

5A

ASSIGNMENT OF LEASES, RENTS AND PROFITS

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS (hereinafter referred to as "Assignment") is executed and delivered this 6th day of March, 1991, by **HARBERT PROPERTIES CORPORATION**, an Alabama corporation, (hereinafter referred to as "Assignor"), to and in favor of **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation having its principal office at One Nationwide Plaza, Columbus, Ohio 43216, Attention: Real Estate Investment, 33T, its successors and assigns, (hereinafter referred to as "Assignee");

W I T N E S S E T H:

WHEREAS, Assignor is the present owner in fee simple of certain real property located in Shelby County, Alabama more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Real Property"); and

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WHEREAS, Assignee is the owner and holder of a certain mortgage and security agreement of even date herewith (hereinafter referred to as the "Mortgage") encumbering the Real Property and other property more specifically described in the Mortgage (all of which property is referred to herein and in the Mortgage as the "Property"), which Mortgage secures the payment of a certain note of even date herewith in the amount of Nine Million Seven Hundred Twenty Five Thousand and No/100 Dollars (\$9,725,000.00) made by Assignor as Maker to and in favor of Assignee as Holder (hereinafter referred to as the "Note"); and

WHEREAS, Assignee, as a condition to making the aforesaid loan and to obtain additional security therefor, has required the execution of this Assignment by Assignor; and

NOW THEREFORE, in order to further secure the payment of the indebtedness of Assignor to Assignee evidenced by the Note, and secured by the Mortgage, and in further consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby sell, assign, transfer and set over unto Assignee all of the leases, rents, issues, profits and income of, from or pertaining to the Property. This Assignment shall include any and all leases or rental agreements that may now be in effect, specifically including without limitation, those leases set forth in Exhibit B attached hereto and by this reference made a part hereof, as well as any future or additional leases or rental agreements, and any renewals or extensions of the same, that may be entered into by Assignor. Assignor hereby agrees to execute and deliver such further assignments of said

Leahah Little

EXHIBIT B

Permitted Title Exceptions

1. Building setback line of 35 feet reserved from East, Southeasterly, Westerly and South lines of subject property as shown by plat and as shown by survey of Paragon Engineering, Inc. dated February 19, 1991.

2. Public Utility easements as shown by recorded plats, including power, utility, sanitary sewer, storm sewer and storm drainage, all as shown by survey of Paragon Engineering, Inc., dated February 19, 1991. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 127 page 140; Deed Book 269 page 577 and Deed Book 94 page 349 in Probate Office.

3. Land Use Agreement dated April 26, 1977, between the Harbert-Equitable Joint Venture and Blue Cross and Blue Shield of Alabama, recorded in Misc. Book 19 beginning at page 690, and amended in Misc. Book 43 page 82 and Real 16 page 64 in Probate Office.

4. Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) as shown by Amendment No. 2, recorded in Misc. book 19 beginning at Page 633, except as modified in deed recorded in Deed Book 206 page 559, and as modified by Change of Use Agreement recorded in Real 207 page 551 in Probate Office.

5. 10 foot slope easement across the Easterly portion of Lot 7 (being a portion of subject property), according to survey of Riverchase East, 1st Sector, as recorded in Map Book 6 page 76 in Probate Office. Said slope easement is located immediately adjacent to the right-of-way of Riverchase Parkway and within the first ten (10) feet of the 35 foot setback line, by recorded plat and survey by Paragon Engineering, Inc., dated February 19, 1991.

6. Easement to Alabama Power Company as set out in Real 270 page 122 and Deed Book 349 page 998 in Probate Office, and as shown by Survey of Paragon Engineering, Inc., dated February 19, 1991.

7. Taxes for the year 1991, a lien, but not yet due and payable.

8. Rights of tenants, as tenants only, under written leases.

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

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JUDGE OF PROBATE

1. Deed Tax	\$	14,587.50
2. Mfg. Tax	\$	95.60
3. Recording Fee	\$	3.00
4. Indexing Fee	\$	4.00
5. Notary Fee	\$	4.00
6. Certified Copy	\$	4.00
Total	\$	14,684.00

leases or rental agreements as Assignee may from time to time request.

This Assignment is absolute and effective immediately and without possession. Notwithstanding the foregoing, Assignor shall have a license to receive, collect and enjoy the rents, issues, profits and income accruing from the Property until a default has occurred under the Note, the Mortgage or any other instrument evidencing or securing the Note. Upon the occurrence of a default, the license shall cease automatically, without need of notice, possession, foreclosure or any other act or procedure, and all leases, rents, issues, profits and income assigned hereby shall thereafter be payable to Assignee.

