


LOAN NO. 20038001001

STATE OF ALABAMA )

Jefferson COUNTY )

  
20060216000078390 1/9 \$35.00  
Shelby Cnty Judge of Probate, AL  
02/16/2006 01:57:01PM FILED/CERT

THIS INSTRUMENT WAS PREPARED BY AND WHEN RECORDED, RETURN TO:

REQUESTED BY & RETURN TO:

Anderson, McCoy & Orta  
100 N. Broadway, Suite 2650  
Oklahoma City, OK 73102

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of July 31, 2003, by Ambler, L.L.C., an Alabama limited liability company having an address of 951 18th Street South, Suite 200, Birmingham, Alabama, 35205 (the "Assignor") in favor of Merrill Lynch Mortgage Lending, Inc., a Delaware corporation, whose address is 4 World Financial Center, 250 Vesey Street, New York, NY, 10080 (the "Assignee"). All capitalized terms not defined herein shall have the same meanings set forth in the Mortgage (as hereinafter defined). **This Assignment of Leases and Rents is filed as additional security for the indebtedness secured by a certain Mortgage executed by the Borrower in favor of the Lender and recorded concurrently with the filing of this Assignment.**

W I T N E S S E T H:

WHEREAS, Assignee is making a Loan in the original principal amount of SIX MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$6,850,000) to Assignor, which Loan is evidenced by the Note dated the date hereof, made by Assignor in favor of Assignee in the amount of the Loan; and

WHEREAS, the Note is secured by that certain Mortgage, Security Agreement, Assignment of Rents and Fixture Filing dated the date hereof, given by Assignor to Assignee (the "Mortgage"), encumbering that certain real property situated in the County of Shelby, State of Alabama as is more particularly described on Exhibit A attached hereto and all Improvements thereon (said real property and Improvements are hereinafter sometimes collectively referred to as the "Property"); and



WHEREAS, as a condition of the Loan, Assignor agreed to further secure the performance of the terms, covenants and agreements of the Loan Documents by entering into this Agreement.

NOW, THEREFORE, in consideration of Assignee making the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby irrevocably, absolutely and unconditionally, bargain, transfer, pledge, convey, sell, assign, set over unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to (a) the Leases; (b) the Rents; (c) all security deposits, guarantees and other security held by Assignor in connection with the Leases; (d) all credits, rights, options, claims and causes of action in connection with the Leases and Rents; (e) all proceeds from the sale or other disposition of the Leases; (f) the right to receive and apply the Rents to the payment of the Debt; (g) any award or other payment which Assignor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any present or future tenant or lessee under a Lease for any portion of the Property ("**Tenant**"); (h) any and all payments made by or on behalf of any Tenant in lieu of Rent and (i) all rights to insurance proceeds, condemnation awards and similar payments under Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, the parties hereby agree as follows:

1. This instrument is an absolute, unconditional and present assignment of the Leases and the Rents and grant of the powers of Assignee set forth herein, and not an assignment for security. As long as there is no Event of Default, Assignor is hereby granted a revocable license by Assignee to collect the Rents and to take all actions with respect to all Leases, subject to the terms of the Loan Documents (the "**License**"). Upon the occurrence of an Event of Default, the License shall automatically be revoked without notice to Assignor. Assignee may thereafter, without taking possession of the Property, collect the Rents. From and after such revocation of the License, Assignor shall be the agent of Assignee for collection of the Rents. Any Rents so collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee. Assignor shall, within one (1) business day after receipt of any Rents, pay the same to Assignee to be applied by Assignee as hereinafter set forth. The existence or exercise of the License to collect Rent shall not operate to subordinate this Assignment to any subsequent assignment. This Assignment shall be fully operative without any further action on the part of any Person.

