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THIS INSTRUMENT PREPARED BY:
James F. Nellis, Jr., Esq.
Alston & Bird
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

NOTE TO PROBATE JUDGE: This instrument is given as additional security to a Mortgage and Security Agreement of even date herewith between the parties hereto recorded concurrently herewith.

STATE OF ALABAMA

COUNTY OF SHELBY

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made this 7th day of ^{February}~~January~~, 1989, by and between HARBERT PROPERTIES CORPORATION, an Alabama corporation, with an address of One Riverchase Parkway South, Birmingham, Alabama 35244 (hereinafter called "Borrower") in favor of THE FIRST NATIONAL BANK OF CHICAGO with an address of One First National Plaza, Suite 0151, Chicago, Illinois 60670 Attention: Real Estate Department (hereinafter called "Lender").

W I T N E S S E T H:

For and in consideration of Ten Dollars (\$10.00) cash in hand paid by the Lender to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, the Borrower hereby SELLS, ASSIGNS, TRANSFERS, GRANTS, SETS OVER and DELIVERS to the Lender:

All leases and subleases, written or oral, and all agreements for use or occupancy of any portion of the premises hereinafter described or of the buildings and improvements thereon, and all of the Borrower's interest as lessor (which term as used herein shall include the Borrower's interest as landlord) and all other right, title and interest of Borrower in, to and under any and all of the leases and rental agreements, including any and all extensions, renewals and

✓ Cahaba Title

modifications thereof and guarantees of the performance or obligations of any tenant or lessees (hereinafter referred to individually as a "Tenant" and collectively as the "Tenants") thereunder, now or hereafter placed during the term of this Assignment upon all or any portion of the land (the "Land") included as a portion of the Premises (the "Premises") encumbered by that certain Mortgage and Security Agreement (the "Mortgage") of even date herewith by the Borrower to the Lender, the Land being described in Exhibit A attached hereto and made a part hereof and being more particularly described in the Mortgage, and which leases shall include, without limitation, the leases described in Exhibit B attached hereto and made a part hereof (hereinafter, said leases, subleases, rental agreements and agreements for use or occupancy, and any and all such extensions, renewals, modifications and guarantees thereof, whether now in existence or entered into in the future, are hereinafter referred to collectively as the "Leases");

TOGETHER with the immediate and continuing right to collect and receive all the rents, income, receipts, revenues, issues, benefits and profits now due or which may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Premises or any part thereof, including but not by way of limitation: minimum rents, additional rents, percentage rents, parking maintenance, tax and insurance contributions, deficiency rents and liquidated damages following default, the premium payable by any Tenant upon the exercise of a cancellation privilege originally provided in any Lease, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises together with any and all rights and claims of any kind which Borrower may have against any Tenant under such Leases or any subtenants or occupants of the Premises (all such moneys, rights and claims in this paragraph described being hereinafter called "Rents");

The aforesaid rights, titles and interests in the Leases and all such Rents, income, profits, issues, benefits and revenues assigned hereby are hereinafter sometimes collectively referred to as the "Collateral."

SUBJECT, however, to a license hereby granted by Lender to Borrower, but limited as hereinafter provided, to collect and receive all of the Rents.

TO HAVE AND TO HOLD the same unto the Lender, its successors and assigns forever, or for such shorter period as hereinafter may be indicated, subject to and upon the terms and conditions set forth herein.

THIS ASSIGNMENT is made for the purpose of securing the following (hereinafter referred to as the "Secured Indebtedness"):

A. The full and prompt payment when due, whether by acceleration or otherwise, of the principal sum and interest thereon and any other indebtedness evidenced by that certain Real Estate Note of even date herewith, made by the Borrower, payable to the order of Lender in the original principal sum of Ten Million Five Hundred Thousand and No/100 Dollars (\$10,500,000.00) and secured by the Mortgage and presently held by Lender, including any extensions and renewals thereof and any note or notes supplemental thereto, and any consolidations, replacements, substitutions therefor, and any modifications or amendments thereof (hereinafter referred to as the "Note"); and

