

**Note to Probate Court:** The maximum principal indebtedness secured by this Assignment of Rents and Leases is \$1,850,000.00.

## **ASSIGNMENT OF RENTS AND LEASES**

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

<b>Lender:</b>	<b>ServisFirst Bank</b>
<b>Lender's Notice Address:</b>	<b>850 Shades Creek Parkway, Suite 200 Birmingham, Alabama 35209</b>
<b>Loan Amount:</b>	<b>\$2,780,000.00 (consisting of a \$780,000.00 term loan and a \$2,000,000.00 revolving loan)</b>
<b>Mortgage:</b>	<b>The Mortgage and Security Agreement executed by Owner in favor of Lender this date to further secure the Obligation (defined below).</b>
<b>Owner:</b>	<b>Smith Family Companies, Inc. and Smith Properties, L.L.C.</b>
<b>Owner's Notice Address:</b>	<b>100 Pardue Road Pelham, Alabama 35124</b>

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

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

3. **THE PARTIES INTEND** that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan



Documents, the Rents and Profits as they respectively become due and to enforce the Lease, so long as there is no default by Owner in performance of the terms, covenants or provisions of the Obligation, the Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

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

5. **OWNER WARRANTIES:**

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

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

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

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



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

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

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

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

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

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


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

15. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, OWNER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. OWNER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF OWNER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN OWNER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.


IN WITNESS WHEREOF, this document has been executed by the undersigned under seal as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

“OWNER”

SMITH FAMILY COMPANIES, INC.

By:   
Name: Philip J. Smith  
Title: President

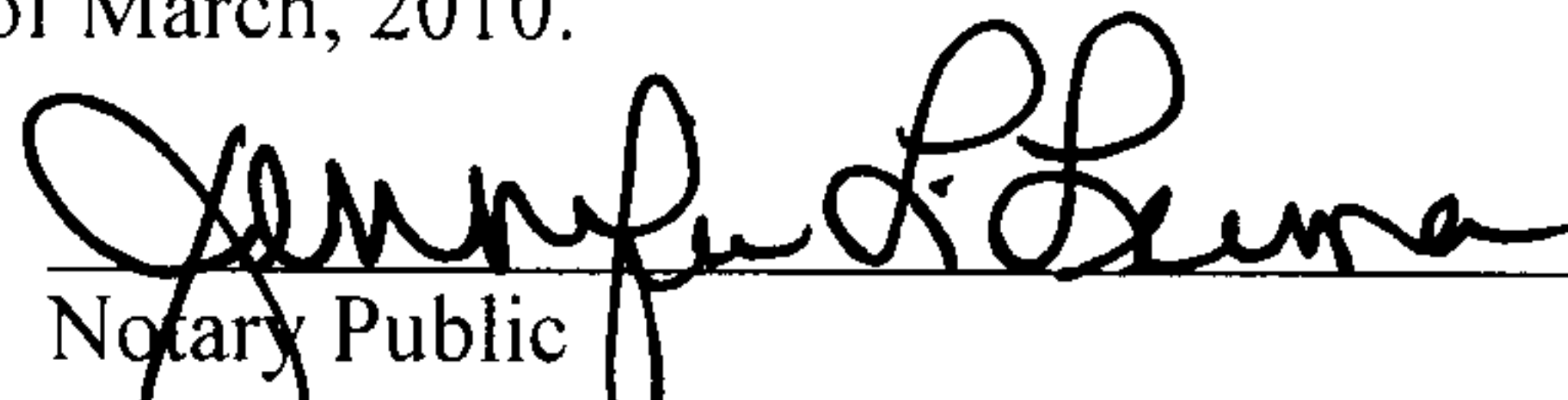
SMITH PROPERTIES, L.L.C.

By:   
Name: Philip J. Smith  
Title: Member

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON   )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Philip J. Smith**, whose name as the President of **Smith Family Companies, Inc.**, an Alabama 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.

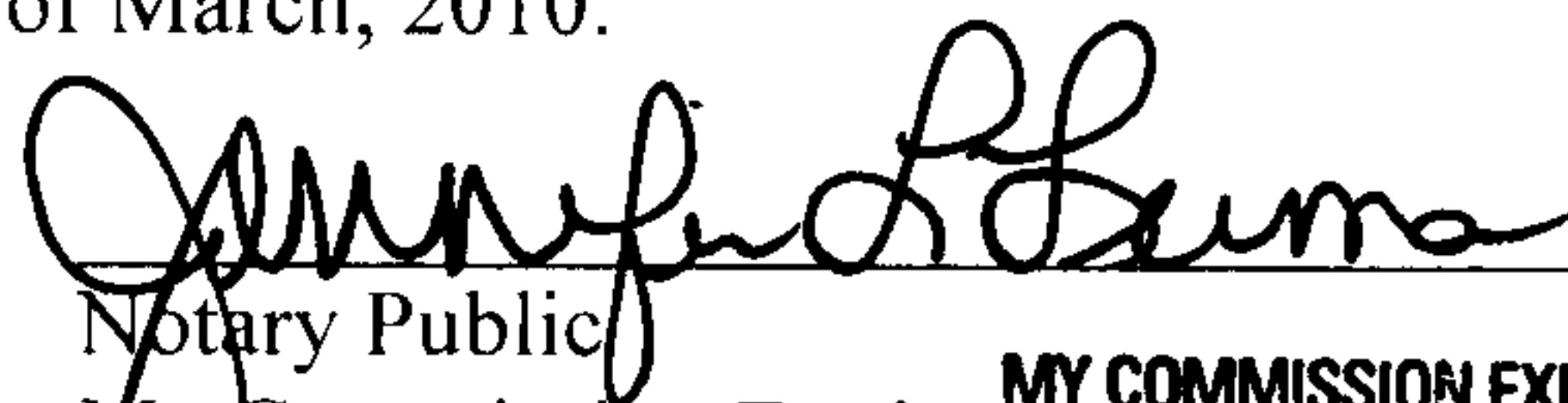
Given under my hand this 18<sup>th</sup> day of March, 2010.