2. Upon revocation of the License, Assignee shall have the right and authority, without any notice to or demand on Assignor and without releasing Assignor from any obligation hereof, to: (a) manage and operate the Property, with full power to employ agents to manage the Property; (b) enter into Leases, service contracts and other agreements; obtain insurance; provide utility service; pay all taxes, brokerage commissions and other expenses in connection with the Property, including the Debt; make repairs and improvements to the Property and do all other acts relating to the management of the Property; (c) demand, collect, receive and sue for the Rents, including those past due and unpaid (d) dispose by the usual summary proceedings any Tenant in default; (e) at its option, and to the extent not prohibited by law, require Assignor to (i)



pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in the possession of Assignor, and (ii) vacate and surrender possession of the Property to Assignee or to such receiver; or if Assignor is in default hereof, evict Assignor by summary proceedings or otherwise; and (f) irrevocably be Assignor's attorney-in-fact, coupled with an interest by virtue of this Assignment and appear in any proceeding and collect any award or payment to Assignor, in connection with the Property so long as any sums are outstanding under the Loan.

3. Assignee may apply the Rents received by Assignee, after deducting the costs of collection therefrom, including, without limitation, attorneys' fees and management fees, in such order or priority as Assignee may determine in its sole discretion, to (a) amounts expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums and such other expenses as Assignee incurs in connection with the operation and management of the Property and (b) the Debt.

4. Any sum advanced by Assignee for any purpose, together with interest thereon at the Default Rate from the date advanced by Assignee until repaid by Assignor, shall immediately be due and payable to Assignee by Assignor on demand and shall constitute part of the Debt. The execution of this Assignment constitutes and evidences the irrevocable consent of Assignor to the entry upon and taking possession of the Property and the Equipment by Assignee. The exercise by Assignee of the rights granted hereunder and the collection and application of the Rents as provided herein shall not (a) be considered a waiver by Assignee of any default under the Loan Documents, (b) prevent foreclosure of any liens on the Property or (c) make Assignee liable under any of the Leases. All of Assignee's rights and privileges under the Loan Documents are expressly reserved as though this Assignment had not been entered into.

5. Assignor agrees to deliver to Assignee, within ten (10) days after Assignee's request, a complete list of the Leases, the amount of security and other deposits held in connection with each Lease certified pursuant to an Officer's Certificate identifying the demised premises, the names of the Tenants, the Rent payable under the Leases, the date to which such Rents have been paid, the terms of the Leases, the dates of occupancy, the dates of expiration, any Rent concessions, work obligations or other inducements granted to Tenants and any renewal options. Assignor shall also deliver on demand a copy of any Lease not previously delivered to Assignee.

6. This Assignment shall not operate to place responsibility upon Assignee (a) for the management, upkeep, care, repair or control of the Property, (b) for the performance of any of the terms and conditions of any of the Leases, (c) for any waste committed on the Property by the Tenants or any other party, (d) for any dangerous or defective condition of the Property, (e) for any negligence in the management, upkeep, care, repair or control of the Property or (f) to account for Rents other than Rents that are actually received by Assignee. Except for Assignee's gross negligence or willful misconduct, Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or from any other act or omission of Assignee in the management, upkeep, care, repair or control of the Property.

7. Assignor hereby indemnifies and holds Assignee harmless from and against any and all liability, loss, cost, expense or damage (collectively, "Costs") which may be incurred by




reason of this Assignment, including, without limitation, claims, actions, suits, proceedings or demands ("**Claims**"): (a) of Tenants for security deposits not paid to Assignee or (b) asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. Should Assignee incur any liability by reason of this Assignment or in defense of any Claim for any Cost, the amount paid or incurred by Assignee shall: (a) be immediately due and payable to Assignee by Assignor upon demand, (b) incur interest at the Default Rate from the date paid by Assignee until repaid by Assignor and (c) be secured by the Loan Documents.

8. Assignor represents, warrants and covenants to and for the benefit of Assignee that: (a) Assignor is the sole owner of the entire landlord's interest in the Leases, with full right and title to assign the same and the Rents thereunder; (b) the Leases (i) have not been altered, modified or amended in any manner except as previously disclosed in writing to Assignee, (ii) are in full force and effect and (iii) are the valid and binding obligations of Assignor and, to the knowledge of Assignor, of the Tenants thereto; (c) none of the Rents have been (i) previously assigned, pledged or hypothecated, (ii) discounted, released, waived, compromised or otherwise discharged or (iii) prepaid for more than one (1) month in advance; (d) there are no material defaults now existing under any of the Leases by the landlord or Tenants and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases by the landlord or Tenants, except as previously disclosed in writing to Assignee; (e) there are no offsets, claims or defenses to the payment of any portion of the Rents; and (f) Assignor has and shall duly and punctually observe and perform all covenants, conditions and agreements in the Leases on the part of the landlord to be observed and performed thereunder.

