the Northwest line of said Lot 1 for 100.00 feet; thence Southeasterly along the Southwesterly line of said Lot 1 for 77.00 feet; thence left 90 degrees, 00 minutes and run Northeasterly for 100.00 feet; thence left 90 degrees, 00 minutes and run Northwesterly for 77.00 feet to the point of beginning, being situated in Shelby County, Alabama.

Also:

Commence at the most Northerly corner of Lot 1, Block F, Lyman's Addition to Montevallo, as recorded in Map Book 3, Page 27, Shelby County, Alabama and run Southeasterly along the Northeasterly line of said Lot 1 for a distance of 77.00 feet to the point of beginning; thence right 90 degrees, 00 minutes and run Southwesterly 100.00 feet; thence left 90 degrees, 00 minutes and run Southeasterly for 5.00 feet; thence left 90 degrees, 00 minutes and run Northeasterly for 100.00 feet; thence left 90 degrees, 00 minutes and run Northwesterly for 5.00 feet to point of beginning, being situated in Shelby County, Alabama.

Parcel III:

Commence at the Easternmost corner of Lot 21 in the Town of Montevallo, according to the original plan of said Town; thence run Northwesterly along the Southwest margin of Middle Street for 150.0 feet to the point of beginning of the parcel herein described; thence continue Northwesterly along said Southwest margin of said Middle Street for 62.5 feet to a point; thence turn a deflection angle of 90 degrees to the left and run 75.0 feet to a point; thence turn a deflection angle of 90 degrees to the left and run 62.5 feet to a point; thence turn a deflection angle of 90 degrees to the left and run 75.0 feet to the point of beginning.

Parcel IV:

A parcel of land situated in the SE ¼ of NW ¼ of Section 21, Township 22 South, Range 3 West, in the Town of Montevallo and more exactly described as follows: Begin at the intersection of the Northwest limits of Lyman's Addition to the Town of Montevallo with the Southwest boundary of Moody Street; thence at an angle of 90 degrees, 00 minutes to the left of said boundary of Moody Street proceed 110.58 feet; thence at an angle of 52 degrees, 04 minutes to right a distance of 43.4 feet to the point of beginning of said lot; thence proceed in the same straight line a distance of 49.25 feet; thence at an angle of 90 degrees, 55 minutes to the left a distance of 169.1 feet; thence at an angle of 59 degrees, 00 minutes to the left a distance of 118.42 feet; thence at an angle of 82 degrees, 09 minutes to the left a distance of 83.1 feet; thence at an angle of 90 degrees, 00 minutes to the left 50.0 feet; thence at an angle of 90 degrees, 00 minutes to the right a distance of 57.6 feet; thence at an angle of 87 degrees, 49 minutes to the left a distance of 134.6 feet to the point of beginning.

Parcel V:

A part of the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21, Township 22 South, Range 3 West, more particularly described as follows: Begin at the East boundary of King Street with the NW limits of Lyman's Addition to Montevallo and proceed Northerly along the East side of King Street a distance of 134.5 feet to the point of beginning; thence continue in the same line 136.00 feet; thence turn an angle of 90 degrees, 57 minutes to right and run 121.95 feet; thence turn an angle of 89 degrees, 05 minutes to right and run a distance of 134.1 feet; thence turn an angle of 90 degrees, 00 minutes right and run a distance of 121.78 feet to point of beginning.

Parcel VI:

Part of the Southeast Quarter of the Northwest Quarter of Section 21, Township 22 South, Range 3 West in the Town of Montevallo, Shelby County, Alabama, more particularly described as follows: Begin at the intersection of the Southwest boundary of Moody Street with the Northwest Limits of Lyman's Addition to Montevallo; thence in a Northerly direction in the line with the Northwest boundary of Moody Street a distance of 125.42 feet; thence at an angle of 51 degrees, 07 minutes to the right a distance of 39.5 feet; thence at an angle of 90 degrees to the left a distance of 56.3 feet; thence at an angle of 90 degrees to the left a distance of 174.9 feet; thence at an angle to the right of 90 degrees, a distance of 130.0 feet to the East boundary of King Street; thence at an angle of 90 degrees to the left and along the East boundary of King Street, a distance of 161.08 feet to the point of beginning; thence continue along the East line of King Street a distance of 272.00 feet; thence at an angle of 51 degrees, 07 minutes to the left a distance of 63.66 feet; thence at an angle of 90 degrees to the left a distance of 276.9 feet; thence at an angle of 97 degrees, 51 minutes to the left a distance of 118.42 feet; thence at an angle of 59 degrees to the right a distance of 35 feet; thence at an angle of 90 degrees to the left 121.95 feet to the Point of Beginning. Situated in Shelby County, Alabama.

Parcel VII:

A lot or parcel of land in the City of Montevallo, Shelby County, Alabama, lying and being in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 21, Township 22 South, Range 3 West, particularly described as follows: From the Southeast corner of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 21 run North along the East line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ a distance of 882.63 feet; thence North 88 degrees, 50 minutes West for 970.79 feet to the point of beginning and Northeast corner of herein described property; thence from said point of beginning, continue North 88 degrees, 50 minutes West for 315 feet to the East right of way of the Montevallo-Siluria Road; thence South along said East right of way for 98 feet to the North line of a paved city street; thence Easterly along said North line of street for 315 feet; thence run North 03 degrees, 30 minutes West for 93.36 feet to the point of beginning.

Less and Except:

Commence at the point of intersection of the East right of way line of Alabama Highway 119 with the North right of way line of Overland Road; thence run Easterly along said North right of way line of said Overland Road for a distance of 240.00 feet to a point in a ditch, being the point of beginning of the parcel of land herein described; thence continue Easterly along said right of way line for 55.00 feet to a point; thence turn an angle of 94 degrees, 44 minutes, 22 seconds to the left and run Northerly 93.36 feet to a point; thence turn an angle of 84 degrees, 59 minutes, 48 seconds to the left and run Westerly 30.00 feet to a point in ditch; thence turn an angle of 94 degrees, 40 minutes, 09 seconds to the left and run along said ditch for 45.92 feet; thence turn an angle of 28 degrees, 08 minutes, 46 seconds to the right and continue along said ditch for 51.77 feet to the point of beginning. Said parcel of land is lying in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 21, Township 22 South, Range 3 West.

All being Situated in Shelby County, Alabama.