

**ASSUMPTION AGREEMENT**

**THIS ASSUMPTION AGREEMENT** (this "Agreement") is entered into as of the 4<sup>th</sup> day of March, 2005 by and between **University Investments, LLC** (hereinafter sometimes referred to for convenience as the "Additional Borrower"), **Mark D. Robinson and Jamie Higdon** (hereinafter individually and collectively sometimes referred to for convenience as the "Original Borrower") and **AmSouth Bank** (hereinafter sometimes referred to for convenience as the "Lender").

**RECITALS:**

**A.** The Original Borrower obtained from Lender a loan in the amount of \$1,125,000.00 (hereinafter sometimes referred to as the "Loan") evidenced by a Promissory Note (hereinafter sometimes referred to for convenience as the "Note") dated as of July 12, 2004 in the original principal sum of \$1,125,000.00. The Loan and the Note are secured and supported by, among other things, that certain Mortgage and Security Agreement recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument #20040713000387600 (the "Mortgage"), that certain Assignment of Rents and Leases recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument #20040713000387610 (the "Assignment") and those certain UCC Financing Statements recorded in the Office of the Judge of Probate of Shelby County, Alabama at Instrument #20040713000387620, and in the Office of the Secretary of State of the State of Alabama in Instrument B 04-0564373 FS (individually and collectively, the "UCC Financing Statements"). The covenants, terms, and conditions of the Loan are further evidenced by other agreements, documents and instruments executed by the Original Borrower. For convenience, the Note, the Mortgage, the Assignment, the UCC Financing Statements, and all other agreements, documents, and instruments executed in connection with the Loan are hereinafter referred to as the "Loan Documents".

**B.** Original Borrower desires to transfer his interest in and to the real property described in the Mortgage and in Exhibit A attached hereto and all related personal property and fixtures (collectively the "Property") to Additional Borrower, and the Original Borrower and Additional Borrower have requested Lender's consent to such transfer. Lender is willing to grant its consent to the requested transfer provided that Original Borrower and the Additional Borrower enter into this Agreement and the other documents to be executed in connection herewith.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and conditions contained herein, the parties hereto hereby agree as follows:

1. **Assumption.** Additional Borrower hereby unconditionally and irrevocably assumes liability for, and agrees to be bound by all of the Original Borrower's indebtedness and other obligations owing to Lender pursuant to the Note, the Mortgage and all of the other Loan Documents. Additional Borrower's obligations shall be performable as if Additional Borrower

were a maker and mortgagor originally named in the Note and Mortgage and a borrower and debtor originally named in all of the other Loan Documents to which Original Borrower is a party.

2. **Additional Documents.** Concurrently with the execution of this Agreement, and upon request of Lender at any time hereafter, Additional Borrower and Original Borrower agree to execute and deliver to Lender all such other documents as Lender shall deem necessary or desirable, including, without limitation, all documents necessary or desirable in order to create and perfect or to continue Lender's first priority mortgage on and security interest in all collateral described in the Mortgage, the Assignment, the UCC Financing Statements, and the other Loan Documents. Additional Borrower hereby authorizes Lender to record amendments to the UCC Financing Statements to reflect that Additional Borrower is a debtor and to file a new UCC Financing Statement in the office of the Secretary of State of Alabama and the Judge of Probate of Shelby County, Alabama reflecting that Additional Borrower is a debtor.

3. **Consent of Lender.** Lender hereby consents to the transfer of the Property to Additional Borrower provided that (i) Lender is given and is at all times vested with a first priority mortgage on and security interest in and to all of the real and personal property described in the Mortgage, the Assignment, the UCC Financing Statements, and the other Loan Documents; (ii) the Original Borrower and Additional Borrower execute and deliver to Lender any and all documents requested at any time or from time to time in order for Lender to be assured that it is vested with a first priority mortgage on and security interest in all such collateral; and (iii) Original Borrower and Additional Borrower perform all of their obligations contained herein including, without limitation, payment of all costs and expenses of Lender. If Lender is not vested with such first priority mortgage and security interest or if Additional Borrower or Original Borrower fails to execute any and all such documents or fails to perform all such obligations, then Lender's consent shall be void ab initio and the Original Borrower and Additional Borrower shall be in default hereunder and under the Note, Mortgage and all other Loan Documents.

4. **No Release; Reaffirmation.** This Agreement does not constitute a novation, and the Original Borrower shall not be released from or relieved of any liability for payment and performance of the indebtedness and other obligations of the Original Borrower to Lender in connection with the Loan Documents to which it is a party as and to the extent therein provided. The Original Borrower hereby acknowledges, affirms, and agrees (i) that Original Borrower is and remains indebted and obligated to Lender pursuant to the Loan Documents to which Original Borrower is a party as and to the extent therein provided; (ii) that the obligations of the Original Borrower are in full force and effect, are valid and binding obligations upon the Original Borrower, and are fully enforceable by Lender against Original Borrower and against all collateral described in the Mortgage, the Assignment, the UCC Financing Statements, and the other Loan Documents; and (iii) that the Original Borrower does not possess any defense, offset, counterclaim, or cross-claim of any nature whatsoever to the enforcement of the Loan Documents.

5. **Additional Borrower's Representations and Warranties.**

Without limitation of any obligations, representations, warranties or liabilities assumed by Additional Borrower pursuant to this Agreement, Additional Borrower represents and warrants to Lender that:

(a) **No Secondary Financing.** No lien or other charge upon the Property, other than the first priority Mortgage of Lender, has been given or executed by Additional Borrower, or has been contracted or agreed to be so given or executed.