B. The full and prompt payment when due, whether by acceleration or otherwise, of all other sums becoming due and payable to the Lender under the provisions of this Assignment or of the Note, the Mortgage or any other instruments evidencing, securing or concerning the indebtedness evidenced by the Note (hereinafter the Note, the Mortgage, this Assignment and said other instruments are sometimes collectively referred to as the "Loan Documents"); and

C. The full and prompt performance and discharge of each and all other obligations, covenants, conditions and warranties contained in the Mortgage or any of the other Loan Documents, and in any extensions, supplements and consolidations thereof covering the Premises and securing the Note and in any other agreement now or hereafter evidencing, securing or otherwise relating to the Note.

TO PROTECT THE SECURITY OF THIS ASSIGNMENT, IT IS COVENANTED AND AGREED AS FOLLOWS:

1. The Borrower hereby warrants and represents to the Lender as follows:

(a) that the Borrower is the sole owner of the entire lessor's interest in the Leases and is entitled to receive the rents, issues and profits from the Leases and from the Premises;

(b) that the Leases are valid and enforceable and in full force and effect and have not been altered, modified or amended in any manner whatsoever except as expressly set forth on Exhibit B attached hereto and made a part hereof;

(c) that neither the lessor, landlord or, to the best of Borrower's knowledge, any Tenant named therein are in default under any of the terms, covenants or conditions thereof nor does there exist any event of default or any state of facts which would, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of said lessor, landlord or, to the best of Borrower's knowledge, any Tenant under any of said terms, covenants or conditions;

(d) that no rent reserved in the Leases has been assigned and that no rent for any period subsequent to the date of this Assignment has been anticipated or collected in advance of the time when the same becomes due under the terms of the Leases;

(e) that the Borrower is not prohibited under any judgment, court decree, administrative regulation, administrative ruling, ordinance, law or other ruling applicable to Borrower, from the execution and delivery of this Assignment, the performance of each and every obligation of Borrower hereunder or the meeting of each and every condition herein contained;

(f) that no action has been brought or threatened which would in any manner interfere with the right of Borrower to execute this Assignment and to perform all of Borrower's obligations contained in this Assignment or under the Leases;

(g) that all copies of the Leases which have been furnished by the Borrower to the Lender are true, correct and complete copies thereof and that the rent rolls which have been furnished by the Borrower to the Lender are true, correct, accurate and complete in all material respects;

(h) that the Collateral is free and clear of any and all liens, security interests and encumbrances and that Borrower has made no sale, assignment, transfer, mortgage or pledge, other than this Assignment and the

Loan Documents, of any of the rights of Borrower under any of the Leases or with respect to any of said rents, issues or profits;

(i) that Borrower has neither done any act nor failed to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment; and

(j) that the Borrower has full power and authority to execute and deliver this Assignment and that said execution and delivery has been duly authorized and does not conflict with or constitute a default under the Leases or any other agreement, indenture or other instrument binding upon the Borrower or the Premises.

2. The Borrower hereby covenants and agrees with the Lender as follows:

(a) to observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Note and Mortgage and of the Leases on the part of the Borrower to be kept, observed and performed, and to give prompt notice to Lender of any failure on the part of Borrower to observe, perform and discharge same and not to do or permit to be done anything to impair the Lender's security;

(b) not to collect or receive or cause to be made any prepayment of any of the rent, income or profits arising or accruing under the Leases or from the Premises in advance of the time when the same shall become due (except the usual prepayment of rent which results from the acceptance by a landlord on the first day of each month of the rent for the ensuing month), nor pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(c) except as permitted by the Mortgage, not to execute any other assignment, pledge, transfer, mortgage or other encumbrance of lessor's interest in, to or under the Leases or with respect to the Rents;

(d) not to subordinate the Leases to any encumbrance or to permit, consent or agree to such subordination without the Lender's prior written

consent (and any such attempted subordination without the prior written consent of Lender shall be void ab initio);

(e) not to alter, modify or change the terms of the Harbert Lease, as defined in the Loan Documents, and not to materially alter, modify or change the terms of any of the other Leases or give any consent or exercise any option required or permitted by such terms if such would cause such Lease to fail to satisfy the definition of "Approved Leases" contained in the Loan Documents without the prior written consent of the Lender nor to give any consent or otherwise permit any assignment or sublease by the Tenant under any of the Leases which would release the Tenant;