PROVIDED ALWAYS that if Assignor shall pay unto Assignee the indebtedness evidenced by the Note, and if Assignor shall duly, promptly and fully perform, discharge, execute, effect, complete, comply with and abide by each of the agreements, conditions and covenants of the Note, the Mortgage, this Assignment and all other instruments executed by Assignor to and in favor of Assignee as further evidence of or as additional security for the indebtedness (hereinafter together referred to as the "Loan Documents"), then this Assignment and the estates and interests hereby granted and created shall terminate.

REPRESENTATIONS AND WARRANTIES OF ASSIGNOR

1. In furtherance of the foregoing assignment, Assignor:

A. Represents and warrants that it is the owner in fee simple of the Property and has good title to the leases, rents, income, issues, and profits hereby assigned and good right to assign the same, and that no other person, entity, firm or corporation has any right, title or interest therein; that Assignor has not previously sold, assigned, transferred, mortgaged or pledged said rents, issues, profits, income and leases of the Property; and that payment of any of the same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or comprised.

B. Agrees and warrants that, without the prior written consent of Assignee, the terms of any and all leases will not be amended, altered, modified or changed in any manner whatsoever, nor will they be surrendered or cancelled, nor will any proceedings for dispossession or eviction of any lessee under said leases be instituted by Assignor; provided, however that Assignor may make alterations or modifications of leases in the ordinary course of business which changes do not adversely affect the rent and other sums payable by such tenants.

C. Agrees and warrants that no request will be made of any lessee to pay any rent, and no rent will be accepted by

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Assignor, for more than one month in advance of the date such rent becomes due and payable under the terms of any and all leases, it being agreed between Assignor and Assignee that rent shall be paid as provided in said leases and not otherwise. The foregoing shall not prevent Assignor from charging and collecting security deposits from each tenant leasing space on the Real Property.

D. Authorizes Assignee, by and through its employees or agents or a duly appointed receiver, at its option, after the occurrence of a default under this Assignment, the Note, the Mortgage or any of the other Loan Documents, to enter upon the Property and to collect, in the name of Assignor, as its lawful attorney, or in its own name as Assignee, any rents, income or profits accrued but unpaid and/or in arrears at the date of such default, as well as the rents, income or profits thereafter accruing and becoming payable during the period of the continuance of the said default or any other default. To this end, Assignor further agrees that it will cooperate with and facilitate, in all reasonable ways, Assignee's collection of said rents, income or profits and will, upon request by Assignee, execute a written notice to each tenant, occupant or licensee directing said tenant, occupant or licensee to pay directly to Assignee all income, rents and profits due and payable under said leases; provided, however, that Assignee may notify said tenant, occupant or licensee of the effectiveness of this Assignment without giving notice to Assignor or requesting Assignor to give such notice or join in such notice.

Whenever in this Assignment, the term "default" is used, such term shall be used subject to any applicable cure period contained herein or in the Loan Documents.

E. Authorizes Assignee, upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and to perform all acts necessary and proper and to expend such sums out of the income of the Property as in Assignee's sole discretion may be reasonable or necessary in connection therewith, in the same manner and to the same extent as Assignor theretofore might do. Assignor hereby releases all claims against Assignee arising out of such management, operation and maintenance, except for the willful or wanton misconduct of Assignee.

F. Agrees to execute, upon the request of Assignee, any and all other instruments requested by Assignee to effectuate this Assignment or to accomplish any other purpose deemed by Assignee to be necessary or appropriate in connection with this Assignment.

G. Assignor agrees and acknowledges that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted to Assignee in the Note, the Mortgage or any of the other Loan Documents. The collection and

application of the rents, issues and profits as described herein shall not constitute a waiver of any default which might at the time of application or thereafter exist under the Note, the Mortgage or any of the other Loan Documents, and the exercise by Assignee of the rights herein provided shall not prevent Assignee's exercise of any rights provided under the Note, the Mortgage or any of the other Loan Documents.

ASSIGNEE'S RIGHTS FOLLOWING DEFAULT BY ASSIGNOR

2. Assignee may, after the occurrence of a default as hereinabove provided, from time to time, appoint and dismiss such agents or employees as shall be necessary or reasonable for the collection of the rents, issues and profits derived from the Property and for the proper care and operation of the Property, and Assignor hereby grants to Assignee the authority to give such agents or employees so appointed full and irrevocable authority on Assignor's behalf to manage the Property and to do all acts relating to such management, including, without limitation, the entry into and execution of new leases in the name of Assignor or otherwise, the alteration or amendment of existing leases, the authorization to repair or replace any items necessary in order to maintain the building or buildings and chattels incidental thereto in good and tenantable condition, and the effectuation of such alterations or improvements as in the judgment of Assignee may be reasonable or necessary to maintain or increase the income from the Property. Assignee shall have the sole control of such agents or employees, whose remuneration shall be paid out of the rents, issues and profits as hereinabove provided, at the rate of compensation accepted in the community wherein the Property is situated.

