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Shelby Cnty Judge of Probate, AL
06/29/2007 03:52:28PM FILED/CERT

PREPARED AND RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

IMPERIAL CAPITAL BANK
500 North Brand Boulevard, Suite 1500
Glendale, California 91203

Attention: Telma Altoon

CONVEYANCE TO SECURE A DEBT.



(Space above this line for Recorder's use)

STATE OF ALABAMA
COUNTY OF SHELBY

ASSIGNMENT OF LEASES

This Assignment of Leases (the "Assignment") is executed by Tower Capital, LLC, a California limited liability company, as to an undivided seventy percent (70%) interest, and Forest Square, LLC, an Alabama limited liability company, as to an undivided thirty percent (30%) interest, as tenants in common (collectively, the "Borrower"), in favor of **IMPERIAL CAPITAL BANK** (the "Lender"), with reference to the following facts:

A. Borrower has obtained or is about to obtain a loan from the Lender in the principal amount of **One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00)** (the "Loan") evidenced by Borrower's promissory note dated **June 21, 2007** (the "Note") in favor of the Lender. The Note and Borrower's other obligations to the Lender in connection with the Loan are secured by a mortgage, fixture filing, assignment of rents, and security agreement (the "Mortgage") encumbering the real property described in Exhibit "A" attached hereto (the "Real Property") and all buildings, structures and improvements now existing or hereafter constructed on the Real Property (the "Improvements"). The Real Property and Improvements are referred to collectively as the "Property."

B. The Note, Mortgage, and all other documents executed by Borrower and delivered to the Lender at the Lender's request in connection with the Loan are referred to collectively as the "Loan Documents."

C. Borrower desires to assign its interest in all leases now or hereafter affecting the Property to the Lender on the terms and conditions of this Assignment.

THEREFORE, for valuable consideration, Borrower agrees as follows:

1. **Assignment.** Borrower absolutely and unconditionally grants, transfers and assigns to the Lender all of Borrower's right, title, and interest in and to the following (collectively, the "Leases"): (a) all existing and future leases affecting all or part of the Property, including the leases, if any, identified in Exhibit "B" attached to this Assignment; (b) all extensions, renewals, modifications and amendments to such leases; and (c) all guaranties of and security for the tenants' obligations under such

leases . All terms with an initial capital letter which are used but not defined in this Assignment shall have the respective meanings given to such terms in the Mortgage.

2. License. Prior to the occurrence of an Event of Default under the Loan Documents, Borrower shall have a license to exercise all of the lessor's rights under the Leases and to collect all rent and other amounts payable by tenants under the Leases, including all claims by Borrower for damages resulting from or arising out of any breach by any tenant under any of the Leases (collectively, the "Rent") as the same becomes due and payable. Upon the occurrence of an Event of Default under the Loan Documents, Borrower's license to enforce the Leases and collect the Rent shall automatically be revoked without notice to Borrower. Following such revocation, the Lender shall be entitled to enforce all of the lessor's rights under the Leases and collect and retain all Rent. The Lender shall have the right to apply all Rent collected by or on behalf of the Lender to the obligations secured by the Mortgage in such order and amounts as the Lender may determine in its sole and absolute discretion. No action taken by the Lender to collect Rent or enforce the Leases shall be deemed to make the Lender a mortgagee-in-possession of the Property. Notwithstanding anything to the contrary contained in this Assignment or in the other Loan Documents, Borrower's assignment of the Leases to the Lender is an absolute assignment and not an assignment as security.

3. Notice to Tenants. Upon revocation of the license described in Section 2 above, Borrower irrevocably authorizes all tenants under the Leases (referred to collectively as the "Tenants" and individually as a "Tenant") to comply with any notice or demand by the Lender for payment to the Lender of any Rent or for the performance of any of the Tenants' other obligations under the Leases, and no Tenant shall have any duty to inquire as to whether any default by Borrower has occurred under the Loan Documents.