(f) not to cancel, terminate or consent to any surrender of any of the Lease which in the aggregate equal or exceed 5,000 square feet of the Premises, nor materially modify or alter the terms thereof without, in each such instance enumerated in this paragraph, the prior written consent of the Lender;

(g) not to cancel or terminate the Leases or to accept a surrender thereof or to waive, excuse, condone, discount, set-off, compromise, or in any manner release or discharge any Tenant thereunder, of and from the performance or observance by the Tenant of any and all obligations, covenants, conditions and agreements by said Tenant to be kept, observed and performed, including the obligation to pay the rents thereunder, in the manner and at the place and time specified therein which in the aggregate equal or exceed 5,000 square feet of the Premises;

(h) not to convey, transfer, suffer or permit a conveyance or transfer of the Premises or portion thereof or of any interest therein so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, Tenants thereunder;

(i) not to alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty if such would cause the affected lease to fail to satisfy the definition of "Approved Leases"

contained in the Loan Documents without the prior written consent of the Lender;

(j) to keep the Leases free from any liens, encumbrances or security interests whatsoever, other than the security interest hereunder and other than any subordinate encumbrances permitted by the Mortgage, and promptly to pay or discharge all taxes assessed against the Leases and all liens which may attach thereto;

(k) to give prompt notice to Lender of any claim of default under any of the Leases, whether given by a Tenant to Borrower or given by Borrower to a Tenant, together with a complete copy of any such notice;

(l) to take no action which will cause or permit the estate of the Tenant under any of the Leases to merge with the interest of the Borrower in the Premises or any portion thereof;

(m) at the option of Lender, to place all security deposits in an escrow account with a bank or lending institution and subject to conditions acceptable to Lender or to post, secure and maintain an effective surety bond for such security deposits in an amount and term acceptable to Lender providing that same may not be cancelled nor may the surety withdraw without at least thirty (30) days prior written notice to Lender and that any claim of Borrower thereunder shall be paid to Lender in lieu of Borrower in the event of default by Borrower hereunder;

(n) to notify and direct in writing each and every present or future Tenant or occupant of the Premises or of any part thereof that any security deposit or other deposits heretofore delivered to Borrower have been retained by Borrower or assigned and delivered to Lender as the case may be;

(o) not to enter into any lease without first obtaining Lender's prior written consent (unless permitted otherwise by the express terms of the Loan Documents);

(p) to secure the prior written consent of Lender as to the form of lease to be utilized with respect to the Premises and to incorporate in such

lease form such provisions as reasonably requested by Lender to protect the interest of Lender hereunder and not to materially change such lease form without the prior written consent of Lender;

(q) to maintain the Leases in full force and effect, to enforce the Leases in accordance with their terms and to enforce or secure in the name of the Lender the performance of each and every obligation, term, covenant, condition and agreement in the Leases by any Tenant to be performed; and

(r) to appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with any of the Collateral, or the obligations or liabilities of Borrower as the lessor thereunder, or of the Tenant or any guarantor thereunder or in any manner connected with the Leases or the obligations, duties or liabilities of the Borrower and any Tenant thereunder, and, upon request by Lender, to do so in the name and behalf of the Lender but at the expense of the Borrower, and to pay all reasonable costs and expenses of the Lender, including attorneys' fees and expenses, in any action or proceeding in which the Lender may appear.

3. That in the event any representation or warranty herein of Borrower shall be found to be untrue in any material respect or Borrower shall default in the observance or performance of any obligation, term, covenant, condition or warranty contained herein, then, in each such instance, the same shall constitute and be deemed to be a default under the Note, Mortgage and other Loan Documents, subject to the notice and cure period provided therein, if any, hereby entitling Lender to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and hereunder as well as by law.

