

This Instrument Prepared By and Return To:

Eric L. Pruitt  
Baker Donelson Bearman  
Caldwell & Berkowitz, P.C.  
420 North 20th Street  
1600 Wells Fargo Tower  
Birmingham, Alabama 35203

**STATE OF ALABAMA**

**COUNTY OF SHELBY**

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of the 1st day of July, 2011, by SOUTHERN RESOURCE RESERVE, LLC, an Alabama limited liability company ("Assignor"), as assignor, in favor of SOUTHEASTERN COMMERCIAL FINANCE, L.L.C., an Alabama limited liability company (together with its successors and assigns, "Lender"), as assignee.

**RECITALS:**

A. Lender has made a loan to Assignor and AUA, INC., a North Carolina corporation (together with Assignor, collectively, "Borrower") in the principal amount of \$750,000.00 (the "Loan") and in connection therewith Assignor executed a Loan and Security Agreement of even date herewith in favor of Lender (the "Loan Agreement") and a Promissory Note of even date herewith in the stated principal amount of \$750,000.00 (the "Note"). This Assignment is the "Lease Assignment" referred to in the Loan Agreement.

B. The Loan and Note are secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (the "Mortgage"), which encumbers the real estate more particularly described on the attached **Exhibit "A"** (the "Real Estate") and other property more particularly described in the Mortgage (together with the Real Estate, collectively, the "Property").

C. As inducement to Lender to make the Loan, Assignor hereby agrees to execute in favor of Lender this Assignment on the property described herein, subject and subordinate only to the prior encumbrances described herein.

NOW, THEREFORE, in consideration of the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:



20110726000217190 1/8 \$33.00  
Shelby Cnty Judge of Probate, AL  
07/26/2011 03:39:40 PM FILED/CERT



## **ARTICLE I**

### **ASSIGNMENT**

1.01. Defined Terms. Capitalized terms used in this Assignment and not specifically defined in this Assignment have the meaning provided in the Loan Agreement.

1.02. Assignment; Property Assigned. Assignor hereby irrevocably, absolutely and unconditionally assigns, sets over and transfers to Lender all of Assignor's right, title and interest in and to (but none of Assignor's obligations under) all current and future Contracts, Leases and Rents arising with respect to the Property, all proceeds or streams of payment arising from the sale or other disposition of all or any of the Leases or Rents, and the right to receive and apply the Rents to the payment of the Obligations and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties or with respect to the Rents (collectively, "Assigned Property").

1.03. Termination of Assignment. Upon payment in full of the Obligations and release or discharge of the Mortgage of record, this Assignment, and all of Lender's right, title and interest in the Assigned Property, shall automatically terminate.

1.04. Prior Assignment. Assignor has previously absolutely assigned its rights in the Leases and Rents to Alamerica Bank ("Prior Lender") pursuant to that certain Assignment of Rents and Leases executed October 21, 2009 by Assignor in favor of Prior Lender (the "Prior Assignment"), which Prior Assignment was recorded on October 22, 2009, in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 20091022000397280. Under the Prior Assignment, until an event of default occurs under the Prior Assignment, Prior Lender granted Assignor a revocable license to continue collecting the Rents and other amounts coming due under the Leases. As of the date hereof this Assignment is subject and subordinate only to the Prior Assignment, and subsequent to the date hereof shall be subject and subordinate only to such Prior Assignment or to any other mortgage or security interest issued to the Prior Lender or to any other secured lender, as a successor to the Prior Lender through assignment or otherwise, in connection with all presently existing debt of the Assignor to the Prior Lender and any renewals, extensions, substitutions, refundings, refinancings, replacements or additions to such indebtedness. The Assignor shall perform, observe and comply with all provisions of the Prior Assignment and the documents evidencing or securing the loan referenced in the Prior Assignment. The Assignor shall, immediately upon receiving any knowledge or notice of any default in any of its Obligations to Prior Lender, give to the Lender (a) written notice thereof, and (b) immediately upon receipt thereof, a true copy of each and every notice, summons, legal process, or other communication relating in any way to the Prior Assignment or the performance of enforcement thereof, or to any default thereunder.

1.05. Present Assignment; License to Collect. Assignor intends this Assignment to be a present, unconditional, absolute and executed assignment of the Assigned Property and not an assignment for security only. Nevertheless, subject to the terms of this Assignment, Lender hereby grants to Assignor a revocable license to operate and manage the Property in order to enable Assignor to take any and all actions, except the collection of Rents and all other payments required under the Leases and under the Lease Guaranties, necessary for the proper management and operation of the Property. Lender's right to revoke the license granted to



Assignor is in addition to all other rights and remedies available to Lender following an Event of Default.

