

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

Mary Aronov, Attorney
Baker, Donelson, Bearman, Caldwell & Berkowitz
165 Madison Avenue, Suite 2000
Memphis, TN 38103

901-526-2000

Index Instructions: Section
35 Township/South, Range 8
West, Desoto County,
Mississippi

11/05/07 9:30:48
BK 122 PG 598
DEBOTO COUNTY, MS
W.E. DAVIS, CH CLERK

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made and entered into on this 19th day of October, 2007, but effective as of October 31, 2007, by and between **BIG ORANGE DEVELOPMENT PARTNERS**, a Tennessee general partnership whose general partners are Dudley P. Schaefer, Scott W. Schaefer, David B. Schaefer and Paul O. Schaefer, whose address is 9595 Macon Road, Cordova, Tennessee 38018 ("Assignor"), to **FIRST TENNESSEE BANK NATIONAL ASSOCIATION**, a national banking association, whose address is 165 Madison Avenue, Memphis, Tennessee 38103, Attention: First Horizon Business Credit Division ("Assignee").

WITNESSETH:

WHEREAS, Assignee made a term loan ("Loan") to Schaefer Sash & Door Co, Big River Lumber Company, Inc., Builder Specialties, Inc. of Memphis, DPS Investments LLC, and Big Orange Development Partners (the "Borrowers"), in the sum of Five Hundred Thousand Dollars (\$500,000.00), evidenced by a Promissory Note of even date herewith, executed by the Borrowers in favor of Assignee (including any extensions, modifications, renewals and replacements, the "Note"); and

WHEREAS, payment of the Loans are secured by, *inter alia*, a Deed of Trust and Security Agreement (the "Deed of Trust") of even date herewith executed by Assignor for the benefit of Assignee (as beneficiary) encumbering, *inter alia*, real property and all of the improvements thereon in County of Desoto, State of Mississippi, and more particularly described in Exhibit "A" attached hereto (the "Real Property") (the Note, the Deed of Trust, and any other documents evidencing or securing payment of the Note are collectively referred to herein as the "Loan Documents"); and

WHEREAS, in conjunction with the Loans, Assignee has required that Assignor execute and deliver this Assignment to Assignee;

NOW, THEREFORE, for value given and in consideration of the foregoing, Assignor and Assignee hereby agree as follows:

1. Assignment of Rents and Leases. All of the rents, royalties, bonuses, issues, profits, revenue, income, deposits, escrow accounts and other benefits derived from the Real Property or arising from the use or enjoyment of any portion thereof or from any existing or future lease or agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Real Property, together with any and all rights that Assignor may have against any tenant under such leases or any subtenants or occupants of any part of the Real Property and any award made hereafter to Assignor in any court proceeding involving any of the tenants or in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and all payments by tenants in lieu of rent (all hereinafter collectively called the "Rents"), are hereby absolutely and unconditionally assigned to Assignee. Assignor hereby further assigns to Assignee all existing and future leases, including subleases, any and all extensions, renewals, modifications, and replacements thereof, and all guaranties of tenants' performance thereunder, upon any part of the Real Property (the "Leases"). It is understood and agreed by the parties that this assignment is intended to be and is an absolute assignment from Assignor to Assignee, and not merely the passing of a security interest; provided, however, that prior to an Event of Default (hereinafter defined), Assignor shall have a license, without joinder of Assignee, to enforce the Leases and to collect the Rents as they come due and to retain, use and enjoy the same. Assignor shall, upon request of Assignee, execute confirmatory assignments of any specific leases affecting any part of the Real Property.

2. Warranties Concerning Leases and Rents. Assignor represents and warrants:

- (a) Assignor has good title to the Leases and Rents hereby assigned and full authority to assign them without the consent of any other party;
- (b) none of the Rents have been or will be assigned, mortgaged or pledged;
- (c) all existing Leases are valid and in full force and effect, and neither Assignor nor any tenant is in default under any of the Leases;
- (d) none of the Rents have been or will be anticipated, waived, released, discounted, set off or compromised;
- (e) except as indicated in the Leases, Assignor has not received any funds or deposits from any tenant except for and on account of Rents which have heretofore come due; and
- (f) the terms of the Leases have not been changed from the terms in the copies of any of the Leases submitted to Assignee for approval.

3. Assignor's Covenants of Performance. Assignor covenants to:

- (a) perform all of its obligations under the Leases, take all action and fulfill all covenants and conditions required to enforce the Leases against the tenants, and give prompt notice to Assignee of any material failure to do so;
- (b) enforce the tenants' obligations under the Leases;
- (c) defend, at Assignor's expense, any proceeding pertaining to the Leases, including, if Assignee so requests, any such proceeding to which Assignee is a party; and
- (d) neither create nor permit any encumbrance upon or assignment of Assignor's interest as lessor under the Leases, except this Assignment.