(b) **Title to Properties, etc.** Upon the consummation of the transfer of the Property to Additional Borrower, Additional Borrower shall have good and indefeasible title to the Property. The Property is free and clear of mortgages, pledges, liens, charges and other encumbrances, except as reflected on the Lender's Title Insurance Policy. Upon the consummation of the transfer of the Property to the Additional Borrower, Additional Borrower shall be the fee owner of the Property and all leases with respect thereto.

(c) **Litigation.** There are no actions, suits, or proceedings pending or, to the best knowledge of Additional Borrower, threatened against or affecting Additional Borrower, at law or in equity or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency of instrumentality, domestic or foreign, which involve any of the transactions contemplated in this Agreement or the possibility of any judgment or liability that may result in any material adverse change in the business, operations, properties or assets, or in the condition, financial or otherwise, of Additional Borrower; and Additional Borrower is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(d) **Agreements.** Additional Borrower is not a party to any agreement or instrument, materially and adversely affecting the businesses, properties, assets, operations or condition, financial or otherwise, of Additional Borrower; and Additional Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party, which default would have a material adverse effect upon the business, properties or assets, operations or condition, financial or otherwise of Additional Borrower.

(e) **Loan Document Review.** Additional Borrower hereby certifies that it has thoroughly reviewed the provisions of this Assumption Agreement, the Note, the Mortgage and other Loan Documents executed and delivered by Original Borrower or Additional Borrower, respectively, in connection with the Loan, that it has been advised and represented by counsel of its own choice in said transaction (or has had the opportunity to obtain counsel of its own choice and has elected not to obtain such separate counsel) and that it understands and consents to the provisions of such instruments.

(f) **Organization.** Additional Borrower is an Alabama limited liability company which is duly organized, validly existing and in good standing in the State of Alabama. Additional Borrower's only members are Mark D. Robinson and Jamie Higdon. Additional Borrower has all requisite power and authority, and has taken or caused to be taken all necessary action necessary to execute, deliver, enter into and perform in accordance with this Assumption Agreement, the Mortgage, the Note and the other Loan Documents. Upon execution and delivery hereof and thereof, this Assumption Agreement, the Mortgage, the Note, and the other Loan Documents will constitute valid and binding obligations of Additional Borrower and other parties thereto, and the Lender will be entitled to the benefits of this Assumption Agreement and the other Loan Documents.

6. **Original Borrower's Warranties.** Original Borrower warrants to Lender that it is in full compliance with all of its obligations under the Loan Documents and there are no unfulfilled obligations or liabilities under the Note, the Mortgage or any of the other Loan Documents which arose on or before the date of this Agreement, except the payment of the remaining balance due thereunder. There are no defenses, offsets, counterclaims or Events of Default (or events which with notice, lapse of time or both would constitute an Event of Default) under any of the Loan Documents. The provisions of the Loan Documents are in full force and effect and are enforceable against the Original Borrower and Additional Borrower.

7. **No Future Transfers Without Lender's Consent.** Additional Borrower agrees that the granting of consent by Lender to this transfer shall not constitute a waiver of any restriction on transfer contained in the Mortgage, and any such restriction shall continue in full force and effect. Any future transfer or sale by Additional Borrower of all or any part of the Property or any interest therein without the prior written consent of Lender shall constitute a default under the Mortgage, and Lender, at its option, may exercise all remedies available to it under the terms of the Note, the Mortgage, and the other Loan Documents.

8. **Governing Law.** This Assumption Agreement shall be governed by and construed in accordance with the substantive laws of the State of Alabama.

9. **Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

10. **Entire Agreement.** This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

11. **Payment of Expenses.** Borrower agrees to pay or reimburse Lender for all costs and expenses incurred in connection herewith, including, without limitation, recording fees, title insurance fees, and legal fees. If not directly and immediately paid by Borrower upon request by Lender, then Borrower authorizes Lender to pay such costs, expenses, and fees by debit to Borrower's account at Lender or by advance or readvance of proceeds of the Loan and a corresponding increase of the principal balance due under the Note.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**“ADDITIONAL BORROWER”**

University Investment, LLC

By: Mark D. Robinson

Name: Mark D. Robinson

Title: Manager

**“ORIGINAL BORROWER”**

Mark D. Robinson

Mark D. Robinson

Jamie Higdon  
Jamie Higdon

**“LENDER”**

AmSouth Bank

By: Brent Reilly

Name: Brent Reilly

Title: Officer

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 as the manager of **University Investments, LLC**, an Alabama 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, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 4<sup>th</sup> day of March, 2005.

Jennifer L. Leuna  
Notary Public  
My Commission Expires: 10-2-08

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that **Mark D. Robinson**, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he voluntarily executed the same on the day the same bears date.

Given under my hand and seal this the 4<sup>th</sup> day of March, 2005.

Jennifer L. Leuna  
Notary Public  
My Commission Expires: 10-2-08

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that **Jamie Higdon**, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he voluntarily executed the same on the day the same bears date.

Given under my hand and seal this the 4<sup>th</sup> day of March, 2005.

Jennifer L. Seuma  
Notary Public  
My Commission Expires: 10-2-08

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Brent Reilly whose name as the officer of AmSouth Bank, an Alabama banking 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 4<sup>th</sup> day of March, 2005.

Jennifer L. Seuma  
Notary Public  
My Commission Expires: 10-2-08

## EXHIBIT A

### DESCRIPTION OF REAL 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  $\frac{1}{4}$  of NW  $\frac{1}{4}$  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.