


**Prepared By, And After
Recording Return To:**
Linda J. Peacock
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20151027000375140 1/8 \$35.00
Shelby Cnty Judge of Probate, AL
10/27/2015 02:57:40 PM FILED/CERT

STATE OF ALABAMA)

SHELBY COUNTY)

ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

THIS ABSOLUTE ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made as of is made as of October 27, 2015, by **2700 CORPORATE DRIVE, LLC**, an Alabama limited liability company ("Assignor"), whose address is 5395 Emery Way, Suite 200, Hoover, Alabama 35244, in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("Assignee"), whose address is 420 North 20th Street, 6th Floor, Birmingham, Alabama 35203, Attn: Hank Patterson.

Assignee is making a Loan to Assignor in the aggregate principal amount of \$10,080,000.00 (the "Loan") pursuant to a Loan Agreement of even date herewith between Assignor and Assignee (the "Loan Agreement"), as evidenced by a promissory note of even date herewith in said amount (the "Note") and secured by, among other things, a mortgage of even date herewith (the "Mortgage") encumbering certain real property more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"). The Loan Agreement, the Note, the Mortgage, this Assignment and all other documents executed in connection with the consummation of the Loan or the Obligations (as defined below) and amendments, modifications, extensions, refinancings, renewals, consolidations, substitutions, and replacements of any of the foregoing, are referred to herein, collectively, as the "Loan Documents."

NOW, THEREFORE, in consideration of the Loan and the promises and covenants contained herein and in the Loan Documents, Assignor does hereby absolutely and presently assign, transfer and set over unto Assignee, its successors and assigns, (A) all of the rents, royalties, bonuses, issues, profits, revenue, income, deposits (including without limitation tenant security deposits), escrow accounts, contracts, sales proceeds and other benefits derived from the Property or arising from the use or enjoyment of any portion thereof or from any existing or future lease or sales agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, together with any and all rights that Assignor may have against any tenant under such leases or any subtenants or occupants of any part of the Property, or against any purchaser under any sales contract and any award made hereafter to Assignor in any court proceeding involving any of the tenants or in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and all payments by tenants in lieu of rent (all hereinafter collectively called the "Rents"); and (B) all existing and future leases, including subleases, and all existing and future contracts related to all or any portion of the Property, and any and all extensions, renewals, modifications, and replacements thereof, and all guaranties of tenants' performance thereunder, upon any part of the Property (collectively, the "Leases"). It is understood and agreed by the parties that this assignment is intended to be and is an absolute assignment from Assignor to Assignee, and not merely the passing of a security interest; provided, however, that prior to an Event of Default (hereinafter defined), Assignor shall have a license, until revoked in accordance with the terms of this Assignment, to enforce the Leases and to collect the Rents as they come due but only to use the same for payment of the obligations under the Loan Documents, for

the operation and preservation of the Property and to hold such other sums so collected in trust for the benefit of Assignee. Assignor shall, upon request of Assignee, execute confirmatory assignments of any specific leases affecting any part of the Property.

Assignor further agrees with Assignee as follows:

1. Prior Approval for Actions Affecting Leases.

(a) Assignor will not enter into any Leases, other than Qualified Leases (as herein defined), without Assignee's prior approval of the form and content of such Lease. Assignor shall not, without the prior written consent of Assignee, which consent shall not be unreasonably withheld and which consent shall be deemed to have been given if Assignee does not respond within thirty (30) days of Assignor's written request for consent: (i) receive or collect Rents not yet due under the terms of any of the Leases; (ii) waive or release any obligation of any tenant under the Leases or any party liable under the Leases; (iii) except upon default by the tenant under a Lease, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases; or (iv) change, alter or modify any of the Leases.