4. That so long as there shall exist no default by Borrower in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in the Note, Mortgage or other Loan Documents or in the Leases contained, Borrower shall have the right under a license granted hereby (but limited as provided in the following paragraphs) to collect upon, but not prior to accrual, as aforesaid, all of said Rents arising from or out of the Leases or any renewals or

extensions thereof, or from or out of the Premises or any part thereof, and Borrower shall be entitled to collect such Rents and apply same in accordance with the Loan Documents.

5. The Borrower hereby authorizes and directs the Tenants named in the Leases or any other or future Tenants or occupants of the Premises, upon receipt from the Lender of written notice to the effect that the Lender is then the holder of the Note and the Mortgage and that a default exists thereunder or under this Assignment, to pay over to the Lender all rents, income and profits arising or accruing under the Leases or from the Premises and to continue so to do until otherwise notified by the Lender.

6. That upon or at any time after default in the payment of any indebtedness secured hereby or in the observance or performance of any obligation, term, covenant, condition or warranty herein or in the Note, Mortgage or other Loan Documents or in the Leases contained, Lender, at its option and subject to the notice requirements contained in the Loan Documents and any applicable cure periods associated therewith and without regard to the adequacy of the security for the Secured Indebtedness under any other Loan Documents, shall have the complete right, power and authority hereunder then or thereafter to exercise and enforce any or all of the following rights and remedies:

- (a) to terminate the license granted to Borrower to collect as aforesaid the Rents, and then and thereafter, either with or without taking possession, in Lender's own name or in Borrower's name or in Lender's nominee's own name, to demand, collect, receive, sue for, attach and levy the Rents, including those past due and unpaid, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and proper costs and expenses of collection, as determined by Lender, including attorney's fees and expenses, to apply the net proceeds thereof, together with any funds of Borrower deposited with Lender, to the operation and management of the Premises, but in such order as Lender in its sole discretion may elect, against the payment of (i) all reasonable costs and expenses, including attorneys fees and expenses, of managing and operating the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as the Lender may reasonably deem necessary or desirable, all expenses of operating and

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maintaining the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, ground rents, service charges and fees and any other liens, all premiums for all insurance which the Lender may reasonably deem necessary or desirable, the cost of all alterations, renovations, repairs or replacements, all costs and expenses incurred in connection with the performance of Borrower's obligations under the Leases, and in connection with the collection of the rents, issues and profits from the Leases and the Premises and all other expenses incident to taking and retaining possession of the Premises; (ii) all the reasonable costs and expenses, including reasonable attorneys' fees, incurred in the collection of all or any of the Secured Indebtedness, including all costs, expenses and attorneys' fees and expenses incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Secured Indebtedness; and (iii) the Secured Indebtedness, together with all reasonable costs and attorneys' fees and expenses; all of which shall be paid in such order of priority as to any of the items mentioned in this paragraph as the Lender in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding;

- (b) to declare all sums secured hereby immediately due and payable and, at its option, exercise all of the rights and remedies contained in the Note and Mortgage; and
- (c) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court and irrespective of said Borrower's possession, then or thereafter, to enter upon and take possession of the Premises or any part thereof and have, hold, manage, lease and operate the same with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Lender, on such terms and for such period of time as the Lender may deem appropriate, and exercise any and all rights of Borrower herein or under the Leases as fully as Borrower himself could do, including, without limiting the generality of the foregoing, enforcing, modifying, extending or terminating any or all of the Leases, removing and evicting any Tenant, collecting,

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modifying, compromising, waiving, reducing or increasing any or all the rents payable thereunder, and obtaining new Tenants and entering into new leases on the Premises on any terms and conditions deemed desirable by Lender, and otherwise do any act or incur any costs or expense as Lender shall deem proper to protect the security hereof, as fully and to the same extent as Borrower could do if in possession, and, to the extent Lender shall incur any cost in connection with the performance of any such activities, including costs of litigation, then all such costs shall become a part of the Secured Indebtedness, shall bear interest from the date upon which Lender so incurs such costs at the interest rate applicable after a default as specified in the Note and shall be due and payable on demand;

Lender shall have full right to exercise any or all of the foregoing remedies with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, use and operate all or any portion of the Premises which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies.