4. Warranties and Representations by Borrower. Borrower warrants and represents to the Lender that, except as specifically set forth in a written rent statement or other writing furnished by Borrower to the Lender prior to the date of this Assignment, (a) there are no leases or rental agreements affecting all or part of the Property other than the leases identified in Exhibit "B" attached to this Assignment (collectively, the "Existing Leases"), and as of the date the Mortgage is recorded in the official records of the county in which the Property is located, no leases or rental agreement will affect the Property other than the Existing Leases; (b) Borrower has delivered to the Lender complete and accurate copies of the Existing Leases; (c) no rent concessions have been given to any Tenant under any of the Existing Leases; (d) no rent has been prepaid in advance for more than one (1) month by any Tenant under any of the Existing Leases; (e) no Tenant under any of the Existing Leases has any defenses to the enforcement of its Existing Lease, and no Tenant under any of the Existing Leases has any offsets or deductions to rent; (f) if this Assignment is executed in connection with existing Improvements on the Real Property, each of the Tenants under the Existing Leases has accepted and now occupies its premises, and all work required to be performed by Borrower under the Existing Leases has been completed in a manner satisfactory to the Tenants; (g) no Tenant under the Existing Leases has an option or right of first refusal to expand its premises or to purchase all or part of the Property; (h) each of the Existing Leases is in full force and effect, and neither Borrower nor any Tenant is in default under any of the Existing Leases; and (i) each of the Existing Leases constitutes the entire agreement with the Tenant thereunder, and none of the Existing Leases has been modified, amended, or supplemented in any respect.

5. Compliance with Leases. Borrower shall perform and discharge all obligations of the lessor under the Leases in accordance with the terms thereof and shall diligently enforce all remedies available to Borrower in a commercially reasonable manner in the event of a default by the Tenant under any Lease.

6. Lease Documentation. If, under the terms of the Loan Documents, the Lender's prior written consent is required in connection with Borrower's execution of any Lease, at the time the Lender's consent is requested by Borrower, Borrower shall submit to the Lender (a) a complete and accurate copy of the Lease with respect to which the Lender's consent is requested; (b) the rental application of the Tenant under the Lease; (c) if specifically requested by the Lender, a complete and

accurate copy of a current financial statement for the Tenant under the Lease, certified by the Tenant as being true and correct, together with a credit report for the Tenant; (d) an estoppel certificate satisfactory to the Lender in form and substance executed by the Tenant under the Lease; (e) a subordination, non-disturbance, and attornment agreement satisfactory to the Lender in form and substance executed by the Tenant under the Lease; and (f) such other information regarding the Tenant under the Lease and the proposed use of the space which is the subject of the Lease as the Lender may require. Upon the Lender's request from time to time, Borrower shall provide the Lender with the information and documents specified in parts (a) through (f) of this Section with respect to any or all Tenants leasing space in the Improvements.

7. Covenants by Borrower. Borrower agrees that, without the Lender's prior written consent, and except as otherwise permitted by this Assignment, Borrower shall not (a) terminate, cancel, accept a surrender of, modify, amend, or waive any of Borrower's rights under any of the Leases, except cancellation of a Lease based on a material default by the Tenant thereunder; (b) collect Rent under any of the Leases for more than one (1) month in advance; (c) agree to subordinate any of the Leases to any other mortgage, Mortgage or encumbrance now or hereafter affecting the Property; (d) discount Rent payable under any of the Leases or release any Tenant or any other party liable for the performance of any Tenant's obligations under any of the Leases; (e) consent to any sublease or to the assignment of all or part of any Tenant's interest under the Leases; or (f) in any other manner impair the Lender's rights with respect to or interest in the Rent. Any attempted termination, cancellation, surrender, modification, amendment, or subordination of a Lease in violation of this Section shall be void. Borrower shall cause each of the Leases to contain such provisions as may be necessary or appropriate in order to enable Borrower to require and obtain from the Tenant under such Lease all information respecting such Tenant which Borrower may be obligated to provide to the Lender under the Loan Documents, including the Tenant's financial statements.

8. Permitted Lease Modifications. Notwithstanding Section 7 above, and provided that no Event of Default has occurred under the Loan Documents, Borrower shall have the right to enter into a modification, amendment, or supplement to a Lease (referred to collectively as a "Lease Modification") without the Lender's prior written consent, provided that (a) the Lease Modification (i) is and at all times remains subordinate to the Mortgage; (ii) is not material in nature; (iii) does not affect the Rent (including base rent, percentage rent, and common areas charges) payable by the Tenant, term, or any other monetary or economic term of such Lease; (iv) does not modify in any material respect the permitted use of the premises under such Lease; (v) does not change the identity of the Tenant under such Lease; and (vi) does not materially increase any obligation of the landlord under such Lease; and (b) Borrower provides the Lender with a complete and accurate copy of the Lease Modification within five (5) business days after such Lease Modification becomes effective.