(b) As used herein, the term "Qualified Lease" means (1) existing Leases as of the date of this Assignment (unless modified without Assignee's consent) and (2) future Leases that either Assignee approves in writing or that meet the following criteria: (i) the proposed lease provides a rental rate and annual rent escalations customary for comparable leased space in the Applicable Market; (ii) the proposed lease does not have a free or reduced rent period that exceeds the customary free or reduced rent periods for comparable leased space in the Applicable Market; (iii) the proposed lease is written on a lease form previously approved by Assignee and provides, in a manner approved by Assignee, that the lease is junior and subordinate to the lien of the Mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of Assignor upon any foreclosure of the Mortgage; and (iv) the proposed lease has a lease term of not more than five years after the Maturity Date defined in the Note. As used herein, the term "Applicable Market" means the market for commercial office property in Jefferson and Shelby Counties, Alabama, of the same class as the Property. Assignee shall not be responsible for monitoring whether the Leases are Qualified Leases and shall have no liability to Assignor or any other person if Assignor enters into Leases that are not Qualified Leases. Assignee, by failing to object to any Lease or by exercising rights with respect to any Leases, shall not be deemed to waive any default or Event of Default (including without limitation defaults due to entering into a Lease that is not a Qualified Lease) resulting from Assignor entering into a Lease that is not a Qualified Lease.

2. Settlement for Termination. Assignor agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Assignee.

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

4. Records. Upon request by Assignee following an Event of Default, Assignor shall deliver to Assignee executed originals of all Leases and copies of all records relating thereto.

5. Right to Rely. Assignor hereby authorizes Assignee to give notice in writing of this Assignment at any time to any tenant under any of the Leases. Assignor hereby authorizes Assignee, upon the occurrence of an Event of Default, to direct any such tenant to make payment of Rents and other amounts due directly to Assignee. Assignor hereby authorizes and directs the tenants under the Leases to pay Rents to Assignee upon written demand by Assignee, without further consent of Assignor.

The tenants may rely upon any written statement delivered by Assignee to the tenants and shall have no obligation to inquire into whether an Event of Default has occurred or the circumstances giving rise to an Event of Default. Any such payment to Assignee shall constitute full acquittance to the party making such payment for the amount of such payment.

6. Priority of Leases. Except to the extent, if any, otherwise provided in a written instrument signed by Assignee, the lien of this Assignment is prior and paramount to all Leases of the Property or any part thereof.

7. Events of Default. The following shall be "Events of Default" hereunder: (a) the failure by Assignor to perform any covenant, condition or agreement contained in this Assignment; and (b) the occurrence of an Event of Default as defined in the Loan Agreement, the Note, the Mortgage or any of the other Loan Documents.

8. Remedies. If an Event of Default shall occur, Assignor's license to collect the Rents granted hereunder shall be automatically revoked without notice or demand, and Assignee may exercise any one or more of the following remedies:

(a) Assignee may: (i) regardless of whether Assignee shall have entered into possession of the Property, collect Rents in Assignee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to the payment of all Assignor's obligations and indebtedness due under or in connection with the Loan Documents (the "Obligations") as Assignee may elect in its sole discretion; (ii) take control and possession of the Property and the Rents with or without bringing any action or proceeding, including by appointment of receiver, which appointment is consented to by Assignor; (iii) make, modify, enforce, cancel or accept surrender of any Leases, evict tenants, adjust Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Assignee reasonably deems advisable in connection with the Property; (iv) apply Rents in such manner as Assignee in its sole discretion shall determine; (v) require Assignor to transfer and deliver possession of all security deposits and records thereof to Assignee; and (vi) use any other remedies permitted to Assignee under applicable law.

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

(c) No right, power or remedy conferred upon or reserved to Assignee by this Assignment is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Assignee may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

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

10. Rights and Remedies Cumulative; No Waiver.

(a) This Assignment is in addition to and not in limitation of any other rights and remedies Assignee may have by virtue of any other instrument or agreement contemporaneously herewith or hereafter executed by Assignor.

(b) Assignee shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder. A waiver by Assignee of any right or remedy hereunder on any one occasion, shall not be construed as a bar to or waiver of any such right or remedy which Assignee would have on any future occasion nor shall Assignee be liable for exercising or failing to exercise any such right or remedy. Assignor may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Assignee.