  
Notary Public  
My Commission Expires MY COMMISSION EXPIRES OCTOBER 2, 2012

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON   )


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Philip J. Smith**, whose name as a member of **Smith Properties, 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 the instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 18<sup>th</sup> day of March, 2010.

  
Notary Public  
My Commission Expires: MY COMMISSION EXPIRES OCTOBER 2, 2012



**EXHIBIT A**

  
20100319000081370 5/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
03/19/2010 02:16:15 PM FILED/CERT

**PARCEL I:**

A tract of land situated in the Northwest  $\frac{1}{4}$  of Section 30, Township 20 South, Range 2 West, being described as follows:

Commence at the Northwest corner of said Section and run South 0 degrees 10 minutes 19 seconds East along West line of Northwest  $\frac{1}{4}$  1,680.50 feet; thence North 87 degrees 32 minutes 49 seconds East and run 460.40 feet; thence South 0 degrees 10 minutes 38 seconds East and run 60 feet to the point of beginning; thence South 0 degrees 10 minutes 38 seconds East and run 344.09 feet; thence South 89 degrees 49 minutes 22 seconds West and run 105.0 feet; thence North 80 degrees 55 minutes 36 seconds West and run 119.35 feet to a point on a curve to the left having a central angle of 9 degrees 14 minutes 43 seconds and a radius of 966.97 feet; thence North 4 degrees 27 minutes 02 seconds East and along chord of said curve run 155.86 feet; thence North 0 degrees 10 minutes 20 seconds West 127.17 feet to the beginning of a curve to the right having a central angle of 87 degrees 42 minutes 34 seconds and a radius of 25.0 feet; thence North 43 degrees 41 minutes 14 seconds East and along chord of said curve run 34.64 feet to a point; said point being on the South right of way of Pardue Road; thence North 87 degrees 32 minutes 49 seconds East 186.36 feet to the point of beginning. Situated in Shelby County, Alabama.

**PARCEL II:**

A tract of land located in Section 30, Township 20 South, Range 2 West, Shelby County, Alabama; being more particularly described as follows:

Commence at the Northwest corner of Section 30, Township 20 South, Range 2 West, Shelby County, Alabama; thence run Southerly along the West Section line of Section 30, 1309.15 feet; thence left 89 degrees 41 minutes 02 seconds Easterly 659.86 feet; thence an interior angle left of 90 degrees 16 minutes 47 seconds Southerly 350.62 feet; thence right 90 degrees 21 minutes 43 seconds Westerly 200.01 feet; thence left 90 degrees 20 minutes 25 seconds Southerly 100.00 feet to the point of beginning; thence Southerly 294.15 feet; thence left 89 degrees 39 minutes 35 seconds Easterly 517.99 feet; thence left 89 degrees 09 minutes 03 seconds Northerly 294.17 feet; thence left 90 degrees 50 minutes 57 seconds Westerly 524.10 feet to the point of beginning.

**ALSO KNOWN AS:**

Commence at the Northwest Corner of Section 30, Township 20 South, Range 2 West, Shelby County, Alabama; thence run South 00 degrees 10 minutes 19 seconds East along the West line of the Northwest Quarter a distance of 1680.50 feet; thence North 87 degrees 32 minutes 49 seconds East and run 460.40 feet; thence run South 00 degrees 10 minutes 38 seconds East and run 60 feet to the point of beginning; thence run South 00 degrees 10 minutes 38 seconds East 39.95 feet; thence South 89 degrees 50 minutes 13 seconds East 524.10 feet; thence South 1 degree 00 minutes 44 seconds West 294.17 feet; thence North 89 degrees 50 minutes 13 seconds West 517.99 feet; thence South 89 degrees 49 minutes 22 seconds West 105.00 feet; thence North 80 degrees 55 minutes 36 seconds West 119.35 feet to a point on a curve to the left, concave Westerly with a radius of 966.97 feet a central angle of 9 degrees 14 minutes 43 seconds, a chord bearing of North 04 degrees 27 minutes 02 seconds East and a chord length of 155.86 feet; thence run Northeasterly, then Northerly along the arc of said curve 156.03 feet, being along the East right of way line of Monroe Drive; thence continue North 00 degrees 10 minutes 20 seconds West 127.17 feet along said East right of way line to the PC of a curve to the right, concave Southeasterly with a radius of 25.00 feet, a central angle of 87 degrees 42 minutes 34 seconds, a chord bearing of North 43 degrees 41 minutes 14 seconds East and a chord length of 34.64 feet; thence run Northerly, then Easterly 38.27 feet along the arc of said curve; thence continue North 87 degrees 32 minutes 49 seconds East 186.36 feet to the point of beginning.

All being situated in Shelby County, Alabama.