Provided, however, that the acceptance by Lender of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of possession of said Premises by Lender, be deemed or construed to constitute Lender a mortgagee in possession nor thereafter or at any time or in any event obligate the Lender to appear in or defend any action or proceeding relating to the Leases or to the Premises, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any Tenant thereunder and not assigned and delivered to Lender, nor shall Lender be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises.

And provided further that the collection of the Rents and application as aforesaid and/or the entry upon and taking possession of the Premises shall not cure or waive any default or waive, modify or affect any notice of default under the Note, Mortgage or other Loan Documents to invalidate any act done pursuant to such notice, and the enforcement of such right

or remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that the collection and application aforesaid of such rents may have cured for the time the original default. If Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

The Lender shall not be liable for any loss sustained by the Borrower resulting from the Lender's failure to let any portion of the Premises after default or from any other act or omission of the Lender in managing the Premises after default unless such loss is caused by the willful misconduct of the Lender. The Lender shall not be obligated to perform or discharge, and the Lender does not hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Assignment. It is further understood that this Assignment shall not operate to place responsibility either for the control, care, management or repair of the Premises upon the Lender or for the carrying out of any of the terms and conditions of the Leases; neither shall this Assignment operate to make the Lender responsible or liable for any waste committed on the Premises by the Tenants or any other parties, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any Tenant, licensee, employee or stranger.

The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or at law or in equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. This Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Lender under the terms thereof. The right of the Lender to collect the Secured Indebtedness and to enforce any other security held by the Lender may be exercised by the Lender either prior to, simultaneously with, or subsequent to any action taken by the Lender hereunder. It is intended that this paragraph shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and

all available to Lender until the Secured Indebtedness shall have been paid in full.

7. Borrower shall, and does hereby agree to, indemnify Lender for, and to hold Lender harmless from, any and all liability, loss, damage or expense which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, or for any action taken by the Lender hereunder, or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Lender arising out of the Leases, including, but without limitation thereto, any claim by any Tenant of credit for rental paid to and received by Borrower, but not delivered to Lender, for any period under any Lease in advance of the due date thereof. Should the Lender incur any such liability, loss, damage or expense under the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amounts thereof, including reasonable costs, expenses and attorneys' fees and expenses, with interest thereon at the default rate set forth in the Note and Mortgage, shall be payable by Borrower immediately upon demand, shall be secured hereby and by the Mortgage and the Borrower shall reimburse the Lender for such amounts promptly after demand therefor, and upon the failure of the Borrower so to do, the Lender may, at its option, declare all sums secured hereby and by the Mortgage immediately due and payable. Notwithstanding anything contained in this paragraph, however, Borrower shall not be responsible for the willful misconduct and negligence of the Lender.

8. Until the Secured Indebtedness shall have been paid in full, Borrower, within ten (10) days after request by Lender (but Borrower shall not be required to provide Lender with the same Lease more than one time), will deliver to Lender executed copies of any and all Leases upon all or any part of the Premises. Borrower hereby covenants and agrees to make, execute and deliver, or cause to be made, executed and delivered, unto Lender 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 Lender in its reasonable judgment, upon demand and at any time or times, any and all such other and further assignments, instruments of further assurance, certificates and other documents, including, without limitation, assignments of Leases not yet executed as of the

date hereof and assignments of the rent under any Lease with the United States Government after allowance of the rental claim, ascertainment of the amount due and issuance of the warrant for payment thereof, and other instruments as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues and profits from the Premises. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby appoints Lender the agent and attorney-in-fact of Borrower so to do, which appointment is coupled with an interest and is irrevocable.

9. The failure of the Lender to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times, shall not be construed or deemed to be a waiver by Lender of any of its rights and remedies under the Note, Mortgage or other Loan Documents, or under the laws of the state in which the said Premises are situated. The right of the Lender to collect the said indebtedness and to enforce any other security therefor may be exercised by Lender, either prior to, simultaneously with, or subsequent to any action taken hereunder.