4. Prior Approval for Actions Affecting Leases. Assignor shall not, without the prior written consent of Assignee:

- (a) receive or collect Rents not yet due under the terms of any of the Leases;
- (b) waive or release any obligation of any tenant under the Leases or any party liable under the Leases;
- (c) cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder; or
- (d) change, alter or modify any of the Leases.

5. Settlement for Termination. Assignor agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Assignee, and any check in payment of such damages shall be made payable solely to Assignee or jointly to Assignor and Assignee. Assignor agrees to endorse any dual payee check for such payment to the order of Assignee. Unless Assignee shall hereafter agree otherwise, any such settlement for damages shall be applied to the Obligations as Assignee may elect.

6. No Obligation upon Assignee. Assignee's acceptance of the assignment of Leases and Rents provided for herein shall not obligate Assignee to appear in or defend any proceeding relating to any of the Leases or to the Real Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Assignor by any tenant. Assignee shall not be liable for any injury or damage to person or property in or about the Real Property.

7. Records. Upon request by Assignee, Assignor shall deliver to Assignee executed originals of all Leases and copies of all records relating thereto.

8. Merger. There shall be no merger of the leasehold estates created by the Leases with the fee estate of the Real Property without the prior written consent of Assignee.

9. Right to Rely. Assignor hereby authorizes Assignee to give notice in writing of this assignment at any time to any tenant under any of the Leases, and from and after the occurrence of an Event of Default hereunder, to direct any such tenant to make payment of Rents and other amounts due directly to Assignee. Assignor hereby authorizes and directs the tenants under the Leases to pay Rents to Assignee upon written demand by Assignee, without further consent of Assignor, and without verifying whether an Event of Default has occurred; and the tenants may rely upon any written statement delivered by Assignee to the tenants. Any such payment to Assignee shall constitute full acquittance to the party making such payment for the amount of such payment.

10. Priority of Leases. Except to the extent, if any, otherwise provided in a written instrument signed by Assignee, the lien of this Assignment is prior and paramount to all Leases of the Real Property or any part thereof. However, Assignee may at its option without the consent of any person or entity, at any time subordinate the lien of this Assignment to any existing or future Lease of all or any part of the Real Property by giving written notice to the tenant under such Lease; and upon sale of the Real Property under this Assignment such tenant shall attach to the owner and each successive owner of the Real Property.

11. Events of Default. Any of the following shall constitute an Event of Default hereunder:

- (a) the occurrence of an Event of Default under, and as defined and described in the Note, the Deed of Trust, or any other of the Loan Documents;
- (b) any breach by Assignor of any covenant, agreement or condition of this Assignment; or
- (c) any representation or warranty by Assignor contained in this Assignment proves to be untrue or misleading in any material respect.

12. Remedies. If an Event of Default shall occur, Assignor's license granted hereunder shall be automatically revoked and Assignee may exercise any one or more of the following remedies:

- (a) Enforcement of Assignment of Rents and Leases. Assignee may:
 - (i) regardless of whether Assignee shall have entered into possession of the Real Property, collect Rents in Assignee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to the payment of all Borrower's or either of Assignor's obligations and indebtedness due under or in connection with the Loan Documents (the "Obligations") as Assignee may elect in its sole discretion.
 - (ii) take control and possession of the Real Property and the Rents with or without bringing any action or proceeding;
 - (iii) make, modify, enforce, cancel or accept surrender of any Leases, evict tenants, adjust Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Assignee reasonably deems advisable in connection with the Real Property;

- (iv) apply Rents in such manner as Assignee in its sole discretion shall determine;
- (v) require Assignor to transfer and deliver possession of all security deposits and records thereof to Assignee; and
- (vi) use any other remedies permitted to Assignee under applicable law.

(b) The foregoing remedies are in addition to any remedies afforded Assignee under any other of the Loan Documents or in law or equity, by statute or otherwise, all of which rights and remedies are reserved by Assignee. All of the remedies of Assignee shall be cumulative and may be exercised at Assignee's option concurrently or successively in any order determined by Assignee and the exercise or beginning of exercise by Assignee of any such remedies shall not preclude the simultaneous or subsequent exercise of the same remedy or any other remedy available to Assignee. No failure or delay on the part of Assignee to exercise any remedy shall operate as a waiver thereof.

(c) The rights of Assignee to collect and receive Rents or to take possession of the Real Property or to exercise any of the rights or powers herein granted to Assignee shall, to the extent not prohibited by law, also extend to the period from and after the commencement of a non-judicial foreclosure, or the filing of any suit to foreclose the lien of the Deed of Trust or this Assignment, including any period allowed by law for the redemption of the Real Property after any foreclosure sale.