9. Approval of New Leases and Lease Modifications. Provided that no Event of Default has occurred under the Loan Documents, the Lender shall exercise its right to grant or withhold its approval of any proposed new Lease ("New Lease") or Lease Modification requiring the Lender's approval under the Loan Documents in the Lender's good faith business judgment. The Lender shall use its good faith efforts to give written notice to Borrower of the Lender's approval or disapproval of any New Lease or Lease Modification within ten (10) business days after the Lender's receipt of a complete and accurate copy of the New Lease or Lease Modification, as applicable, together with current financial statements for the Tenant thereunder and such other information regarding the New Lease or Lease Modification as the Lender may request in order to enable the Lender to make a reasonably informed decision with respect to the New Lease or Lease Modification; provided, however, that the Lender shall have no liability to Borrower of any kind as a result of the Lender's failure for any reason to give such notice within such ten (10) business day period.

10. No Liability by Lender. Nothing contained in this Assignment shall be deemed to render the Lender directly or indirectly liable or responsible for (a) the control, care, operation, management or repair of all or part of the Property; or (b) the performance or observance of any or all of Borrower's duties, obligations, representations, or warranties as lessor under any of the Leases. The

Lender shall have no responsibility or liability of any kind to Borrower for any failure or delay by the Lender in enforcing any of the terms or conditions of any of the Leases.

11. **Indemnification.** Borrower shall indemnify and hold the Lender harmless from and against any and all claims, demands, damages, liabilities, actions, causes of action, suits, costs, and expenses, including attorneys' fees and costs, arising out of or relating to (a) any duty or obligation to be performed by Borrower or any representation or warranty made by Borrower as lessor under any of the Leases; or (b) the Lender's exercise of any or all of the Lender's rights and remedies under this Assignment.

12. **No Prior Assignments.** Borrower warrants and represents to the Lender that (a) Borrower holds or has acquired all of the lessor's rights under the Existing Leases; (b) Borrower has not assigned the Leases to any other Person; and (c) Borrower shall not assign the Leases to any other Person as long as Borrower remains indebted to the Lender in connection with the Loan.

13. **Attorneys' Fees.** Borrower shall pay to the Lender upon Lender's demand all costs and expenses, including attorneys' fees and costs, incurred by the Lender in enforcing any of the terms of the Leases or this Assignment.

14. **Modifications; Waiver.** This Assignment may be modified only by a written agreement signed by Borrower and the Lender. No waiver of any of the terms of this Assignment shall be binding on the Lender unless such waiver is in writing and signed by the Lender.

15. **Alabama Law.** This Assignment shall be governed by and interpreted under the laws of the State of Alabama. Mortgagor agrees that the laws of the state in which the land is located shall govern the procedural rights of Mortgagor and Mortgagee in foreclosure of the lien of this Assignment.

16. **Remedies.** The Lender shall be entitled to exercise its rights and remedies under this Assignment (a) without initiating any action or proceeding of any kind against Borrower or taking possession of the Property; (b) without regard to the adequacy of any security for Borrower's obligations to the Lender in connection with the Loan; and (c) without having recorded a notice of default and election to sell under the Mortgage. The Lender's rights and remedies under this Assignment are cumulative with and in addition to all other rights and remedies which the Lender may have in connection with the Loan.

17. **Assignment; Term.** The Lender's rights under this Assignment may be separately assigned by the Lender by written instrument. Upon Borrower's payment and performance of all obligations secured by the Mortgage, the Lender shall execute and record a release to Borrower of all rights acquired by the Lender under this Assignment.

18. **Descriptive Headings; Counterparts.** The headings to sections of this Assignment are for convenient reference only, and they do not in any way limit or amplify the terms of this Assignment and shall not be used in interpreting this Assignment. For purposes of this Agreement, the term "including" shall be deemed to mean "including without limitation." This Assignment may be signed in counterparts, each of which shall constitute an original, and all of which together shall constitute one agreement.

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19. **Successors.** This Assignment shall be binding upon and inure to the benefit of Borrower and the Lender and their respective successors and assigns.

Dated: June 21, 2007.

BORROWER:

Tower Capital, LLC, a California limited liability company

By: 
Rabin Michael, Manager/Member

Forest Square, LLC, an Alabama limited liability company

By: 
Rabin Michael, Manager/Member

ASSIGNMENT OF LEASES



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EXHIBIT "A"

LEGAL DESCRIPTION

THE REAL PROPERTY REFERRED TO HEREIN IS ALL THAT CERTAIN REAL
PROPERTY LOCATED IN THE CITY OF ALABASTER, COUNTY OF SHELBY,
STATE OF ALABAMA DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS
REFERENCE.