10. Upon payment in full of all of the Secured Indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer or agent of Lender showing any part of the Secured Indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation may and is hereby authorized to rely thereon. A demand on any Tenant made by Lender for payment of rents by reason of any default claimed by Lender shall be sufficient authorization to said Tenant to make future payments of rents to Lender without the necessity for further consent by the said Borrower.

11. All notices, demands or documents of any kind which Lender may be required or may desire to serve upon Borrower hereunder shall be sufficiently served by delivering same to Borrower personally or by leaving a copy of same addressed to Borrower at the address appearing hereinabove, or by depositing a copy of same in the United States mail, postage prepaid and addressed to Borrower at said address.

12. In case of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of the Mortgage shall prevail, but whenever possible, the provisions hereof shall be deemed supplemental to and not in derogation of the provisions of the Mortgage.

13. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

14. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. This Assignment is made solely for the benefit of Lender and its successors and assigns. No Tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

16. Borrower hereby consents and agrees that Lender may at any time, and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the Secured Indebtedness; substitute for any collateral so held by it, other collateral of like kind, or of any kind; agree to modifications of the terms of the Note or the Loan Documents; extend or renew the Note or any of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note or any other Loan Document; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Secured Indebtedness or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other

person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

17. The validity and construction of the obligations described in this Assignment and the Note which it secures shall be governed by and shall be construed in accordance with the internal laws (and not the law of conflicts) of the State of Georgia, but giving effect to federal laws applicable to national banks, provided that the enforcement thereof shall be governed by the laws of the State of Alabama. The Borrower hereby irrevocably submits to the non-exclusive jurisdiction of any United States federal or Georgia state court sitting in Georgia in any action or proceedings arising out of or relating to any Loan Documents and the Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in any such court. Should any obligation or remedy under this Assignment or the Note be invalid or unenforceable pursuant to the laws provided herein to govern, the laws of the State of Alabama or another state whose laws can validate and apply to this obligation shall apply.

18. Time is of the essence of this Assignment.

19. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors, successors-in-title and assigns, and all Tenants, sub-tenants and assigns of same, and all occupants and subsequent owners of the Premises, and all subsequent holders of the Note and Mortgage. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. All obligations of each Borrower hereunder shall be joint and several.

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IN WITNESS WHEREOF, this Assignment has been duly executed and sealed by the Borrower, and has been delivered and accepted in Chicago, Illinois, the day and year first above written.

HARBERT PROPERTIES CORPORATION,
an Alabama corporation

By: Raymond J. Harbert
Name: Raymond J. Harbert
Title: President

Attest: S. Perry Guinn Jr.
Name: S. Perry Guinn Jr.
Title: Assistant Secretary

(AFFIX CORPORATE SEAL)

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CORPORATE ACKNOWLEDGEMENT

STATE OF ALABAMA

COUNTY OF JEFFERSON

PERSONALLY appeared before me, the undersigned Notary Public in and for said State, within my jurisdiction, the within-named Raymond J. Herbert and S. Perry Given, Jr., who acknowledged that they are the President and Asst. Secretary, respectively, of HARBERT PROPERTIES CORPORATION (the "Borrower"), and that for and on behalf of the said corporation, and as its act and deed, they signed, sealed and delivered the within instrument for the purposes mentioned, on the day and year therein mentioned, after first having been duly authorized by said corporation to do so.

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Given under my hand and official seal, this the 7th day of February, 1989.

Richard T. Davis
Notary Public

AFFIX SEAL

My Commission Expires: 2-4-91

EXHIBIT "A"

PROPERTY DESCRIPTION

Lot 1, according to the survey of The Concourse at Riverchase, as recorded in Map Book 13 page 33, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Also that additional piece of property being more particularly described as follows:

