

STATE OF ALABAMA

COUNTY OF SHELBY

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ASSIGNMENT OF LEASES
RENTS AND PROFITS

THIS ASSIGNMENT OF LEASES made this 31st day of March, 1995, by **SUNSHINE, L.L.C.** an Alabama Limited Liability Company (hereinafter called "Borrower") whose address is 2195 Lake Drive Parkway, Birmingham, Alabama 35244 to **FIRST COMMERCIAL BANK** whose address is 2000 SouthBridge Parkway, Birmingham, AL 35209 (hereinafter called "Lender");

W I T N E S S E T H:

Borrower, in consideration of the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration paid by Lender, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, ASSIGN, TRANSFER and SET OVER unto Lender, its successors and assigns, the following:

A. All rents and other sums of money that may now and at any time hereafter become due and payable to Borrower under the terms of the Leases; and

B. Any and all monies, awards or other payments paid or payable by any and all lessees under the Leases in lieu of rent including but not limited to any damages (all such monies, awards or payments including but not limited to damages herein collectively called the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property; and

C. Any and all revenues, profits, royalties, rights and benefits for the Property.

This Assignment of Leases is made by Borrower as additional security for the payment of: (a) the promissory note of even date herewith in the principal amount of ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS made by Borrower and payable to the order of Lender, with interest at the rate provided therein, and all other notes given in substitution therefor or in renewal or extension thereof (hereinafter collectively called the "Note"); and (b) all indebtedness now or hereafter incurred arising under or secured by the Mortgage, Assignment of Rents and Leases, and Security Agreement of even date herewith (hereinafter called the "Mortgage") from Borrower to Lender encumbering the Property; SUBJECT, HOWEVER, to the terms, provisions and conditions herein set forth.

1. THIS INSTRUMENT IS ~~A PRESENT ASSIGNMENT~~ ^{AN ASSIGNMENT} OF BORROWER'S RIGHTS IN THE LEASES. Lender shall have the right, power and

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privilege (but shall be under no duty) immediately to demand, collect and sue for, in its own name, or in the name of Borrower, all rents and other sums of money due and payable under the Leases, as they become due and payable, including those past due and unpaid, and to apply such rents and other sums of money to the payment of the Note and other indebtedness secured by this Mortgage, principal, interest, expenses and attorneys' fees, in such order as the Lender in its sole discretion may determine. Notwithstanding the foregoing, until a default by Borrower under the Note or the Mortgage, Lender shall permit Borrower to collect such rents and revenues. In the event of any default under the Note or the Mortgage, or the occurrence of an event or circumstance which with the lapse of time or the giving of notice or both would constitute a default under the Note or Mortgage, Lender may at its option terminate Borrower's permission to receive rents and revenues from the Property, and all rents and revenues shall thereafter be paid directly by the lessees or other payors to Lender. Lender shall also have the right, power and privilege (but shall be under no duty) to take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper and Lender may apply any rents and other sums of money received hereunder to the payment (in such order as Lender may determine) of: (a) all expenses of managing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including without being limited thereto, all taxes, assessments, charges, claims, utility costs, and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property and/or collecting the rents and other sums of money due and payable under the Leases; and (b) the Note and other indebtedness secured by the Mortgage, principal, interest, attorneys and collection fees, in such order as Lender in its sole discretion may determine. A written demand by Lender on each lessee for the payment of rent and other sums of money that become due under the Leases shall be sufficient to warrant such lessee to make all future payments of such rents and other sums of money directly to Lender without the necessity for further consent by Borrower. Each such lessee shall be entitled to rely upon a written demand by Lender for such payment and shall be fully protected from any claims by Borrower for all payments made to Lender after receipt of such written demand.

2. Borrower hereby represents, covenants and warrants unto Lender that Borrower is the sole owner of the entire lessor's interest in the Leases; that Borrower has not executed any prior assignments of the Leases or the rents and other sums of money that become due and payable thereunder; that no rent reserved in the Leases or any of them has been assigned or anticipated and no rent for any period subsequent to the date of this Assignment has been

collected in advance of the time when the same became due under the terms of the applicable Lease; that Borrower has performed no act or executed any other instrument which might prevent Lender from enjoying and exercising any of its rights and privileges evidenced hereby; that Borrower has not executed or granted any modifications to any existing Leases except as previously disclosed to Assignee; that all existing Leases are valid and in full force and effect; that there exists no defense, counterclaim or set off to the payment of the rent under the Leases; and that there are no defaults now existing under the Leases and no event has occurred which with the passage of time or the giving of notice, or both, would constitute a default.

3. Borrower agrees that, so long as the indebtedness evidenced by the Note or any part thereof shall remain unpaid, Borrower will make no assignment, pledge or disposition of the Leases or the rents and other sums of money that become due and payable thereunder; nor will Borrower subordinate any of the Leases to any deed of trust or mortgage or any other encumbrance of any kind except the Mortgage or permit, consent or agree to such subordination; nor will Borrower reduce the rent or other sums of money payable under any of the Leases, modify, alter or amend the Leases or give any consent, concession or waiver or exercise any option required or permitted by the terms of any of the Leases; nor will Borrower cancel or terminate any of the Leases, accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of lessee thereunder; nor will Borrower, except to the extent required by the terms of any of the Leases, consent to an assignment or sublease of the interest and estate of the lessees under any of the Leases; nor will Borrower modify or change the terms of any guaranty of any of the Leases or cancel or terminate such guaranty; nor will Borrower enter into additional leases covering any portion of the Property except on the standard form lease approved by Lender without first having obtained the written consent of Lender; and any such acts, if done or permitted to be done without the prior written consent of Lender, shall be null and void and shall constitute a default under the Note and Mortgage.

