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AFTER RECORDING RETURN TO:

Ray D. Gibbons  
Gordon, Silberman, Wiggins & Childs, P.C.  
1400 SouthTrust Tower  
Birmingham, Alabama 35203

Inst # 1998-40837

**ASSIGNMENT OF RENTS AND LEASES**

STATE OF ALABAMA )

COUNTY OF SHELBY )

**THIS ASSIGNMENT OF RENTS AND LEASES** (the "Assignment") is made as of the 16 day of October, 1998 by NSC 31, L.L.C., an Alabama limited liability company (the "Borrower") in favor of **SOUTHTRUST BANK, NATIONAL ASSOCIATION**, a national banking association (the "Bank"). As used in this Assignment, except as otherwise defined herein or unless the context may clearly require to the contrary, all capitalized words and phrases shall have the meaning attributed to them in that certain Construction Loan Agreement of even date herewith between the Borrower and the Bank.

**FOR VALUE RECEIVED**, Borrower hereby sells, assigns, transfers and sets over unto Bank, its successors and assigns, all of the Borrower's interest (the "Borrower's Interest") in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the property described in Exhibit "A" attached hereto, and the improvements located or to be located thereon, included but not limited to the Master Lease, and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due (collectively, the "Rents") under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (and any successor or replacement provision), including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief.

**1. BORROWER'S REPRESENTATIONS AND WARRANTIES**

The Borrower warrants and represents to the Bank, in order to induce the Bank both to make the Loan and to accept this Assignment, that:

(a) the Borrower is (or, with respect to any Assigned Leases hereafter made, will be) the sole owner and holder of the Borrower's Interest in each Assigned Lease,

(b) each of the Assigned Leases is (or, with respect to any Assigned Leases hereafter made, will be) valid and enforceable and in full force and effect, and has not been (or, with respect to any Assigned Leases hereafter made, will not be) altered, modified or amended in any manner whatsoever except as set forth in this Assignment,

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(c) none of the Rents has been or will be assigned, pledged or in any manner transferred or hypothecated, except pursuant to this Assignment, and

(d) none of the Rents, for any period subsequent to the date of this Assignment, has been or will be collected in advance of the time when such Rents become due under the terms of the Assigned Leases.

## 2. COVENANTS OF BORROWER

The Borrower covenants with the Bank that, except as may otherwise be expressly provided for in the Loan Agreement, the Borrower shall (a) observe and perform all the material obligations imposed upon the Borrower under each Assigned Lease; (b) not do, or permit to be done, anything to impair the security of any Assigned Lease; (c) promptly send to the Bank copies of each notice of default which the Borrower shall send or receive under the Assigned Leases; (d) enforce the performance and observance of the material provisions of each Assigned Lease; (e) not collect any of the Rents except as set forth in this Assignment; (f) not subordinate any Assigned Lease to any mortgage (other than the Mortgage) or other lien or encumbrance, or permit, consent, or agree to any such subordination without the prior written consent of the Bank; (g) not alter, modify or change the material terms of any Assigned Lease, nor give any consent to exercise any option required or permitted by such terms, without the prior written consent of the Bank in each such case; (h) not cancel or terminate any Assigned Lease, or accept a surrender of any Assigned Lease, without the prior written consent of the Bank in each such case; (i) not convey or transfer, and shall not suffer or permit a conveyance or transfer of, the Mortgaged Property, or of any interest in the Mortgaged Property, so as to effect directly or indirectly, approximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any other party to and under any Assigned Lease; (j) not alter, modify or change the terms of any guaranty of any Assigned Lease, and shall not cancel or terminate any such guaranty, without the prior written consent of the Bank in each such case; (k) not consent to any assignment of, or subletting under, any Assigned Lease without the prior written consent of the Bank; (l) not lease or otherwise let all or any portion of the Mortgaged Property, without the prior written consent of the Bank; (m) at the Bank's request, execute any documentation confirming the assignment and transfer to the Bank of each Assigned Lease upon all or any part of the Mortgaged Property; and (n) execute and deliver, at the request of the Bank, all other further assurances, confirmations and assignments in the Mortgaged Property as the Bank shall, from time to time, reasonably require in order to evidence or secure the rights of the Bank pursuant to this Assignment.

## 3. TERMS AND CONDITIONS OF ASSIGNMENT

3.1 Borrower's Rights Prior to Default. So long as there shall not exist any default by Borrower in the performance of any covenant or agreement of Borrower in any Assigned Lease, nor any Event of Default under and as defined in any Loan Document, nor any default by the Borrower in the performance of any covenant, agreement or obligation of the Borrower contained herein (each of the foregoing herein being called an "Event of Default"), then the Borrower shall have the right to continue to exercise all its rights and perform its obligations under the Assigned Leases, including the right to collect each payment of Rent at the time of, but not more than one (1) month prior to, the date provided in the applicable Assigned Lease for such payment, and to retain, use and enjoy such payment (subject to the terms of the Loan Documents), and to lease the Mortgaged Property or any part thereof, all subject to the provisions of this Assignment and the Loan Documents. However, in the event of any Event of Default, then the Borrower's rights, pursuant to this paragraph, to collect, retain, use, and enjoy each payment of Rent shall terminate.



3.2 Bank's Remedies Upon Default Upon, or at any time after, the occurrence of any Event of Default, and without in any way waiving such Event of Default or releasing the Borrower from any obligation under this Assignment, at the Bank's option and in its discretion, and irrespective of whether the Bank shall have commenced any other remedy under applicable Law or any other Loan Document, then the Bank may, upon notice to Borrower and with or without bringing any action or proceeding except as required by applicable Law, (i) exercise any and all rights available under applicable Law, (ii) revoke the rights of the Borrower as set forth in Section 3.1, (iii) proceed to perform any and all of the duties and obligations and exercise all the rights and remedies of the Borrower contained in the Assigned Leases as fully as Borrower could itself, (iv) lease all or any portion of the Mortgaged Property and collect the Rents, and/or (v) take possession of the Mortgaged Property or the Rents and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as the Bank may in its discretion deem proper, and, either with or without taking possession of the Mortgaged Property in the Bank's own name:

(a) make any payment or perform any act which the Borrower has failed to make or perform, in such manner and to such extent as the Bank may deem necessary to protect the security provided for in this Assignment, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security provided for in this Assignment, or the rights or powers of the Bank;

(b) lease the Mortgaged Property or any portion thereof in such manner and for such Rents as the Bank shall determine in its sole and absolute discretion; or

(c) demand, sue for, or otherwise collect and receive from all persons all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements of and to the Mortgaged Property (or any part thereof) as may seem proper to the Bank and to apply the Rents to the payment of (in such order of priority as the Bank, in its sole discretion, may determine):

(1) all expenses of managing the Mortgaged Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as the Bank may deem necessary or desirable;

(2) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which the Bank may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Mortgaged Property;

(3) all or any portion of the Loan; and/or

(4) all reasonable costs and attorneys' fees incurred in connection therewith.

Borrower hereby specifically authorizes Bank, and hereby constitutes and appoints Bank as Borrower's agent and attorney-in-fact, in Borrower's name or in Bank's name, to do any of the foregoing. The foregoing power of attorney is coupled with an interest and cannot be revoked by insolvency, bankruptcy, death, dissolution or otherwise. The foregoing remedies are cumulative of and in addition to, and not restrictive of or in lieu of, the rights and remedies provided for or allowed by any one or more of the Loan Documents, or provided for or allowed by law or in equity.

3.3 Bank's Exercise of Rights Not a Waiver. The exercise by the Bank of any rights or powers under Section 3.2 of this Assignment, including, without limitation, the collection of the Rents, and the application of the Rents as provided in this Assignment, shall not be considered a waiver by the Bank of any default by the Borrower under any Loan Document.

3.4 Bank Not Liable Except For Its Willful Tortious Misconduct or Bad Faith. The Bank shall not be liable for any loss sustained by the Borrower resulting: 1) from the Bank's failure to let the Mortgaged Property or 2) from any act or omission of the Bank in exercising its rights and remedies hereunder, unless and to the extent such loss is caused by the willful tortious misconduct, gross negligence or bad faith of the Bank. Nor shall the Bank be obligated to perform or discharge, nor does the Bank hereby undertake to perform or discharge, any obligation, duty or liability under the Assigned Leases or under or by reason of this Assignment, and the Borrower shall, and does hereby agree, to indemnify the Bank for, and to hold the Bank harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Bank by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Assigned Leases, unless resulting from the willful tortious misconduct, gross negligence or bad faith of the Bank. Should the Bank incur any such liability under any Assigned Lease, or under or by reason of this Assignment, or in defense of any claims or demands specified above in this paragraph, then the amount of all such liability, including, without limitation, costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and the Borrower shall reimburse the Bank for all such liability immediately upon demand by the Bank. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon the Bank, nor for the carrying out of any of the terms and conditions of the Assigned Leases; nor shall it operate to make the Bank responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other parties, nor for any dangerous or defective condition of the Mortgaged Property, nor for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any Tenant, employee or others, unless and to the extent resulting from the willful tortious misconduct, gross negligence or bad faith of the Bank.

3.5 Termination of Agreement. Upon payment in full by the Borrower of the Loan, and provided that the Bank has no further obligation to the Borrower or otherwise under the Loan Documents, then this Assignment shall become and be void and of no effect, provided, however, 1) this Assignment shall continue to secure the obligations of the Borrower to the Bank pursuant to this Assignment as and to the extent that any payment by the Borrower to the Bank is avoided or is required to be disgorged by the Bank, and 2) the affidavit, certificate, letter or statement of any officer, agent or attorney of the Bank showing any part of the Loan to remain unpaid, or any obligation of the Bank to exist (each such affidavit, certificate, letter or statement being called an "Bank's Certification"), shall be and constitute presumptive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may, and is hereby authorized to, rely on such Bank's Certification.

3.6 Borrower's Authorization With Respect to Other Parties. The Borrower hereby authorizes and directs each party to any Assigned Lease (other than the Borrower), upon receipt from the Bank of written notice to the effect that an Event of Default exists, to perform all of its obligations under the Assigned Lease as directed by Bank (including, if so directed, the payment of all Rents to Bank), and to continue to do as so directed until otherwise notified by the Bank.

3.7 Release or Application of Security by Bank. The Bank: 1) may take or release other security for the payment of the Loan, 2) may release any party primarily or secondarily liable for the Loan



or any part thereof, and 3) may apply any other security held by the Bank to the satisfaction of the Loan, without, in each case, prejudice to any of the Bank's rights under this Assignment.

3.8 Borrower's Indemnity of Bank. Notwithstanding anything to the contrary in any Loan Document, the Borrower shall indemnify and hold the Bank harmless from, and defend the Bank, at the Borrower's sole cost and expense, against all Indemnified Losses arising out of or in connection with this Assignment (unless arising from Bank's own misconduct or gross negligence), and all such Indemnified Losses shall be payable by the Borrower to the Bank, on demand by the Bank, and, until reimbursed by the Borrower pursuant to the terms of this Assignment, shall be secured by this Assignment and shall bear interest at the Default Rate.

3.9 No Waiver by Bank. Nothing contained in this Assignment, and no act done or omitted by the Bank pursuant to the powers and rights granted to it under this Assignment, shall be deemed to be a waiver by the Bank of its rights and remedies under the Loan Documents other than this Assignment. This Assignment is made and accepted without prejudice to any right or remedy of the Bank under the terms of such other Loan Documents.

3.10 Bank's Rights Cumulative And May Be Exercised Separately. The right of the Bank to collect the Loan, and to enforce any of its rights and remedies under any Loan Document, may be exercised by the Bank either prior to, simultaneously with, or subsequent to any action taken by the Bank under this Assignment.

3.11 Cooperation By Borrower. The Borrower will, at the cost of the Borrower, and without expense to the Bank, do, execute, acknowledge and deliver such further acts, conveyances, assignments, notices of assignments, transfers and assurances as the Bank shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Bank the property and rights assigned by this Assignment, or intended now or hereafter to be assigned by this Assignment, or which the Borrower may be or may hereafter become bound to convey or assign to the Bank, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment. On demand, the Borrower will execute and deliver, and hereby authorizes the Bank to execute in the name of the Borrower to the extent the Bank may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien of this Assignment upon the Assigned Leases.

3.12 Notices. All notices given pursuant to this Assignment shall be given (and deemed received) in the manner set forth in the Loan Agreement.

3.13 Successors and Assigns. This Assignment, together with the covenants, representations and warranties contained in this Assignment, shall inure to the benefit of the Bank and each subsequent holder of the Mortgage and shall be binding upon the Borrower, and its successors and assigns and any subsequent owner of the Mortgaged Property (or any part thereof or interest therein).