Commence at the Southwest corner of the NE 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, and run in a Northerly direction along the West line of said 1/4 Section a distance of 30.14 feet to the point of beginning of the herein described parcel; thence deflect 42 deg. 20 min. 47 sec. to the right and run in a Northeasterly direction a distance of 30.10 feet to the PC of a curve; thence run in a Northeasterly and Easterly direction along the arc of a curve to the right having a central angle of 45 deg. 00 min. 00 sec. and a radius of 235.00 feet a distance of 184.57 feet to the PT of said curve; thence run along the projection of the tangent of said curve a distance of 375.48 feet to the PC of a curve; thence run in a Easterly to Northeasterly direction along the arc of a curve to the left having a central angle of 92 deg. 14 min. 45 sec. and a radius of 30.00 feet a distance of 48.30 feet to a point of reverse curve, said point also being on the westerly right of way line of Riverchase Parkway East; thence turn an interior angle of 0 deg. 00 min. 00 sec. (angle measured from tangent to tangent) and run along said right-of-way line and along the arc of a curve to the left having a central angle of 14 deg. 16 min. 16 sec. and a radius of 500.37 feet a distance of 124.63 feet to a point of reverse curve; thence turn an interior angle of 0 deg. 00 min. 00 sec. (angle measured from tangent to tangent) and run along the arc of a curve to the left having a central angle of 73 deg. 28 min. 59 sec. and a radius of 30.00 feet, a distance of 38.48 feet to the PT of said curve; thence run in a Westerly direction along the projection of the tangent to the last described curve a distance of 396.95 feet to the PC of a curve; thence run in a Westerly and Southwesterly direction along the arc of a curve to the left having a central angle of 45 deg. 00 min. 00 sec. and a radius of 165.00 feet a distance of 129.59 feet to the PT of said curve; thence run in a Southwesterly direction along the projection of the tangent to the last described curve a distance of 68.09 feet to the PC of a curve; thence run in a Southwesterly direction along the arc of a curve to the right having a central angle of 30 deg. 00 min. 00 sec. and a radius of 285.00 feet a distance of 149.23 feet to a point; thence run in a Southwesterly direction along the projection of the tangent to the last described curve a distance of 33.57 feet to the PC of a curve; thence run in a Southwesterly direction along the arc of a curve to the left having a central angle of 26 deg. 02 min. 37 sec. and a radius of 165.00 feet a distance of 75.00 feet to a point;

thence turn an interior angle of 90 deg. 00 min. 00 sec. from the tangent to the last described curve and run to the right in a Northwesterly direction a distance of 5.00 feet to the PC of a curve; thence turn an interior angle of 270 deg. 00 min. 00 sec. to the tangent of a curve to the left having a central angle of 46 deg. 18 min. 11 sec. and a radius of 170.00 feet and run in a Southwesterly direction a distance of 137.38 feet to the PT of said curve; thence run in a Southerly direction along the projection of the tangent to the last described curve a distance of 71.42 feet to the PC of a curve thence turn an interior angle of 0 deg. 00 min. 00 sec. (angle measured to tangent) and run in Northwesterly direction along the arc of a curve to the left having a central angle of 101 deg. 32 min. 13 sec. and a radius of 50.00 feet, a distance of 88.60 feet to the PT of said curve; thence turn an interior angle of 78 deg. 27 min. 47 sec. (angle measured from tangent) and run in a Northerly direction a distance of 22.43 feet to the PC of a curve; thence run in a Northwesterly direction along the arc of a curve to the right having a central angle of 72 deg. 20 min. 47 sec. and a radius of 230.00 feet a distance of 290.42 feet; thence run in a Northeasterly direction along the projection of the tangent to the last described curve a distance of 33.57 feet to a point; thence turn an interior angle of 270 deg. 00 min. 00 sec. and run to the left in a Northwesterly direction a distance of 5.00 feet to the PC of a curve; thence turn an interior angle of 90 deg. 00 min. 00 sec. to the tangent of a curve having a central angle of 30 deg. 00 min. 00 sec. and a radius of 215.00 feet and run in a Northeasterly direction a distance of 112.57 feet to the PT of said curve; thence run in a Northeasterly direction along the projection of the tangent to the last described curve a distance of 37.99 feet to the point of beginning of the herein described parcel, being situated in Shelby County, Alabama.

EXHIBIT B

1. Lease between Harbert International, Inc. and Harbert Properties Corporation dated January 12, 1989.

1. Deed Tax	\$	_____
2. Mtg. Tax		_____
3. Recording Fee		<u>52.50</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>53.50</u>

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

89 FEB 10 PM 4:02

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

