

Prepared by:
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STATE OF ALABAMA)

:

COUNTY OF SHELBY)

ASSIGNMENT OF RENTS AND LEASES

31st THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") made as of the day of March, 2005, is from **EDWIN B. LUMPKIN, JR.**, a married, individual resident of the State of Alabama (the "**Borrower**"), whose address is 100 Metro Parkway, Pelham, Alabama 35124, in favor of **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association ("**Lender**") whose address is 420 North 20th Street, 11th Floor, Birmingham, Alabama 35203, Attention: Alan Drennen.

WITNESSETH:

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 any and all leases now or hereafter in effect with respect to occupancy of any space 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**"), together with (i) any extensions, modifications or renewals thereof, (ii) any guarantees of the lessees' obligations thereunder (all of said 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 \$1,400,000, as the same may hereafter be renewed, extended, modified, or amended (the "**Note**"), 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 the Note). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Note. 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) There are, as of the date of this Assignment, no Leases of all or any part of the Property.

(b) With respect to any future Leases, Borrower hereby warrants and represents to Lender, effective as of the date of execution of such Lease, that:

(i) Borrower 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 has 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.

(ii) 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.

(iii) 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.

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

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

(c) 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.

(d) 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) enter into any Lease; (ii) make any material modifications to the lease form approved by Lender; (iii) except in the ordinary course of business, terminate the term or accept the surrender of any of the Leases; (iv) except in the ordinary course of business, waive, or release the lessees from, the performance or observance by the lessees of any obligation or condition of the Leases; (v) except as approved in writing by Lender, permit the prepayment of any rents under the Leases for more than thirty (30) days prior to the accrual; (vi) except in the ordinary course of business, give any consent to any assignment by any of the lessees of any of the Leases of any sublease of any part or portion of the Property; or (vii) further assign any interest in the Leases or the Property; provided, however, that nothing herein shall be deemed to prohibit the Borrower from entering into any Wachovia Swap Document or securing its obligations thereunder with the Leases or any other collateral for the Loan.

(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 tenant under the Leases to pay rental 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.

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) if required by applicable law, 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) The failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment after the expiration of any applicable notice and cure periods set forth in the Note;

(b) The failure by Borrower to cause to be true and not misleading any warranty of Borrower contained herein; or

(c) The occurrence of a default or "Event of Default" under any of the Loan Documents (it being understood and agreed that the term "Event of Default" includes the expiration of any grace or cure periods permitted the Borrower under the applicable 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 or any Wachovia Swap Document. Any amounts remaining after such application shall be applied to the payment of the indebtedness secured by the Loan Documents, any Wachovia Swap Document, and/or to monthly payments thereof, and upon the payment in full of the indebtedness evidenced and/or secured by the Loan Documents

or any Wachovia Swap Document; and 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 **Cross-Default.** An Event of Default by Borrower under this Assignment shall constitute an Event of Default under all other Loan Documents.

3.09 **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.

3.10 **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 Note.


3.11 **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 which

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.

3.12 WAIVER OF JURY TRIAL. BORROWER 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. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER 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.

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IN WITNESS WHEREOF, the Borrower has caused this Assignment to be executed by its duly authorized officer on the day and year first above written.


EDWIN B. LUMPKIN, JR.

STATE OF Alabama
COUNTY OF Jefferson

I, the undersigned Notary Public in and for said County, in said State, hereby certifies that **EDWIN B. LUMPKIN, JR.**, 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 for and as his individual act.

Given under my hand and official seal, this 31st day of March, 2005.




Notary Public
My Commission Expires: 4-20-08 :

EXHIBIT A


20050406000158380 9/9 \$35.00
Shelby Cnty Judge of Probate, AL
04/06/2005 09:11:23AM FILED/CERT

Legal Description of Property

Lot 2-A and Lot 2-B, according to the resubdivision of Lot 2, Nannie Dee Durden Estate, as recorded in Map Book 17, Page 1, in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama.