

STATE OF ALABAMA )

SHELBY COUNTY )

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS is entered into by and between NSM INVESTMENTS, LLC, an Alabama limited liability company (the "**Borrower**"), and REGIONS BANK, an Alabama banking corporation (the "**Lender**"), to secure an indebtedness owing by the Borrower to the Lender, as evidenced by that certain promissory note (the "**Note**") of even date herewith, in the principal sum of EIGHT HUNDRED SIXTY THOUSAND AND 00/100 (\$860,000.00) DOLLARS, payable to the order of the Lender and executed by the Borrower, which indebtedness is described in a Loan Agreement (the "**Loan Agreement**") of even date therewith executed by the Borrower, and the Lender, and which is described in and secured by a Mortgage (the "**Mortgage**") of even date therewith executed by the Borrower to the Lender, covering the Borrower's interest, in and to the real property described in Exhibit "A" attached hereto and made a part hereof (the "**Subject Property**"). Said indebtedness is hereinafter collectively referred to as the "**Indebtedness**." The Mortgage, this Assignment of Leases and Rents, the Loan Agreement, and all other instruments executed by the Borrower further securing the Indebtedness are hereinafter collectively referred to as the "**Security Documents**."

For and in consideration of the Loan made to the Borrower by the Lender as evidenced by the Note, the Borrower has granted, transferred and assigned and by these presents does grant, transfer and assign unto the Lender all of his right, title and interest in and to the following:

1. All leases and subleases, whether written or oral, of the Subject Property, or any portion thereof, any and all extensions and renewals of said leases, and any and all further leases or subleases now existing or hereafter made, including subleases thereunder, upon or covering all or any part of the Subject Property, all such leases, subleases, and tenancies heretofore mentioned being hereinafter collectively referred to as the "**Leases**";
2. Any and all guarantees of the lessee's performance under any of the Leases; and
3. The immediate and continuing right to collect and receive all of the rents and all other sums now due or which may become due or to which the Borrower may now or shall hereafter become entitled or make demand or claim, arising or issuing from or out of the Leases (collectively hereinafter referred to as the "**Rents**").

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The Borrower represents and warrants:

(a) The Borrower has good title to the Leases and Rents hereby assigned and good right to assign the same;

(b) No other person, corporation or entity has any right, title or interest in the Leases or Rents hereby assigned;

(c) All and singular the terms, covenants, conditions and warranties of the existing Leases on the part of the lessor thereunder have been duly and punctually performed, kept, and observed;

(d) No previous sale, assignment, transfer, mortgage or pledge of the Leases or the Rents, is superior to the assignment of the Leases and Rents hereunder.

(e) No Rents due for any period subsequent to the date hereof have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised; and

(f) No lessee under any existing Lease is in default in the payment of rent.

To protect the security of this assignment, the Borrower covenants and agrees:

1. To observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the lessor, thereunder and to give prompt notice to the Lender in the event Borrower fails to observe, perform and discharge the same;

2. To enforce or secure the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of any Lease;

3. To appear in and defend any action or proceeding arising under, or occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Borrower and any lessee thereunder, and, upon request by the Lender, to do so in the name and on behalf of the Lender but at the expense of the Borrower, and to pay all costs and expenses of the Lender, including reasonable attorney's fees, in any action or proceeding in which the Lender may appear with regard to the Leases;

4. Not to pledge, transfer, mortgage or otherwise encumber or assign

future payment of the Rents during the term hereof;

5. Not to waive, excuse, condone, discount, set-off, compromise, or in any manner release or discharge any lessee of the Subject Property of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay Rents in the manner and at the place and time specified in any Lease;

It is a condition of the granting of these powers, benefits and privileges, and of the making of the assignment, and the Lender by the acceptance of this instrument so agrees, that, until an act of default shall be made by the Borrower in the performance of any of the agreements, covenants and promises in the Note, the Mortgage, the Loan Agreement or any of the Security Documents, including the making of the payments as set out in said Note, the Borrower may receive and collect the rents from the Leases; but it is covenanted and agreed by the Borrower, for the consideration aforesaid, upon or at any time after default in the payment of any Indebtedness secured hereby or in the observance or performance of any obligation, covenant or warranty set forth herein, in the Loan Agreement, or in any Security Document, or the occurrence of any event of default under the terms of any of the Note, the Loan Agreement, or any Security Document, the Lender, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies:

- (a) To collect the Rents as aforesaid, and, in the Lender's own name,
- (b) to demand, collect, receive, sue for, attach and levy on the Rents,
- (c) to give proper receipts, releases and acquittance therefor, after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees,
- (d) to apply the net proceeds thereof, together with any funds of the Borrower deposited with the Lender, upon any Indebtedness secured hereby, or by the Security Documents and in such order as the Lender may determine;
- (e) and to declare all sums secured hereby immediately due and payable and, at its option, to exercise all of the rights and remedies provided for in the Note, in the Loan Agreement, in the Security Documents, or under the terms hereof.

The collection of the Rents and application thereof as aforesaid shall not cure or waive any default or waive, modify or affect any notice of default under the Note, the Loan Agreement, the Security Documents or hereunder, or invalidate any act done pursuant to such notice. The enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the 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.

This assignment shall remain in effect as long as any part of the Indebtedness remains unpaid and upon the payment in full of said Indebtedness the Lender shall execute a release of this assignment upon the written request and at the expense of the Borrower. This assignment shall run with the land described in Exhibit "A" hereto and shall inure to the benefit of and bind the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed under seal by its duly authorized officer this 5<sup>TH</sup> day of October, 1998.

SEAL

NSM INVESTMENTS, LLC

By: *Vickie Simpson*  
Its MANAGER

This Instrument Prepared By:

Joseph W. Mathews, Jr.  
Lange, Simpson, Robinson & Somerville LLP  
417 North 20<sup>th</sup> Street, Suite 1700  
Birmingham, Alabama 35203

STATE OF ALABAMA        )

JEFFERSON COUNTY        )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Nickolas S. Marino, whose name as Manager of NSM INVESTMENTS, LLC, an Alabama limited liability company, is signed to the foregoing Assignment of Leases and Rents, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 5<sup>th</sup> day of October, 1998.

Audrey K. Season  
Notary Public        **MY COMMISSION EXPIRES OCTOBER 28, 2000**  
My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

ASSIGNMENT OF LEASES AND RENTS

Part of Block 1, of Cahaba Valley Park North, as recorded in Map Book 13, page 140 in the Probate Office of Shelby County, Alabama, situated in Section 31, township 19 South, Range 2 West, and more particularly described as follows:

Commence at the centerline point of tangent station 31 + 40.12 of Cahaba Valley Parkway; thence run Northerly along the centerline of said Cahaba Valley Parkway for 54.71 feet to a point, thence, 90° 00' 00" left and run Westerly for 30.00 feet to the point of beginning, said point being on the West right of way line of said Cahaba Valley Parkway and the Southeast corner of the Building Materials Wholesale Site, thence continue along the last stated course and along the South line of said Building Materials Wholesale Site for 220.00 feet to the southwest corner of said Building Materials Wholesale Site, said point being on the West line of said Block 1, of Cahaba Valley Park North: thence 90° 00' 00" left and run Southerly along the West line of said Block 1 for 445.14 feet to the southwest corner of the Henry Moore Site, thence 133° 38' 48" left and run Northeasterly along the West line of said Henry Moore Site for 376.45 feet to the Northwest corner of said Henry Moore Site, said point being on the West right of way line of said Cahaba Valley Parkway, thence 90° 00' 00" left to become tangent to a curve to the right; said curve having a radius of 189.32 feet and subtending a central angle of 43° 38' 49"; thence run Northwesterly along the arc of said curve and along said right of way line for 144.22 feet to the end of said curve, thence at tangent to said curve run Northerly for 54.71 feet to the point of beginning.

Situated in Shelby County, Alabama

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