

APR 30 3 56 PM '96

BOOK

71 PAGE 411

Prepared by and Return to:  
Leonard C. Dunavant, Jr.  
81 Monroe Avenue  
Memphis, TN 38103  
(901) 525-6781

BK 71 PG 411  
W.E. DAVIS CH. CLK.

## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF LEASES (this "Assignment") is made on March 22, 1996, by ALPHA ONE LEASING, INC., a Tennessee corporation ("Borrower"), to TRUST ONE BANK, a Tennessee banking corporation, and its successors and assigns ("Lender").

### PRELIMINARY STATEMENT

Lender has agreed to loan up to \$1,085,000.00 to Borrower to be evidenced by one or more Promissory Notes (the "Notes") to be executed by Borrower in favor of Lender. The payment and performance of Borrower's obligations under the Notes are secured, in part, by a certain Loan and Security Agreement of even date herewith and executed simultaneously with this Assignment between Borrower and Lender.

### AGREEMENT

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

1. Assignment of Certain Rights of Borrower. To further secure the Notes, as well as any and all other obligations and notes of Borrower to Lender, (the "Secured Obligations"), Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under all rental agreements, usage agreements, and leases, including any extensions, modifications, renewals or amendments thereto, relating to the property described on Exhibit "A" attached hereto and all improvements thereon (the "Property"), including, without limitation, the leases, rental agreements, usage agreements, and other occupancy agreements with respect to such property (collectively the "Leases"), together with all rights, powers, privileges, options and other benefits of Borrower as the Lessor under the Leases, and all the rents, issues, royalties, revenues, profits, and income from the Leases and the Property, however earned through Borrower's interest in the leases and Property (collectively the "Rents"), including those now due, past due or to become due. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to take possession and control of the Property, pursuant to Borrower's rights as Lessor under the leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all Rents. It is intended by Borrower and Lender that this Assignment constitutes an absolute assignment and not merely an assignment for additional security.

Notwithstanding the foregoing, however, so long as no Event of Default as defined herein and in the Loan and Security Agreement has occurred, Borrower shall have a revocable license to possess and control the Property and Leases and collect and receive all Rents. Upon the occurrence of an Event of Default, such license shall be revoked at the option of Lender.

Upon the occurrence of any Event of Default, Lender may, at any time without notice, either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and control of the Property, or any part thereof, to perform all acts necessary

and appropriate to operate and maintain the Property including, but not limited to, execute, cancel or modify the Leases, make repairs to the Property, execute or terminate contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Assignment, and in Lender's or Borrower's name, sue for or otherwise collect such Rents from the Leases and Property as specified in this Assignment as the same become due and payable, including, but not limited to, Rents then due and unpaid. All Rents collected by Borrower after an Event of Default shall be held by Borrower as trustee for the benefit of Lender only.

All Rents collected subsequent to the occurrence of any Event of Default shall be applied at the discretion of, and in such order as determined by, Lender to the costs, if any, of taking possession and control of and managing the Property and collecting such amounts, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property and the costs of discharging any obligation or liability of Borrower as Lessor or operator of the Property and to the Secured Obligations. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender hereunder.

If the Rents are not sufficient to meet the costs, if any, of taking possession and control of and managing the Property and collecting the same, any funds expended by Lender for such purposes shall become Secured Obligations.

Any entering upon and taking possession and control of the Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender.

Borrower hereby represents and agrees that it is and will be the sole owner of the entire Lessor's interest in all Leases.

3. Certain Agreements of Borrower. Borrower hereby agrees as follows:

(a) Borrower shall not terminate any Lease or modify or amend any lease in any material manner, excluding renewals, without the prior written consent of Lender, which consent shall not be unreasonably withheld.

(b) Borrower shall faithfully perform and discharge all obligations of the Lessor under the Leases, and shall give prompt written notice to Lender of any notice of Borrower's default received from any lessee or any other person and shall furnish Lender with a complete copy of said notice. Borrower shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Leases. If requested by Lender, Borrower shall enforce any Lease and all remedies available to Borrower against the lessee in the case of default under such Lease by the lessee thereunder;

(c) Upon the request of Lender, Borrower shall promptly provide to Lender a true and correct copy of all existing Leases; and

(d) Nothing herein shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking of actual possession of the Property pursuant to the powers granted herein, or to impose any liability or obligation on Lender under or with respect to the Leases. Lender shall not be obligated to perform or discharge any obligation, duty or liability under any Lease by reason of this Assignment. Borrower shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages (including attorneys' fees) that Lender may incur under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under the Leases or this Assignment. Any rent collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

4. Event of Default. The following shall constitute an Event of Default hereunder:

(i) the occurrence of an Event of Default under any of the Notes, any of the other Secured Obligations or the Loan and Security Agreement (the "Loan Documents");

(ii) if at any time any representation or warranty made by Borrower in this Assignment shall be or become materially incorrect; or

(iii) the breach of any agreement by Borrower under this Assignment.

5. Additional Rights and Remedies of Lender. If an Event of Default occurs, Lender shall have the following right and remedy, in addition to all other rights and remedies provided under the Loan Documents, or any other agreement between Borrower and Lender, or otherwise available at law or in equity or by statute:

Lender shall have the right to assign Borrower's right, title and interest under this Assignment in any of the Leases to any subsequent holder of the Note or any participating interest therein or to any person acquiring ownership to the Property or any part thereof through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Lender.

6. Additional Security. Lender may take or release other security for the Secured Obligations, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of Secured Obligations, without prejudice to any of its rights under this Assignment.

7. Absolute Assignment; Release. The assignment made hereby is an absolute and unconditional assignment of rights only, and not a delegation of duties. The assignment contained herein and all rights herein assigned to Lender shall cease and terminate as to all Leases:

(a) upon the satisfaction of all Secured Obligations; or

(b) upon the release of the Leases from the lien of this Assignment.

It is expressly understood that no judgment or decree that may be entered on any Secured Obligation shall operate to abrogate or lessen the effect of this Assignment, but that the same shall continue in full force and effect as herein provided. The provisions of this Assignment shall also remain in full force

and effect during the pendency of any proceedings for the foreclosure and/or sale of the Property, or any part thereof, both before and after sale, until the issuance of a conveyance pursuant to a decree of foreclosure and/or sale, unless all Secured Obligations are fully satisfied pursuant to paragraph (a) of this Section.

8. Effect on Rights Under Other Documents. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall prejudice or be deemed to be a waiver by Lender of its rights and remedies under the Loan Documents. The right of Lender to collect the Secured Obligations and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. 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 and Security Agreement or in any other document.

9. Further Assurances. Borrower hereby agrees that it shall, whenever and as often as it shall be requested to do so by Lender, execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, any and all such further conveyances, approvals, consents, memoranda of the subject matter hereof, duplicate originals hereof, and any and all other documents and to do any and all other acts as may be necessary or appropriate to carry out the terms of this Assignment. This Assignment or a memorandum hereof may be recorded by Lender at any time. All Leases executed on or after the date of this Assignment shall contain a provision obligating the tenant to enter into a subordination, non-disturbance and attornment agreement with Lender in form and substance satisfactory to Lender.

10. No Waiver. A waiver by Lender of any of its rights hereunder or under the Leases or of a breach of any of the covenants and agreements contained herein to be performed by Borrower shall not be construed as a waiver of such rights in any succeeding instance or of any succeeding breach of the same or other covenants, agreements, restrictions or conditions.

11. Marshalling. Notwithstanding the existence of any other security interest in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any of the Property or any part thereof shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any party who now or hereafter acquires a security interest in any of the Property and who has actual or constructive notice hereof hereby waives, to the extent permitted by law, any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

12. Notices. All notices, demands, requests, consents, approvals or communications required under this Assignment shall be in writing and shall be deemed to have been properly given if sent by hand delivery, overnight courier, or certified mail, postage prepaid, addressed to the parties as specified in the Loan and Security Agreement.

13. Severability. In case any of the provisions of this Assignment shall at any time be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Assignment, and this Assignment shall be construed and enforced as if all such illegal, invalid or unenforceable provisions had never been inserted herein.

14. Right of Reassignment. Lender has the right to reassign all of the rights and obligations granted to Lender herein.

IN WITNESS WHEREOF, Borrower has executed this Assignment on the date set forth in the acknowledgment attached hereto and effective as of the date first above written.

ALPHA ONE LEASING, INC.  
By: [Signature]  
Title: [Signature]

STATE OF TENNESSEE  
COUNTY OF SHELBY

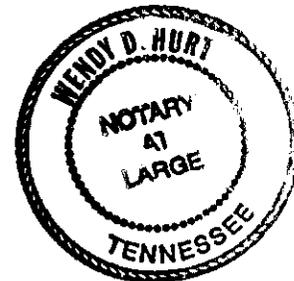
Before me, a notary public, of the state and county aforesaid, personally appeared Alvin F. Barcizza, Jr., with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of Alpha One Leasing, Inc., the within named bargainer, a corporation, and that he executed the foregoing instrument as President for the purpose therein contained, by signing the name of the corporation by himself as President.

WITNESS, my hand and seal at office on this 22nd day of March, 1996.

Wendy D. Hurt  
Notary Public

My Commission Expires:

7-15-97



## EXHIBIT "A"

## Property Description

That certain property lying in Section 5, Township 2 South, Range 7 West, County of DeSoto, State of Mississippi, consisting of a 40' x 75' plot (3,000 square feet) located behind a structure commonly known as the old F.A.A. VORTAC STATION, together with an easement 30 feet wide for three level runs of guy lines extending out approximately 350 feet in three directions, 120 degrees apart, from the center of the tower location pursuant to diagrams supplied to Lessor, and attached hereto. Additionally, an access and egress for maintenance, repair and inspection purposes via an existing road running from Tchulahoma Road West to the aforementioned property is included herein.

Property located in the Northeast quarter of Section 5, Township 2 South, Range 7 West.