APPLICATION BY ASSIGNEE OF NET INCOME FROM THE PROPERTY

3. Assignee shall, after payment of all proper charges and expenses enumerated under Paragraph 2 above, and after retaining sufficient sums to meet taxes, assessments, utilities and insurance coverages in requisite amounts (including liability, fire and extended coverage), credit the net income received by Assignee from the Property, by virtue of this Assignment, to any amounts due and owing to Assignee by Assignor under and pursuant to the terms of the Note and the Mortgage, but the manner of the application of such net income shall be determined in the sole discretion of Assignee. Assignee shall make a reasonable effort to collect rents, income and profits, reserving, however, within its sole discretion, the right to determine the method of collection and the extent to which enforcement of the collection of delinquent rents, income and profits shall be prosecuted. Notwithstanding the foregoing, no such credit shall be given by Assignee for any sum or sums received from the rents, issues and profits of the Property until the sums collected are actually received by Assignee at its principal office as stated above (or

at such other place as Assignee shall designate in writing), and no credit shall be given for any uncollected rents or other uncollected amounts or bills, nor shall credit be given for any rents, issues and profits derived from the Property under any order of court or by operation of law until such amounts are actually received by Assignee at its principal offices as stated above. The net amount of income received by Assignee hereunder and applied by Assignee to the amounts due and owing by Assignor shall not serve to cure any default under the Note, the Mortgage or any of the other Loan Documents, nor shall any amounts received by Assignee hereunder be in full satisfaction of the indebtedness evidenced by the Note unless such amounts are sufficient to pay such indebtedness in full (including any prepayment premiums, late payment charges and advancements) in accordance with the terms of the Note, the Mortgage and the other Loan Documents.

LIMITATION OF ASSIGNEE'S LIABILITY

4. Assignee shall not be obligated to perform or discharge any obligation under the leases hereby assigned or under or by reason of this Assignment, and Assignor hereby agrees to indemnify and hold Assignee harmless against any and all liability, loss or damage which Assignee might incur under the leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on Assignee's part to perform or discharge any of the terms of such leases, except for claims and demands arising by reason of Assignee's gross negligence or willful misconduct.

REINSTATEMENT AFTER DEFAULT

5. In the event that Assignor shall, with the consent of Assignee, reinstate the indebtedness evidenced by the Note completely in good standing, having complied with all the terms, covenants and conditions of the Note, the Mortgage, this Assignment and all of the other Loan Documents, then, in such event, Assignee shall return possession of the Property to Assignor, and Assignor shall remain in possession of the Property unless and until another default occurs under the Note, the Mortgage, this Assignment or any of the other Loan Documents, at which time Assignee may, at its option, again take possession of the Property under authority of and pursuant to the terms and provisions of this Agreement.

TENANT'S NOTIFICATION OF ASSIGNMENT

6. Upon request by Assignee, at any time, Assignor will deliver a written notice to each of the tenants and lessees of the Property, which notice shall inform such tenants and lessees of this Assignment and instruct them that upon receipt of notice by them from Assignee of the existence of a default by Assignor under

the Note, the Mortgage or any of the other Loan Documents, all rent due thereafter shall be paid directly to Assignee.

SATISFACTION OF MORTGAGE; SATISFACTION OF ASSIGNMENT

7. This Assignment shall remain in full force and effect as long as the indebtedness evidenced by the Note and secured by the Mortgage remains unpaid in whole or in part. It is understood and agreed that a complete release or satisfaction of the aforesaid Mortgage shall operate as a complete release or satisfaction of all of Assignee's rights and interest hereunder, and that satisfaction of the Mortgage shall operate to satisfy this Assignment.

EXCULPATION

8. The liability of Assignor with respect to the payment of principal and interest under the Note shall be "non-recourse" and, accordingly, Assignee's source of satisfaction of said indebtedness and Assignor's other obligations hereunder and under the other Loan Documents shall be limited to the Property and Assignee's receipt of the rents, issues and profits from the Property, and Assignee shall not seek to procure payment out of any other assets of Assignor or any person or entity comprising Assignor, nor to seek judgment for any sums which are or may be payable under the Note or under any of the other Loan Documents, as well as any claim or judgment (except as hereafter provided) for any deficiency remaining after foreclosure of the Mortgage. Notwithstanding the above, nothing herein contained shall be deemed to be a release or impairment of the indebtedness evidenced by the Note or the security therefor intended by the other Loan Documents or be deemed to preclude Assignee from exercising its rights to foreclose the Mortgage or to enforce any of its other rights or remedies under the Loan Documents.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way affect or apply to Assignor's continued personal liability for all damages incurred by Assignee due to:

A. fraud or misrepresentation made in or in connection with the Note or any of the other Loan Documents governing, securing or pertaining to the payment thereof;

B. failure to pay taxes or assessments prior to delinquency, or to pay charges for labor, materials or other charges which can create liens on any portion of the Property.

