

Drawn by and, after recording, mail to:

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Inst # 1998-50931

12/22/1998-50931  
09:16 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
D11 CRH 34.50

STATE OF ALABAMA )

COUNTY OF SHELBY )

**ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment"), made as of the 17th day of December, 1998, is from **MEADOW BROOK SOUTH 2700, L.L.C.**, a Delaware limited liability company, whose address is 3595 Grandview Parkway, Suite 400, Birmingham, Alabama 35243-1930 (the "Borrower"), and **SOUTHTRUST BANK, NATIONAL ASSOCIATION**, a national banking association with principal offices in Birmingham, Alabama, whose mailing address is 420 North 20th Street (zip code 35203), P.O. Box 2554 (zip code 35290), Birmingham, Alabama, Attn: Commercial Real Estate Department (the "Lender").

**RECITALS:**

This Assignment is made as additional security for the obligations of Borrower to Lender under (a) that certain Promissory Note in the principal amount of **ELEVEN MILLION FIFTY THOUSAND AND NO/100 DOLLARS** (\$11,050,000) with interest (the "Note") executed and delivered by Borrower to Lender on the date hereof; (b) that certain Construction Loan Agreement between Borrower and Lender of even date herewith (the "Construction Loan Agreement"); (c) that certain Mortgage and Security Agreement of even date herewith (the "Mortgage") executed and delivered by Borrower for the benefit of Lender covering the property more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") to secure the payment of the Note; and (d) any and all other documents executed by the Borrower or others as security for the Loan evidenced by the Note and the Loan Agreement (collectively, the "Loan Documents"). *All defined terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.*

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals, and as an inducement to the Lender to make the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, Borrower's right, title and interest in and to the following:

(a) Any and all oral and written leases and other agreements for the use or occupancy made or agreed to by, any person or entity and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(d) Any guaranties (collectively, the "Guaranties") of any of the Leases, and the rights, powers, privileges, and other benefits of the Borrower under the Guaranties;

(e) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Borrower under the Leases, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Borrower is or may become entitled to under the Leases;

(vi) the right to exercise any option required or permitted;

and Borrower hereby authorizes Lender, upon the occurrence of an Event of Default:

(vii) to manage the Property and let and relet the Property, or any part thereof according to Lender's own discretion;

(viii) to prosecute or defend any suits in connection with the Property in the name of any or all of Lender or Borrower as it may consider desirable;

(ix) to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Borrower;

(x) to make such repairs to the Property as Lender may deem reasonably advisable; and

(xi) to do anything in or about the Property that Lender may deem reasonably advisable or that the Borrower has the right or power to do.

**TO HAVE AND TO HOLD** unto Lender, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this instrument constitutes a present assignment of the foregoing Leases, Rights, Rents, Guaranties, Damages, interests and privileges, Borrower shall have the right and license to collect and use all rentals due under the Leases, and, subject to the covenants and restrictions on Borrower contained in Section III and the other paragraphs of this assignment, to exercise the Rights herein, provided, however, that such license shall be revoked upon the occurrence of an Event of Default.

### **III. COVENANTS**

**3.1 No Other Assignment.** Borrower warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the rents due or to become due thereunder, that there has been no previous and, without Lender's prior written consent as to form and substance, Borrower will permit no future assignment (as collateral or otherwise) of the Borrower's right, title, and interest in any of the Leases, that the Leases are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Lender, that, to the best of Borrower's knowledge, the lessees are not in default under the Leases and have no defenses, setoffs, or counterclaims against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Lender by Borrower.

**3.2 Management.** At all times until this Assignment is released, or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or constructive possession of the Property, Borrower shall cause the Property to be managed in



accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Borrower shall not collect any of the Rents in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Borrower shall not terminate or alter, modify, amend, change or in any manner any of the terms of any of the Leases or the Guaranties, or give any consent, concession, or waiver under any of the Leases, or exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Property, or accept the surrender thereof or consent to any assignment or subletting under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Lender, which consent will not be unreasonably withheld. Borrower shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Property, or subordinate any of the Leases to any security deed, mortgage, or other encumbrance, or permit, consent, or agree to such subordination without the prior written consent of the Lender. Borrower shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Lender, and in the event Lender requests that such a specific action be taken, to use all efforts to cause such action to be taken promptly. Borrower shall execute and deliver, at the written request of Lender, all such further assurances and assignments as Lender from time to time shall require.