From and after the occurrence of an Event of Default, however, and without the necessity of notice or prior demand or Lender's entering upon and taking and maintaining control of the Property (whether directly or through a receiver), the license granted to Assignor by this Section 1.05 shall terminate automatically, and Lender shall be entitled to exercise all of Assignor's rights or the rights of lessor under the Leases and with respect to the Rents and Lender shall have no obligation to remit any Rents to Assignor hereunder but shall be entitled in its sole discretion to withdraw and apply funds constituting the Residual Rents to payment or any and all debts, liabilities and obligations of Assignor to Lender pursuant to, or in connection with, the Loan, the Loan Documents and this Agreement, in such order, proportion and priority as Lender may determine in its sole discretion. Notwithstanding anything contained herein to the contrary, Assignor acknowledges that the order of priority for payments within Lender's control herein does not control over any conflicting requirements set forth in the Loan Agreement or any of the other Loan Documents which Lender may follow in applying such funds.

1.06. Notice to Tenants. (a) Assignor designates Lender to receive, and shall authorize and direct each present and future tenant of the Property to pay over to Lender all Rents at Lender's address set forth in the Loan Agreement, or as otherwise directed by Lender, and to continue to do so until otherwise notified by Lender; (b) no payment by any tenant shall be of any force or effect unless made to Lender, as provided herein; (c) Assignor represents and warrants that it has notified each present tenant of the Property and shall continue to notify and direct each new tenant in writing, and in a manner and form satisfactory to Lender, of the foregoing; and (d) Assignor shall forward to Lender any and all sums received by Assignor in connection with the operation of the Property at Lender's address set forth in the Loan Agreement or as otherwise directed by Lender, within five (5) days of receipt of such sums by Assignor.

(b) Assignor agrees that this Assignment and said designation and directions to each tenant herein set forth are irrevocable and Assignor shall not, while this Assignment is in effect or thereafter until each tenant has received from Lender notice of the termination hereof, take any action as landlord under the Leases or otherwise which is inconsistent with this Assignment or make any other assignment, designation or direction inconsistent herewith; any assignment, designation or direction inconsistent herewith shall be void.

1.07. Assignor Bankruptcy. If a petition under the Bankruptcy Code is filed by or against Assignor, and Assignor determines to exercise its rights under the Bankruptcy Code to reject any Lease, Assignor shall give Lender written notice not less than ten (10) days prior to the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Lender has the right to serve Assignor within such ten-day period a notice stating (a) that Lender demands that Assignor assume the Lease and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (b) that Lender agrees to cure Assignor's default under the Lease or provide adequate assurance of future performance under the Lease. If Lender so notifies Assignor, Assignor shall not seek to reject the Lease and shall assume and assign such Lease to Lender within thirty (30) days after Lender's notice is given.



## **ARTICLE II**

### **DEFAULT AND REMEDIES**

2.01. Events of Default. The occurrence of an "Event of Default" as that term is defined under the Loan Agreement shall constitute an "Event of Default" with respect to Assignor under this Assignment.

2.02. Remedies. Following an Event of Default (which has not been waived in writing by Lender), Lender, without notice or consent from Assignor, shall be entitled to exercise all rights and remedies as have been provided to Lender hereunder, under the other Loan Documents, by law or in equity. Such rights and remedies are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right as remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Assignor in any instance will not entitle Assignor to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Assignment to be given). Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Assignment and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearance granted, to have waived or be estopped from exercising any of its rights or remedies.

## **ARTICLE III**

### **LIMITATIONS ON LENDER LIABILITY**

3.01. No Lender in Possession. Neither the granting of this Assignment to Lender, nor Lender's exercise of any rights or remedies under this Assignment, shall be construed to make Lender a "Lender in possession" of the Property in the absence of Lender itself taking actual possession of the Property.

3.02. No Obligation for Lease Performance or Property Condition. Lender's acceptance of this Assignment shall not at any time obligate Lender to take any action with respect to the Leases, including, without limitation, the performance of any obligation to be performed on the part of Assignor under any of the Leases, which shall remain exclusively with Assignor. Without limiting the foregoing, this Assignment shall not operate to place on Lender any obligation or liability for: (a) the control, care, management or repair of the Property; (b) for carrying out any of the terms and conditions of the Leases; (c) any waste committed on the Property by tenants or any other parties; (c) any dangerous or defective condition of the Property (including, without limitation, the presence of any Hazardous Materials as defined in the Environmental Indemnity); or (d) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property. Assignor, for itself and any party claiming under or through Assignor hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

3.03. Accountability for Rents Received. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to lease the Property after an Event of Default.