3.14 No Oral Changes. This Assignment may only be modified, amended or changed by an agreement in writing signed by the Borrower and the Bank, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Bank. No waiver of any term, covenant or provision of this Assignment shall be effective unless given in writing by the Bank and if so given by the Bank shall only be effective in the specific instance in which given.

3.15 Severability. Whenever possible, each provision of this Assignment shall be interpreted

in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be unenforceable or prohibited by, or invalid under, applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Assignment.

3.16 Entire Agreement. The Borrower acknowledges that the Loan Documents set forth the entire agreement and understanding of the Borrower and the Bank with respect to the Loan and that no oral or other agreement, understanding, representation or warranty exists with respect to the Loan other than as set forth in the Loan Documents.

3.17 No Trial By Jury. THE BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND THE BANK (BY ITS ACCEPTANCE OF THE MORTGAGE AND THIS ASSIGNMENT) IRREVOCABLY AND UNCONDITIONALLY WAIVES, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO, ANY OF THE LOAN DOCUMENTS HERETOFORE, NOW OR HEREAFTER EXECUTED OR DELIVERED, OR IN CONNECTION WITH THE LOAN, OR IN ANY WAY RELATED TO THIS TRANSACTION OR OTHERWISE WITH RESPECT TO THE PROPERTY OR ANY OF THE ASSIGNED LEASES.

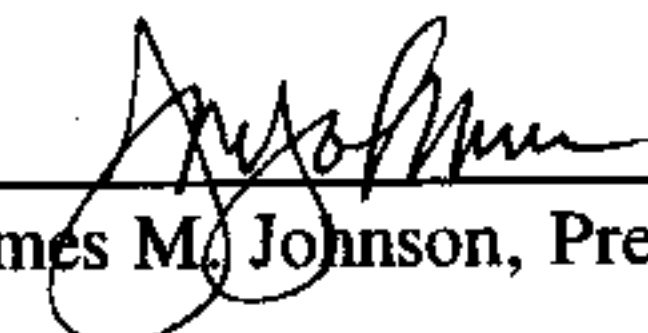
3.18 Binding Effect. This agreement shall be binding upon the Borrower, its successors and assigns and subsequent owners of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Bank, its successors and assigns and any holder of the Note.

IN WITNESS WHEREOF, Borrower has caused these presents to be properly executed as of the day and year first above written.

NSC 31, L.L.C.  
an Alabama limited liability company

By: JOHNSON INVESTMENT COMPANY, LTD.  
an Alabama limited partnership,  
its Managing Member


By: JOHNSON DEVELOPMENT, INC.  
an Alabama corporation,  
its General Partner

By:   
James M. Johnson, President

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James M. Johnson, whose name as President of Johnson Development, Inc., an Alabama corporation, as General Partner of Johnson Investment Company, Ltd., an Alabama limited partnership, as Managing Member of NSC 31, L.L.C., 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as General Partner of said limited partnership, acting in its capacity as Member of said limited liability company as aforesaid.

Given under my hand and official seal, this the 11th day of October, 1998.

 (SEAL)  
Notary Public  
My Commission Expires: 11/10/2001

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

A part of the SW 1/4 of Section 13, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

From the SW corner of said SW 1/4 of the SW 1/4; thence South 89 deg. 53 min. 33 sec. East along the Section line, 969.65 feet to a point on the Easterly right of way line of U.S. Highway No. 31; thence North 12 deg. 00 min. 06 sec. West along said right of way line, 428.12 feet; thence leaving said right of way run North 89 deg. 58 min. 10 sec. East, 62.48 feet; thence North 00 deg. 01 min. 50 sec. West, 9.86 feet to the point of beginning; thence North 89 deg. 58 min. 10 sec. East, 190.50 feet; thence North 00 deg. 01 min. 50 sec. West, 95.50 feet; thence South 89 deg. 58 min. 10 sec. West, 116.04 feet; thence North 37 deg. 16 min. 22 sec. West, 17.85 feet; thence South 67 deg. 52 min. 18 sec. West, 89.88 feet; thence South 49 deg. 25 min. 47 sec. East, 25.85 feet; thence South 00 deg. 01 min. 50 sec. East, 59.07 feet to the point of beginning; being situated in Shelby County, Alabama.

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