**3.3 Execution of Leases.** Borrower shall enter into leases only on a form approved by Lender, and at a rental rate of not less than \$17.50 per square foot and for terms of not less than five (5) years unless the Lender's prior written consent is first obtained (which such consent will not be unreasonably withheld). Borrower shall make no modifications to the Lender-approved form of lease which would such modification would reduce the rental due and payable thereunder or reduce the term of the Lease without the Lender's prior written consent. The form of lease previously submitted by the Borrower to the Lender is hereby approved.

**3.4 Notice of Lessor's Default.** Borrower shall cause notice to be given to Lender of any notice of default by the lessor under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's Lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject Lease having any right to terminate the Lease by reason of such default.

**3.5 Lender to be Creditor of Lessee.** To the extent permitted by law, Lender shall be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Borrower hereby assigns to Lender any and all Damages and any and all money received

in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Lender to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Lender as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due. To the extent permitted by law, Borrower hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

#### **IV. DEFAULTS AND REMEDIES**

##### **4.1 Defaults.**

(a) The failure of the Borrower properly and timely to perform or observe any covenant or condition set forth in this Assignment or any other loan document which is not cured within applicable cure periods as set forth herein or therein or, if no cure period is specified therefore, is not cured within thirty (30) days of Lender's Notice to Borrower of such default shall constitute an Event of Default hereunder; provided, however, that Borrower shall have a reasonable period of time following the expiration of such initial thirty-day cure period within which to cure such default if the same is not reasonably capable of being cured during the initial thirty (30)-day cure period.

(b) The occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall also constitute an Event of Default hereunder.

##### **4.2 Exercise of This Assignment of Leases and Rents.**

(a) Lender may exercise the assignment hereby granted upon the occurrence and during the continuation of any Event of Default and pursue its rights to collect the Rents or manage the Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender and without waiving such Event of Default.

(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Borrower such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender, from time to time upon the occurrence of any Event of Default under this Assignment, shall have all the rights granted hereby.

**4.3 Nature of Remedies.** No delay or omission on the part of Lender in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or



together against Borrower or the Property, or either of them, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

**4.4 Application of Rents.** Lender shall have the power to apply the Rents and Damages in such order as Lender may determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note to the payment of the Loan Documents, including without limitation the payment of all advances and expenses incurred by Lender under the Mortgage, and all expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the expenses and fees of all attorneys, agents, and servants, which expenses Lender may deem to be necessary to exercise the powers granted to the Lender hereunder; provided, however, that if the Loan has not been accelerated, Lender agrees that it will apply such Rents and Damages to the installment next coming due under the Loan. The receipt by Lender of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

**4.5 Limitation of Lender's Obligations.** Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Lender shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Lender's management of the Property other than for damages arising from Lender's gross negligence or willful misconduct. Lender shall not be liable to any lessee under the Leases for the return of any security deposit made under any Lease of any portion of the Property unless Lender shall have received such security deposit from the lessor of such lessee. Lender shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Lender be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Lender a mortgagee in possession of the Property or any part thereof.

**4.6 Reimbursement.** Borrower shall reimburse, indemnify, and hold harmless Lender for and from any and all expenses, losses, damages, and liabilities which Lender may incur by reason of this Assignment, any of the rights granted in this Assignment, except for any such expense, loss, damage or liability caused by Lender's gross negligence or willful misconduct. Any and all amounts due to Lender under this Section 4.6 shall be immediately due and payable following written notice to Borrower, and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

**4.7 Authorization to Lessees.** Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Lender is rightfully entitled to such rent.