C. the misapplication of (i) proceeds of insurance covering any portion of the Property; or (ii) proceeds of the sale or condemnation of any portion of the Property; or (iii) rentals received by or on behalf of the Assignor subsequent to the date on

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which Assignee gives written notice of the commencement of foreclosure proceedings;

D. causing or permitting waste to occur on, in or about the Property, excepting ordinary wear and tear;

E. loss by fire or casualty (prior to any foreclosure of the Mortgage or the taking by the Assignee of a deed in lieu of foreclosure) to the extent not compensated by insurance proceeds collected by Assignee;

F. the return to Assignee, of all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants;

G. the return of, or reimbursement for, all personalty owned by Assignor taken from the Property by or on behalf of Assignor out of the ordinary course of business, and not replaced by personalty of equal or greater value than the original value of the personalty so removed;

H. all court costs and Reasonable Attorneys' Fees actually incurred which are provided for in the Note or in any other Loan Document governing, securing, or pertaining to the payment of the Note; and

I. (i) the removal of any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Federal, State, County, Regional or Local Authority which may or could pose a hazard to the health and safety of the occupants of the Property regardless of the source of origination; and (ii) the restoration of the Property to comply with all governmental regulations pertaining to hazardous waste found in, on or under the Property regardless of the source of origination; and (iii) any indemnity or other agreement to hold the Assignee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses of any and every kind arising under paragraph 3 of the Mortgage; provided, however, that Assignor shall not be liable for removal of any of the materials described above if such materials were placed on the Property subsequent to a foreclosure of the Mortgage, the taking of the Property by the Assignee by a deed in lieu of foreclosure, or subsequent to any transfer of ownership of the Property by means of a transfer approved by Assignee; provided, further, however, that Assignor shall not be relieved of such liability in the event of a transfer to a Related Party (as defined in the Mortgage) unless the Related Party assumes all obligations of Assignor under Paragraph 3 of the Mortgage.

The provisions of this Assignment shall inure to the benefit of Assignee and its successors and assigns of Assignee, and shall be binding upon Assignor, its personal representatives, its

successors and assigns. The creation of rights and powers under this Assignment in favor of, or available to, Assignee shall, in no way whatsoever, be construed to impose concomitant duties or obligations on Assignee in favor of Assignor except as expressly set forth herein.

As used herein, the phrase "Reasonable Attorneys' Fees" shall mean fees charged by attorneys selected by Assignee based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State of Alabama.

This Assignment is executed and delivered as additional security for a loan transaction negotiated and consummated in Shelby County, Alabama, and is to be construed according to the laws of the State of Alabama, and the laws of the United States.

IN WITNESS WHEREOF, the undersigned has executed this Assignment under seal as of the day and year first above written.

HARBERT PROPERTIES CORPORATION

By: Jack E. Hendrix
Its: Vice President
ATTEST: [Signature]
Its: Secretary

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jack E. Hendrix whose name as Vice President Harbert Properties Corporation, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 6th day of March, 1991.

[Signature]
NOTARY PUBLIC

My Commission Expires: 4-11-92

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EXHIBIT A

Lot 1-A, according to a Resurvey of an Amendment to The Concourse at Riverchase, as recorded in Map Book 14 page 120 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

Together with ingress and egress over and across that certain road described in Declaration of Easement recorded in Book 332 Page 637.

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EXHIBIT B

List of Leases

TENANT	DATE OF LEASE	AREA (SF)	TERM (YRS)
Harbert International, Inc.	1/12/89	69,729	10
Hanover Insurance	N/A	4,597	5
DiGiorno Foods Co.	8/25/89	2,102	3
Entre Computer	6/04/89	5,090	5
Comptroller of the Currency	10/12/89	2,902	5 2/3
Daniels, Michaels & Assoc.	9/17/89	5,672	6
Mason & Fitzpatrick	8/16/89	4,305	5
Allied Lime	8/16/89	6,377	5
Concourse Deli	3/15/90	835	3
Associates Commercial	4/01/90	3,265	5
Federal Kemper Ins.	6/15/90	1,400	3

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

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John W. Lawrence, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$
2. Mtg. Tax	\$
3. Recording Fee	\$ 25.00
4. Indexing Fee	\$ 3.00
5. Notary Fee	\$
6. Court Costs	\$ 1.00
Total	\$ 29.00