9. Assignor covenants and agrees that Assignor shall not, without the prior written consent of Assignee: (a) accept Rents (exclusive of security deposits) for more than one (1) month in advance, (b) do or permit anything to impair the value of the Leases as security for the Debt; (c) amend or modify any Lease, except as permitted under Section 6.2 of the Mortgage; (d) enter into any Lease not in conformity with Section 6.2(a) of the Mortgage; (e) take or omit to take any action or exercise any right or option which would permit the Tenants to cancel or terminate said Lease or accept the surrender or assignment of any Lease; (f) permit any Lease to become subordinate to any lien other than the lien of the Mortgage; (g) further pledge, transfer, mortgage or otherwise encumber or assign the Leases or future payments of Rents; (h) cancel or terminate any Lease (other than for non-payment of rent or any other material default thereunder); or (i) discount, release, waive, compromise or otherwise discharge any Rents payable or other obligations under any Lease. However, Assignor may take any of the actions described in subsections (h) and (i) so long as such actions are taken by Assignor in the ordinary course of business, are consistent with sound customary leasing and management practices for similar properties and prompt notice thereof is given to Assignee.

10. At its sole cost and expense, Assignor shall appear in and defend any Claim in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or Tenants thereunder. Assignor shall pay on demand all Costs, including, without limitation, reasonable attorneys' fees and disbursements, which Assignee may incur in

  
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connection with Assignee's appearance, voluntary or otherwise, in any such Claim, together with interest thereon at the Default Rate from the date incurred by Assignee until repaid.

11. Assignee may notify Tenants or other parties of the existence of this Assignment. Assignor does hereby specifically authorize, instruct and direct Tenants to pay all unpaid and future Rents to Assignee upon written demand from Assignee. Assignor hereby agrees that Tenants may rely upon such demand without any inquiry into whether there exists an Event of Default or whether Assignee is otherwise entitled to said Rents. Any such payment shall discharge the Tenant's obligation to make such payment to Assignor. Assignor hereby waives all rights and Claims it may now or hereafter have against Tenants by reason of such payment of Rents to Assignee.


12. Assignee may (a) take or release any security for the Debt, (b) release any Person primarily or secondarily liable for the Debt, (c) grant extensions, renewals or indulgences with respect to the Debt and (d) apply any other security held by it to the satisfaction of any portion of the Debt, all without prejudice to any of its rights hereunder.

13. Assignee shall have the right to (a) institute suit and obtain a protective or mandatory injunction against Assignor to prevent a default hereunder; (b) sue for specific performance to enforce the observance of the agreements, covenants, terms and conditions contained herein; and (c) receive damages occasioned by any default by Assignor. Upon application to a court of competent jurisdiction, Assignee shall be entitled, as a matter of absolute right, to the appointment of a receiver to obtain and secure the rights and benefits intended to be provided to Assignee hereunder, without regard to the adequacy of the security under the Loan Documents and without further notice.

14. The acceptance of this Assignment and the collection of the Rents by Assignee in the event the License is revoked shall be without prejudice to Assignee. The rights of Assignee hereunder are cumulative and concurrent, may be pursued separately, successively or together and may be exercised as often as occasion therefor shall arise.

15. This Assignment shall be in full force and effect continuously from the date hereof until (a) final judgment of foreclosure; or (b) payment in full of the Debt and release of the Mortgage.

16. This Assignment shall not be construed as: (a) making Assignee a mortgagee-in-possession; (b) subordinating the Loan Documents to any Lease; provided, however, that any action or proceeding by Assignee to foreclose its liens encumbering the Property, enforce any other remedy contained in the Loan Documents or take any action by way of entry into possession after an Event of Default shall not operate to terminate any Lease unless Assignee so elects in writing or (c) constituting or evidencing any payment on account of the Debt. The Debt shall be reduced only to the extent of cash payments applied by Assignee in reduction of the Debt.

  
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17. This Assignment is governed by and hereby incorporates by reference the Rules of Construction contained in Article XV of the Mortgage which shall apply with the same import as though fully set forth herein.


IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

ASSIGNOR:

Ambler, L.L.C.  
an Alabama limited liability company

By: BRE Associates, Inc.  
Its Managing Member

By:   
Malcolm S. Bethea  
Its President

  
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STATE OF ALABAMA)

COUNTY OF Jefferson


I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Malcolm S. Bethea, whose name as President of BRE Associates, Inc., an Alabama corporation, as managing member of Ambler, L.L.C., 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as managing member of said limited liability company as aforesaid.

Given under my hand and official seal, this 25<sup>th</sup> day of July, 2003.

Lee Mitchell  
Notary Public

AFFIX SEAL

My commission expires: 9/29/05

  
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Commence at the Northwest corner of the Southwest One-Quarter of Section 11, Township 21 South, Range 3 West; thence run East along the North line of said Quarter Section line for a distance of 1235.17 feet; thence turn an angle to the right of 90 degrees and run South for a distance of 16.74 feet to the point of beginning; from the point of beginning thus obtained turn an angle to the left of 90 degrees 55 minutes 29 seconds and run North 89 degrees 04 minutes 31 seconds East for a distance of 774.99 feet; thence turn an angle to the right of 94 degrees 40 minutes 29 seconds and run South 3 degrees 45 minutes West for a distance of 151.76 feet; thence turn an angle to the left of 93 degrees 45 minutes and run East for a distance of 245.00 feet; thence turn an angle to the right of 93 degrees 45 minutes and run South 3 degrees 45 minutes West for a distance of 93.40 feet to the point of commencement of a curve to the right, said curve having a central angle of 4 degrees 04 minutes 40 seconds and a radius of 2841.09 feet. Said chord bearing is South 5 degrees 47 minutes 20 seconds West; thence run along the arc of said curve in a Southwesterly direction for a distance of 202.20 feet to the end of said curve; thence turn an angle to the right from the tangent extended to said curve of 81 degrees 12 minutes 33 seconds and run South 89 degrees 02 minutes 13 seconds West for a distance of 210.00 feet; thence turn an angle to the left of 76 degrees 10 minutes 06 seconds and run South 12 degrees 52 minutes 07 seconds West for a distance of 55.56 feet; thence turn an angle to the right of 90 degrees and run North 77 degrees 07 minutes 53 seconds West for a distance of 82.00 feet; thence turn an angle to the left of 90 degrees and run South 12 degrees 52 minutes 07 seconds West for a distance of 115.00 feet; thence turn an angle to the right of 63 degrees 40 minutes and run South 76 degrees 32 minutes 07 seconds West for a distance of 85.00 feet; thence turn an angle to the left of 63 degrees 40 minutes and run South 12 degrees 52 minutes 07 seconds West for a distance of 212.94 feet; thence turn an interior angle to the right of 73 degrees 55 minutes 17 seconds and run North 61 degrees 03 minutes 10 seconds West for a distance of 65.77 feet; thence turn an angle to the left of 26 degrees 58 minutes 40 seconds and run North 88 degrees 01 minutes 50 seconds West for a distance of 123.93 feet; thence turn an angle to the right of 13 degrees 18 minutes 35 seconds and run North 74 degrees 43 minutes 15 seconds West for a distance of 61.16 feet; thence turn an angle to the right of 29 degrees 40 minutes 41 seconds and run North 45 degrees 02 minutes 34 seconds West for a distance of 168.05 feet; thence turn an angle to the left of 65 degrees 03 minutes 32 seconds and run South 69 degrees 53 minutes 54 seconds West for a distance of 130.16 feet; thence turn an angle to the left of 29 degrees 25 minutes 03 seconds and run South 40 degrees 28 minutes 51 seconds West for a distance of 72.60 feet; thence turn an angle to the left of 3 degrees 34 minutes 28 seconds and run South 36 degrees 54 minutes 23 seconds West for a distance of 35.20 feet; thence turn an angle to the right of 20 degrees 30 minutes 52 seconds and run South 57 degrees 25 minutes 15 seconds West for a distance of 79.37 feet; thence turn an angle to the right of 47 degrees 35 minutes 07 seconds and run North 74 degrees 59 minutes 38 seconds West for a distance of 177.55 feet; thence turn an angle to the right of 49 degrees 48 minutes 02 seconds and run North 25 degrees 11 minutes 36 seconds West for a distance of 89.68 feet; thence turn an angle to the right of 8 degrees 47 minutes 59 seconds and run North 16 degrees 23 minutes 37 seconds for a distance of 22.48 feet; thence turn an angle to the right of 28 degrees 26 minutes 26 seconds and run North 12 degrees 02 minutes 49 seconds East for a distance of 18.64 feet; thence turn an angle to the right of 22 degrees