## **V. MISCELLANEOUS**

**5.1 Modification of Loan Terms.** If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, or if the Loan is renewed, modified, or replaced, or if any security for the Loan is released, Borrower and any other parties now or hereafter liable therefor or interested in the Property shall be held to consent to such extensions, renewals, modifications, replacements, and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Lender.

**5.2 Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of Borrower and Lender and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Property.

**5.3 Notices.** Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notice as set forth in the Loan Agreement.

**5.4 Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

**5.5 Severability.** If any term, restriction or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by Law.

**5.6 Termination.** The recording of a satisfaction of the Mortgage executed by Borrower for the use and benefit of Lender as security for the Loan by Lender shall terminate this Assignment.

**5.7 Waiver of Jury Trial.** BORROWER WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS

**WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

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**IN WITNESS WHEREOF**, Borrower has caused this Assignment to be executed by its duly authorized general partner on the day and year first above written.

**BORROWER:**

**MEADOW BROOK SOUTH 2700, L.L.C.,**  
a Delaware limited liability company

By: Daniel Realty Company,  
an Alabama general partnership  
Its Operating Member

By: Daniel Equity Partners Limited Partnership,  
a Virginia limited partnership  
Its Managing General Partner

By: Daniel Equity Corporation I,  
a Virginia corporation  
Its General Partner

By:   
\_\_\_\_\_  
Jack R. Peterson  
Its Vice President

STATE OF ALABAMA     )

JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jack R. Peterson, whose name as Vice President of Daniel Equity Corporation I, a Virginia corporation, the general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, the managing general partner of Daniel Realty Company, an Alabama general partnership, the operating member of Meadow Brook South 2700, LLC, a Delaware limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, in its capacity as the managing general partner of Daniel Realty Company, an Alabama general partnership, in its capacity as operating member of Meadow Brook South 2700, L.L.C., a Delaware limited liability company.

Given under my hand and seal of office this 17 day of December, 1998.

  
Notary Public

[NOTARIAL SEAL]

My commission expires: 1/22/2000

## EXHIBIT A

### LEGAL DESCRIPTION

Lot 11H, Meadow Brook Corporate Park South, Phase II, Resurvey No. 4 as recorded in Map Book 24, Page 42 in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

Begin at the Easternmost corner of Lot 11H, Meadow Brook Corporate Park South, Phase II, Resurvey No. 4 as recorded in Map 24, Page 42 in the office of the Judge of Probate of Shelby County, Alabama and run North  $66^{\circ}41'47''$  West along the Southwesterly right-of-way line of Corporate Drive a distance of 431.58 feet to the P.C. (point of curve) of a curve to the left have a radius of 211.67 feet and a central angle  $8^{\circ}20'18''$  and chord bearing of North  $70^{\circ}51'56''$  West; thence in a Northwesterly direction along the arc of said curve and along the Southwesterly right-of-way line of Corporate Drive a distance of 30.80 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve and along the Southwesterly right-of-way line of Corporate Drive, North  $75^{\circ}02'05''$  West a distance of 353.72 feet to a point; thence South  $0^{\circ}25'10''$  East a distance of 97.46 feet to a point; thence South  $15^{\circ}00'40''$  West a distance of 43.23 feet to a point; thence South  $0^{\circ}25'10''$  East a distance of 460.67 feet to a point; thence South  $22^{\circ}45'40''$  East a distance of 235.47 feet to a point; thence North  $90^{\circ}00'$  East a distance of 222.93 feet to a point on the Northwesterly right-of-way line of Alabama Highway No. 119; thence North  $46^{\circ}13'30''$  East along the Northwesterly right-of-way line of said Alabama Highway No. 119 a distance of 188.26 feet to the P.C. (point of curve) of a curve to the left having a radius of 1847.32 feet and a central angle of  $16^{\circ}22'53''$  and a chord bearing of North  $38^{\circ}02'04''$  East; thence along the arc of said curve in a Northeasterly direction along the Northwesterly right-of-way line of Alabama Highway No. 119 a distance of 528.17 feet to the POINT OF BEGINNING.

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