4. Borrower covenants with Lender to observe and perform all the obligations imposed upon the lessor under the Leases and not to do or permit to be done anything to impair the security thereof; to exercise any option or election contained in or relating to any of the Leases which Lender shall require; at Lender's request to assign and transfer to Lender by specific assignment of leases, in the form of this Assignment of Leases, any and all subsequent Leases upon all or any part of the Property (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this

Assignment of Leases as provided herein); and to execute and deliver at the request of Lender all such further assurances and assignments in the premises covered by the Leases as Lender shall from time to time require.

5. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property unless such loss is caused by the willful misconduct and bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under said Leases or under or by reason of this instrument or the exercise of rights or remedies hereunder. Borrower shall and does hereby agree to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this instrument or the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Lender incur any such liability under the Leases or under or by reason of this instrument or the exercise of rights or remedies hereunder or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, failing which Lender may, at its option, declare all indebtedness secured hereby and by the Mortgage to be immediately due and payable. This Assignment of Leases shall not operate to place responsibility upon Lender for the control, care, management or repair of the Property, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

6. Nothing contained herein and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note and the Mortgage or a waiver or curing of any default hereunder or under the Note and/or the Mortgage, and this Assignment of Leases is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of the Note and the Mortgage. The right of Lender to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Lender wither prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. If the Note and all other indebtedness secured hereby and by the Mortgage be paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in the Mortgage and in this Assignment of Leases are kept and performed, this Assignment of Leases shall become null and void and of no further force and effect but the affidavit, certificate, letter or statement of any officer, agent or attorney of Lender showing any part of the Note or such other indebtedness to remain unpaid or any of such covenants, warranties, undertakings and agreements not to be kept or performed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment of Leases and any person may, and is hereby authorized to, rely thereon. Borrower hereby authorizes and directs the lessees named in the Leases or any other or future lessee or occupant of the premises described therein or of the Property or any part thereof, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and Mortgage, to pay over to Lender all rents and other sums of money arising or accruing under any of the Leases or from the premises described therein or any other portion of the Property and to continue so to do until otherwise notified by Lender.

8. Lender shall be and is deemed to be the creditor of each lessee under the Leases in respect of any and all claims for damages, assignment 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 in such proceeding 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 proceeding with option to Lender to apply Damages or any money received by Lender as such creditor in reduction of the indebtedness (in the inverse order of maturity) secured by or to be paid under the Mortgage. Borrower hereby appoints Lender attorney-in-fact to appear in any action and/or to collect any such money or payment.

9. Lender may take or release other security for the payment of the Note and other indebtedness secured by the Mortgage, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the Note and such other indebtedness without prejudice to any of its rights under this Assignment of Leases.

10. Lender may at any time and from time to time in writing (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which hereunder Borrower is prohibited from doing, or consent to Borrower failing to do any act which hereunder Borrower is required to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property and/or the Leases, or any interest therein from this Assignment of Leases. No such act shall in any way impair the rights of Lender hereunder except to the extent specifically agreed to by Lender in such writing.

11. The rights and remedies of Lender hereunder shall not be impaired by any indulgence, including but not limited to (a) any renewal, extension or modification which Lender may grant with respect to any indebtedness secured hereby, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of any item of the Property and/or the Leases or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.

12. A determination that any provision of this Assignment of Leases is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment of Leases to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

13. Notwithstanding the conveyance or transfer of title to any or all of the Property to any lessee under any of the Leases, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment of Leases.

14. The terms, provisions, representations and warranties herein contained shall be binding upon Borrower and the successors and assigns of Borrower, and shall inure to the benefit of Lender, its successors and assigns. All references in this Assignment of Leases to Borrower or Lender shall be deemed to include all such successors and assigns of such respective party.

15. BORROWER AND LENDER WAIVE, TO THE FULL EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THIS AGREEMENT AND IN ANY LITIGATION CONCERNING ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OF SET-OFF OR SIMILAR CLAIM OF ANY NATURE THAT BORROWER MAY ASSERT AGAINST LENDER.

IN WITNESS WHEREOF, Borrower has caused this Assignment of Leases to be executed on the day, month and year first above written.

SUNSHINE, L.L.C., an Alabama
Limited Liability Company

By:


R. WAYNE LAGLE,
MANAGING MEMBER

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for County in said State, hereby certify that R. Wayne Lagle, whose name as Managing Member of SUNSHINE, L.L.C., an Alabama Limited Liability Company is signed to the foregoing Assignment, and who is known to me, acknowledged before me on this day that, being informed of the contents of the assignment, he in his capacity as such Managing Member executed the same for and as the act of said Limited Liability Company.

Given under my hand this 31st day of March, 1995.


Notary Public

Commission Expires: 11/9/98

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