13. Miscellaneous.

(a) No Waiver. No waiver by Assignee shall be construed as a waiver of a subsequent similar default or any other default by Assignor. No delay by Assignee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No failure of Assignee to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Assignee after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by Assignee after the exercise of such option, shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present, or future default on the part of Assignor. Acceptance by Assignee of partial payments shall not constitute a waiver of the default by failure to make full payments.

(b) Expenses of Assignee. Assignor will upon demand pay to Assignee the amount of any and all costs and expenses, including without limitation all fees and disbursements of Assignee's counsel and of any experts and agents, which Assignee may incur in connection with (a) the preparation and recording of this Assignment; (b) the administration of this Assignment; (c) the sale of, collection from, or other realization upon the Real Property, the Rents and Leases; (d) the exercise or enforcement of any of the rights of Assignee hereunder; or (e) the failure of Assignor to perform or observe any of the provisions hereof.

(c) Indemnification. Assignor agrees to indemnify and hold Assignee harmless from and against any and all claims, losses, and liabilities arising out of or resulting from this Assignment and the assignment of rents and leases and the grant of security interests contained herein (including, without limitation, enforcement of this Assignment), and/or arising out of or in connection with any other Loan Documents, except claims, losses, or liabilities resulting solely and directly from Assignee's gross negligence or willful misconduct. In the event that Assignee shall assign or transfer its rights hereunder or under the Note or any other Loan Documents, the rights of Assignee under this section, under the immediately preceding section and under any other provisions of the Loan Documents which require Assignor to indemnify or pay expenses of Assignee shall continue in favor of Assignee originally named herein as well as any successor or assign of Assignee; and any such provision may be enforced severally by the original Assignee named herein or any such successor or assign or, at their option, by all of such parties acting jointly.

(d) Headings, Use of Terms. The article, paragraph and subparagraph headings hereof are inserted for convenience of reference only and shall not alter, define, or be used in construing the text of such articles, paragraphs or subparagraphs. Whenever used, the singular number shall include the plural and the plural the

BK 122 PG 602

singular, and the use of any gender shall be applicable to all genders. The term "Assignor" shall include in their individual capacities and jointly all parties hereinabove named a Assignor. The term "Assignee" shall include any lawful owner, holder, pledgee, or assignee of any of the Obligations. The duties, covenants, conditions, obligations, and warranties of Assignor in this Assignment shall be joint and several obligations of Assignor and each Assignor, if more than one, and each Assignor's heirs, personal representatives, successors and assigns.

(e) Severability. If any provision of this Assignment is held to be illegal, invalid, or unenforceable under present or future laws effective while this Assignment is in effect, the legality, validity and enforceability of the remaining provisions of this Assignment shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Assignment a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. If any of the Obligations shall be unsecured, the unsecured portion of the Obligations shall be completely paid prior to the payment of the secured portion of such Obligations, and all payments made on account of the Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligations.

(f) Burden and Benefit. This instrument shall be binding on Assignor and Assignor's successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns.

(g) Applicable Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of Tennessee without regard to principles of conflicts of laws.

(h) Further Assurance. At any time and from time to time, upon request by Assignee, Assignor will make, execute and deliver, or cause to be made, executed and delivered, to Assignee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Assignee, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Assignee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Assignor under this Assignment, and (b) the interest created by this Assignment upon the Leases and the Rents. Upon any failure by Assignor so to do, Assignee may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Assignor, and Assignor hereby irrevocably appoints Assignee the agent and attorney in fact of Assignor so to do.

(i) Venue of Actions. It is expressly understood and agreed that no suit or action shall be commenced by Assignor, or by any successor, personal representative or assignee of Assignor, with respect to the indebtedness secured hereby with respect to this Assignment, or any of the other Loan Documents, other than in a state court of competent jurisdiction in and for the County of the State in which the principal place of business of Assignee is situated, or in the United States District Court for the District in which the principal place of business of Assignee is situated, and not elsewhere. Nothing in this paragraph contained shall prohibit Assignee from instituting suit in any court of competent jurisdiction for the enforcement of its rights hereunder, in the Note, or in any other Loan Document.

(j) Waiver of Right to Trial By Jury. ASSIGNOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS INSTRUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS INSTRUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING; AND FURTHER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL

COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE
CONSENT TO THE WAIVER OF TRIAL BY JURY.