#### **ARTICLE IV**

#### **MISCELLANEOUS PROVISIONS**


4.01. Further Assurances. Assignor, at Assignor's expense, agrees to take such further actions and execute such further documents as Lender reasonably may request to carry out the intent of this Assignment or to establish and protect the rights and remedies created or intended to be created in favor of Lender hereunder. Assignor agrees to pay all filing, registration or recording fees or taxes, and all expenses incident to the preparation, execution, acknowledgement or filing/recording of this Assignment or any such instrument of further assurance, except where prohibited by law so to do.

4.03. No Third Party Beneficiary. Notwithstanding any provision of this Assignment to the contrary, this Assignment is not intended by the parties to create, and shall not create, benefits on behalf of any tenant or other occupant of the Property or anyone claiming rights through any tenant or other occupant of the Property.

4.04. No Agency or Partnership. Nothing contained in this Assignment shall constitute Lender as a joint venturer, partner or agent of Assignor, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Assignor.

4.05. Entire Agreement: This Assignment, together with the other Loan Documents described in the Loan Agreement, contains the entire agreement between the Assignor and the Lender with respect to the Property. It may not be changed or terminated orally, but may only be changed or terminated by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, discharge or termination is sought.

[No Further Text on this Page]

  
20110726000217190 5/8 \$33.00  
Shelby Cnty Judge of Probate, AL  
07/26/2011 03:39:40 PM FILED/CERT



IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first above written.

**SOUTHERN RESOURCE RESERVE, LLC**  
an Alabama limited liability company

By: *Richard E. Rushing Jr.*  
Print Name: Richard E. Rushing Jr.  
Print Title: President

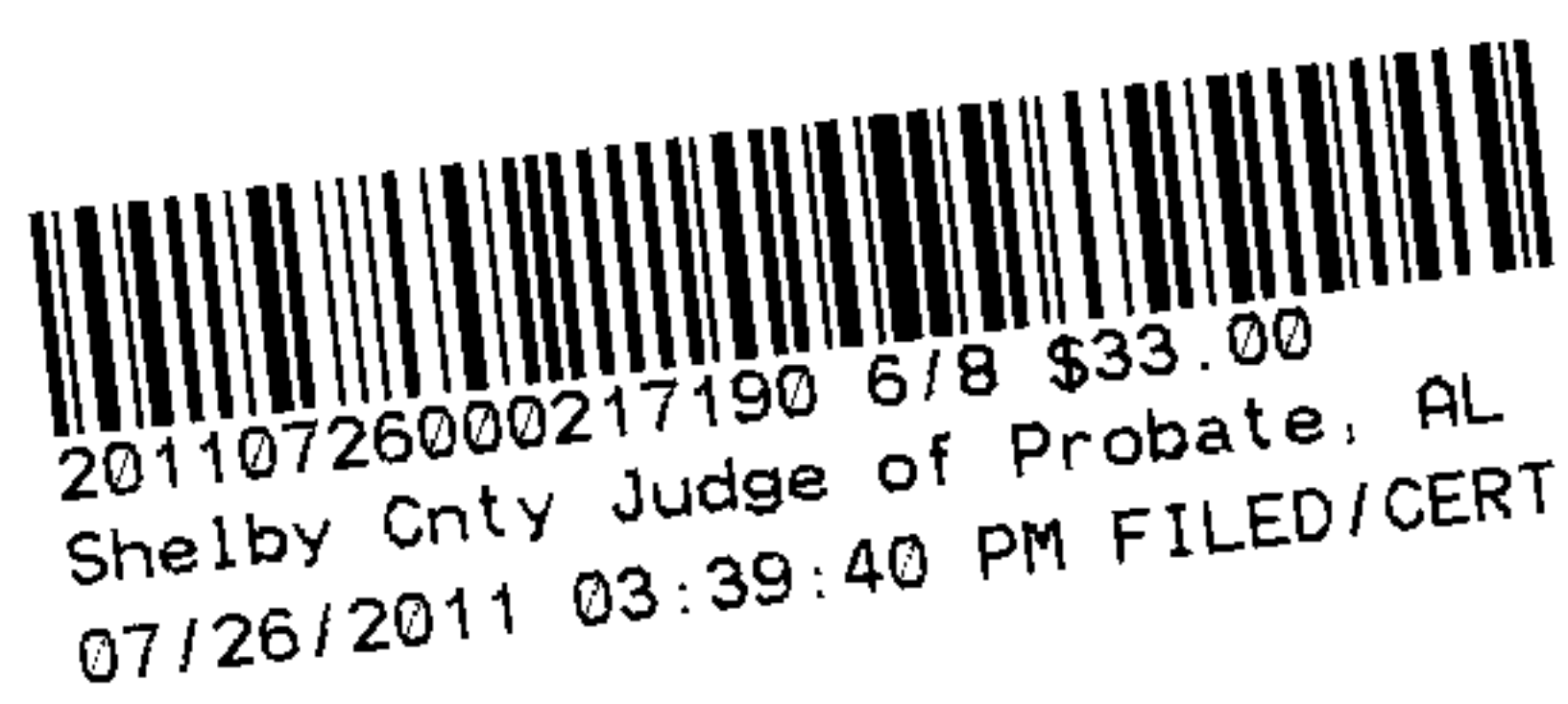
STATE OF Alabama. )  
COUNTY OF Jefferson. )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Richard E. Rushing Jr., whose name as President. of SOUTHERN RESOURCE RESERVE, 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 said instrument, [s]he, as such President and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 22 day of July, 2011.