SEE ATTACHED PAGE 2 FOR CONTINUATION OF LEGAL DESCRIPTION:



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06 minutes 47 seconds and run North 34 degrees 09 minutes 36 seconds East for a distance of 48.14 feet; thence turn an angle to the left of 24 degrees 23 minutes 17 seconds and run North 9 degrees 46 minutes 19 seconds East for a distance of 86.54 feet; thence turn an angle to the left of 15 degrees 22 minutes 56 seconds and run North 5 degrees 36 minutes 37 seconds West for a distance of 25.80 feet; thence turn an angle to the left of 27 degrees 43 minutes 06 seconds and run North 33 degrees 19 minutes 43 seconds West for a distance of 47.20 feet; thence turn an angle to the left of 66 degrees 35 minutes 31 seconds and run South 80 degrees of 18 degrees 23 minutes 40 seconds and run North 81 degrees 31 minutes 34 seconds West for a distance of 35.87 feet; thence turn an angle to the right of 15 degrees 54 minutes 27 seconds and run North 65 degrees 37 minutes 07 seconds West for a distance of 117.72 feet; thence turn an angle to the right of 28 degrees 09 minutes 54 seconds and run North 37 degrees 27 minutes 13 seconds West for a distance of 147.16 feet; thence turn an angle to the left of 00 degrees 36 minutes 11 seconds and run North 38 degrees 03 minutes 24 seconds West for a distance of 131.44 feet; thence turn an angle to the right of 37 degrees 27 minutes 25 seconds and run North 00 degrees 35 minutes 59 seconds West for a distance of 53.61 feet; thence turn an angle to the right of 55 degrees 34 minutes 51 seconds and run North 54 degrees 58 minutes 52 seconds East for a distance of 64.90 feet; thence turn an angle to the right of 36 degrees 29 minutes 42 seconds and run South 88 degrees 31 minutes 26 seconds East for a distance of 74.07 feet; thence turn an angle to the left of 57 degrees 13 minutes 59 seconds and run North 34 degrees 14 minutes 35 seconds East for a distance of 13.45 feet; thence turn an angle to the left of 14 degrees 12 minutes 31 seconds and run North 20 degrees 02 minutes 04 seconds East for a distance of 40.69 feet; thence turn an angle to the left of 17 degrees 15 minutes 54 seconds and run North 2 degrees 46 minutes 10 seconds East for a distance of 50.14 feet; thence turn an angle to the right of 86 degrees 18 minutes 21 seconds and run North 89 degrees 04 minutes 31 seconds East for a distance of 546.97 feet to the point of beginning.

LESS AND EXCEPT:

A part of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , Section 11, Township 21 South, Range 3 West, identified as Tract No. 26, Project No. STPAA-458(1), Shelby County, Alabama, and being more fully described as follows:

Commence at the Northeast corner of said NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , thence West along the North line of said NE  $\frac{1}{4}$  of SW  $\frac{1}{4}$  a distance of 402 feet, more or less, to the present Northwest right of way line of Alabama Highway 119; thence Southerly along said right of way line a distance of 186 feet, more or less, to a point that is 75 feet Westerly of and at right angles to the centerline of Project No. STPAA-458(1) at Station 494+00 and the point of beginning of the property herein to be conveyed; thence continue Southerly along said right of way line a distance of 267 feet, more or less, to the South property line; thence West along said property line a distance of 14 feet, more or less to a point that is 75 feet Westerly of and at right angles to said centerline; thence Northerly, parallel with said centerline, along a curve to the left (concave Northerly), having a radius of 4675.0 feet, a distance of 269 feet, more or less, to the point of beginning.

Situated in Shelby County, Alabama.

  
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