[SEPARATE SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE
TO
ASSIGNMENT OF RENTS AND LEASES

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

BIG ORANGE DEVELOPMENT PARTNERS

By: Dudley P. Schaefer
Dudley P. Schaefer, General Partner

By: Scott W. Schaefer
Scott W. Schaefer, General Partner

By: David B. Schaefer
David B. Schaefer, General Partner

By: Paul O. Schaefer
Paul O. Schaefer, General Partner

STATE OF TENNESSEE
COUNTY OF SHELBY

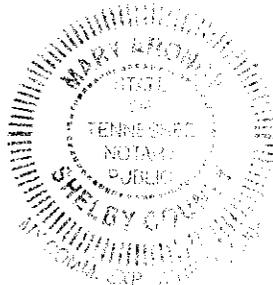
Personally appeared before me, the undersigned authority in and for the said county and state, on this 29th day of October, 2007, within my jurisdiction, the within named **DUDLEY P. SCHAEFER**, who acknowledged to me that he is a general partner of **BIG ORANGE DEVELOPMENT PARTNERS**, a general partnership, and that for and on behalf of said partnership, and as the act and deed of said partnership, he executed the above and foregoing instrument, after first having been duly authorized by said partnership so to do.

WITNESS my hand and seal at office, on this 29th day of October, 2007.

Mary Aronov
Notary Public

My commission expires:

6-10-08



STATE OF TENNESSEE
COUNTY OF SHELBY

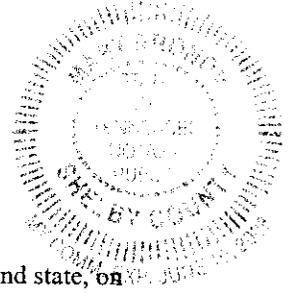
Personally appeared before me, the undersigned authority in and for the said county and state, on this 29th day of October, 2007, within my jurisdiction, the within named **SCOTT W. SCHAEFER**, who acknowledged to me that he is a general partner of **BIG ORANGE DEVELOPMENT PARTNERS**, a general partnership, and that for and on behalf of said partnership, and as the act and deed of said partnership, he executed the above and foregoing instrument, after first having been duly authorized by said partnership so to do.

WITNESS my hand and seal at office, on this 29th day of October, 2007.

Mary Aronow
Notary Public

My commission expires:

6-10-08



STATE OF TENNESSEE
COUNTY OF SHELBY

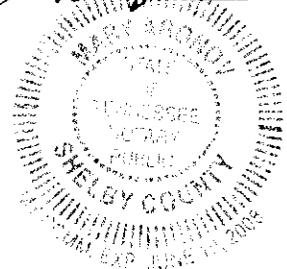
Personally appeared before me, the undersigned authority in and for the said county and state, on this 29th day of October, 2007, within my jurisdiction, the within named **DAVID B. SCHAEFER**, who acknowledged to me that he is a general partner of **BIG ORANGE DEVELOPMENT PARTNERS**, a general partnership, and that for and on behalf of said partnership, and as the act and deed of said partnership, he executed the above and foregoing instrument, after first having been duly authorized by said partnership so to do.

WITNESS my hand and seal at office, on this 29th day of October, 2007.

Mary Aronow
Notary Public

My commission expires:

6-10-08



STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 29th day of October, 2007, within my jurisdiction, the within named **PAUL O. SCHAEFER**, who acknowledged to me that he is a general partner of **BIG ORANGE DEVELOPMENT PARTNERS**, a general partnership, and that for and on behalf of said partnership, and as the act and deed of said partnership, he executed the above and foregoing instrument, after first having been duly authorized by said partnership so to do.

WITNESS my hand and seal at office, on this 29th day of October, 2007.

Mary Aronow
Notary Public

My commission expires:

6-10-08

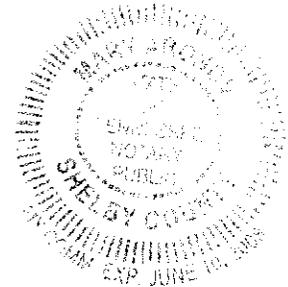


EXHIBIT "A"

LOCATED IN DESOTO COUNTY, MISSISSIPPI:

PARCEL I:

Lot 42, Section "B," Goodman-51, Commercial & Industrial Park Subdivision, in Section 35, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 45, Page 48 in the office of the Chancery Clerk of DeSoto County, Mississippi.

AND

A 10' Ingress and Egress Easement for Lot No. 42 and across Lot 43, Section "B," Goodman 51 Commercial and Industrial Park Subdivision) Plat Book 45, Page 48), Horn Lake, DeSoto County, Mississippi, Section 35, Township 1 South, Range 8 West, which 10' Ingress and Egress easement is more particularly described as follows:

Begin at a point at the southeast corner of Lot No. 42 and the northeast corner of Lot No. 43 in the westerly line of West Dancy Boulevard, thence South 03 degrees 10 minutes 26 seconds East 10.01 feet with the westwardly line of said Boulevard to a point; thence South 89 degrees 52 minutes 12 seconds West 193.95 feet along a line running parallel with the northerly line of Lot No. 43 to a point; thence North 00 degrees 01 minutes 42 seconds East 10 feet to a point in the northerly line of Lot No. 43; thence North 89 degrees 52 minutes 12 seconds East 193.37 feet along the northerly line of Lot No. 43 to the point of beginning.