(SEAL)

*Emma Honeycutt*  
Notary Public  
My Commission Expires: 10-15-2011



## **EXHIBIT A**

### **Real Estate**

**The following described property situated in Township 21 South, Range 3 West, Shelby County, Alabama:**

Section 18: That part of the Southwest Quarter of the Northeast Quarter (SW1/4 of NE1/4) South of Shelby County Road 260;

That part of the Southeast Quarter of the Northwest Quarter (SE1/4 of NW1/4) South of Shelby County Road 260;

The Northwest Quarter of the Southeast Quarter (NW1/4 of SE1/4);

The Northeast Quarter of the Southwest Quarter (NE1/4 of SW1/4) South of Shelby County Road 260;

The Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4);

The Southwest Quarter of the Southwest Quarter (SW1/4 of SW1/4) Less and Except the North One-Half of the North One-Half of the Southwest Quarter of the Southwest Quarter (N1/2 of N1/2 of SW1/4 of SW1/4).

Section 19: The Northwest Quarter of the Northwest Quarter (NW1/4 of NW1/4) West of Clark Creek Less and Except a rectangular parcel of land lying in the NW1/4 of the NW1/4 and the SW1/4 of the NW1/4 of said Section 19, described as follows: Beginning at the Northwest corner of said Section 19; thence in a southerly direction with a bearing of South 18 degrees 31 minutes East a distance of 1,120.1 feet to the point of beginning; thence in a westerly direction with a bearing of South 79 degrees 17 minutes 30 seconds West a distance of 216.0 feet to a point; thence in a southerly direction with a bearing of South 10 degrees 42 minutes 30 seconds East a distance of 276.0 feet to a point; thence in an easterly direction with a bearing of North 79 degrees 17 minutes 30 seconds East a distance of 216.0 feet to a point; thence in a northerly direction with a bearing of North 10 degrees 42 minutes 30 seconds West a distance of 276.0 feet to the point of beginning;

That part of the Northeast Quarter of the Northwest Quarter (NE1/4 of NW1/4) lying North and West of Clark Creek;

That part of the Southwest Quarter of the Northwest Quarter (SW1/4 of NW1/4) West of Clark Creek.

**The following described property situated in Township 21 South, Range 4 West, Shelby County, Alabama:**

Section 24:    The North One-Half of the Northeast Quarter (N1/2 of NE1/4);  
  
                 The Southwest Quarter of the Northeast Quarter (SW1/4 of NE1/4);  
  
                 The Southeast Quarter of the Northeast Quarter West of Clark Creek;  
  
                 The Northwest Quarter of the Southeast Quarter (NW1/4 of SE1/4);  
  
                 The Northeast Quarter of the Southeast Quarter (NE1/4 of SE1/4) West of Clark  
                 Creek;  
  
                 The Southwest Quarter of the Southeast Quarter (SW1/4 of SE1/4) North and  
                 West of Clark Creek;  
  
                 The Southeast Quarter of the Southeast Quarter (SE1/4 of SE1/4) North and West  
                 of Clark Creek.