ASSESSORS PARCEL NUMBER: 58-23-1-02-1-002-027

COMMONLY KNOWN AS: 104 – 144 MARKET CENTER DRIVE
ALABASTER, ALABAMA 35007

END OF LEGAL DESCRIPTION


BORROWER'S INITIALS: Ad Ad

ASSIGNMENT OF LEASES

EXHIBIT "B"

DESCRIPTION OF EXISTING LEASES

1. Tenant: **Rite Aid**
Lease Date: **July 21, 1993**
Suite or approximate square footage: **9,100 sq. ft.**
2. Tenant: **Anytime Fitness**
Lease Date: **May 30, 2007**
Suite or approximate square footage: **3,600 sq. ft.**
3. Tenant: **Regis Corp**
Lease Date: **June 22, 1999**
Suite or approximate square footage: **1,420 sq. ft.**
4. Tenant: **H&R Block**
Lease Date: **January 31, 1998**
Suite or approximate square footage: **2,180 sq. ft.**
5. Tenant: **Angel Nails**
Lease Date: **May 29, 2002**
Suite or approximate square footage: **1,440 sq. ft.**


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6. Tenant: **Classic Cleaners**

Lease Date: **November 6, 1997**

Suite or approximate square footage: **1,200 sq. ft.**

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ALL PURPOSE ACKNOWLEDGMENT

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STATE OF California }
COUNTY OF Los Angeles }

On 6-26, 2007 before me, Margaret F. McIntyre (notary public) personally appeared Rabin Michael, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Margaret F. McIntyre



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type Assignment of Lease
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____

ALL PURPOSE ACKNOWLEDGMENT

STATE OF California }
COUNTY OF Los Angeles }

On 6-26, 2007 before me, Margaret F. McIntyre (notary public) personally appeared Rabin Michael, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Margaret F. McIntyre



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

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Title of Document Type Assignment of Lease
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____

Exhibit "A" – Legal Description

A parcel of land located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Begin at the intersection of the South right of way line of 6th Avenue Southwest and the Easterly right of way line of the L&N Railroad line, thence run Southwesterly along said railroad right-of-way line a distance of 603.00 feet; thence 88 deg. 37 min. left, in a Southeasterly direction, a distance of 257.00 feet; thence 90 deg. right, in a Southwesterly direction, a distance of 15.00 feet; thence 90 deg. 04 min. 19 sec. left, in a Southeasterly direction, a distance of 187.28 feet to a point on the Northwesterly right of way line of Alabama Highway No. 119, said point being on a curve, having a radius of 1352.49 feet; thence 70 deg. 11 min. 08 sec. left to tangent of said curve, in a Northeasterly direction along the arc of said curve to the right and along said right of way line, a distance of 259.97 feet to end of said curve; thence 13 deg. 40 min. 48 sec. right from tangent of said curve, in a Northeasterly direction along said right of way line, a distance of 119.83 feet; thence 89 deg. 06 min. 48 sec. left, in a Northwesterly direction, a distance of 328.80 feet; thence 22 deg. 08 min. right, in a Northerly direction, a distance of 219.24 feet to a point on said South right of way line of 6th Avenue Southwest; thence 89 deg. 48 min. left, in a Westerly direction along said South right of way line, a distance of 365.68 feet to the point of beginning; being situated in Shelby County, Alabama.

Less and except:

A part of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, and being more fully described as follows:

Commencing at the northeast corner of said Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; thence west along the north line of said Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, a distance of 820 feet, more or less, to the present northwest right of way line of Alabama Highway #119 and the point of beginning of the property herein to be conveyed; thence southwesterly along said right of way line, a distance of 870 feet, more or less, to the southwest property line; thence northwesterly along said southwest property line, a distance of 50 feet, more or less, to a point that is 85 feet northwesterly of and at right angles to the centerline of Survey of Alabama Highway #119; thence northeasterly 85 feet northwesterly of and parallel with said centerline, a distance of 900 feet, more or less, to a point that is 85 feet northwesterly of and at right angles to said centerline at Station 551+00; thence northeasterly along a line (which, if extended, would intersect a point that is 65 feet northwesterly of and at right angles to the centerline of Relocated Alabama Highway #119 at Station 552+56.95), a distance of 120 feet more or less, to the northeast property line; thence southeasterly along said northeast property line, a distance of 20 feet, more or less, to the present northwest right of way line of Alabama Highway #119; thence southwesterly along said right of way line, a distance of 118 feet, more or less to the point of beginning, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.