11. Interpretation; Entire Agreement. Article and section headings in this Assignment are included herein for convenience of reference only and shall not be used to construe any provision hereof or for any other purpose. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall include the other. If any of the provisions of this Assignment shall be invalid or unenforceable, the remainder of this Assignment's provisions shall not be affected thereby, and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law. This Assignment is intended to be under the seal of all parties hereto and to have the effect of a sealed instrument in accordance with the law. This Assignment, together with the other Loan Documents, embodies the entire agreement and understanding between the parties, supersedes all prior agreements and understandings related to the subject matter hereof, whether oral or written. This Assignment and the other Loan Documents may not be amended except by written agreement between Assignor and Assignee. In the event that Assignee shall waive in writing any provision or requirement hereunder, such waiver shall be effective only for the specific purposes, circumstances and duration stated in said waiver.

12. Facsimile and Counterpart. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

13. Execution of Documents; Consultation with Counsel. Assignor acknowledges and agrees that Assignor has had an opportunity to review and consider the terms and provisions of this Agreement and each of the other Loan Documents, to consult with counsel of Assignor's choice, if desired, and to suggest changes to the structure and terms of this Agreement and the other Loan Documents. Assignor represents and warrants to Assignee that Assignor is a sophisticated business party and that Assignor's execution of this Agreement and any related Loan Documents is made voluntarily and with full knowledge of the significance and effect of such agreements.

14. Applicable Law. This Assignment shall be governed by the laws of the State of Alabama.

15. Arbitration - Binding Arbitration. Assignee and each party to this agreement hereby agree, upon demand by any party, to submit any Dispute to binding arbitration in accordance with the terms of this Arbitration Program. Arbitration may be demanded before the institution of a judicial proceeding, or during a judicial proceeding, but not more than 60 days after service of a complaint, third party complaint, cross-claim, or any answer thereto, or any amendment to any of such pleadings. A

"Dispute" shall include any dispute, claim or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to any aspect of this agreement, or any related note, instrument or agreement incorporating this Arbitration Program (the "Documents"), or any renewal, extension, modification or refinancing of any indebtedness or obligation relating thereto, including without limitation, their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination, or any request for additional credit. This provision is a material inducement for the parties entering into the transactions relating to this Agreement. In the event of a court ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within 30 days of the abatement order or the time specified by the court; the party's failure to do so shall result in that party's right to demand arbitration being automatically terminated with respect to such Dispute.

(a) Governing Rules. Any arbitration proceeding will (i) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (ii) be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs, in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes are referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then at a location selected by the AAA in the state of the applicable substantive law primarily governing the Note. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(b) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(c) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Every arbitrator shall be a neutral practicing attorney or a retired member of the state or federal judiciary, in either case with a minimum of ten years' experience in the substantive law applicable to the subject matter of the Dispute. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all Disputes in accordance with the applicable substantive law and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the applicable state rules of civil procedure, or other applicable law. Judgment upon the

award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(d) Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(e) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(f) Small Claims Court. Any party may require that a Dispute be resolved in Small Claims Court if the Dispute and related claims are fully within that court's jurisdiction.


(g) Intentionally omitted.

(h) Intentionally omitted.

(i) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the Dispute shall control. This arbitration provision shall survive the repayment of the Note and the termination, amendment or expiration of any of the Documents or any relationship between the parties.

(j) **WAIVER OF JURY TRIAL. DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY A JUDGE OR JURY. TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARBITRATED PURSUANT TO THIS ARBITRATION PROGRAM.**

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

ASSIGNOR:

2700 CORPORATE DRIVE, LLC

By: [Signature]
Name: Gerald D. O'Brien
Title: Manager

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Gerald D. O'Brien, whose name as the Manager of 2700 Corporate Drive, LLC, an Alabama limited liability company, 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 company.

Given under my hand this 27 day of October, 2015.

[Signature]
Notary Public
My commission expires: FEBRUARY 14, 2019




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EXHIBIT A
LEGAL DESCRIPTION OF LAND

The following described real property situated in Shelby County, Alabama:

Lot 11-H, according to the Meadow Brook Corporate Park South, Phase II Resurvey No. 4, as the same is recorded in Map Book 24, at Page 42 in the Office of the Judge of Probate of Shelby County, Alabama.


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