

1157

STATE OF ALABAMA     )  
                              :  
COUNTY OF SHELBY     )

This Instrument Prepared By:

Michael J. Brandt, Esq.  
Bradley, Arant, Rose & White  
1400 Park Place Tower  
Birmingham, Alabama 35203

THIS MORTGAGE AND ASSIGNMENT OF LEASES (this "Mortgage") is made and entered into on this the 12<sup>th</sup> day of May, 1987, by and between John R. Saunders, (herein called "Mortgagor"), and First Commercial Bank (herein called "Mortgagee"),

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee for money loaned, as evidenced by promissory note of even date herewith, in the amount of \$179,000; and

WHEREAS, Mortgagor is desirous of securing the prompt payment of the indebtedness evidenced by said note, and the several installments of principal and interest therein provided for; and

WHEREAS, Mortgagor may hereafter become indebted to said Mortgagee for additional sums loaned and/or on account of indebtedness which may accrue to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee under the provisions of this mortgage; and Mortgagor wishes to execute this conveyance for the security and enforcement of the payment both of said present and any such future indebtedness;

NOW, THEREFORE, the undersigned, in consideration of said premises, the disbursement to Mortgagor of the aforesaid sum of \$179,000, the receipt of which is acknowledged, to secure the prompt payment of said indebtedness with interest thereon, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and further to secure the performance of the covenants, conditions and agreements hereinafter and in said note set forth, Mortgagor has bargained and sold and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the following described real estate, lying and being in the County of Shelby, State of Alabama, to-wit:

A parcel of land located in the SE 1/4 of the SE 1/4, Section 22, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Begin at the Southwest corner of Lot 9, of Parkside, as recorded in Map

Book 7 page 136 in the Office of the Judge of Probate of Shelby County, Alabama; thence in an Easterly direction along the North line of said Lot 9, a distance of 111.43 feet; thence 114 deg. 24 min. 08 sec. left in a Northwesterly direction a distance of 381.58 feet to a point on the Southerly right of way line of Alabama Highway No. 119; thence 71 deg. 58 min. 32 sec. left in a Southwesterly direction along said right of way line a distance of 106.72 feet; thence 90 deg. right in a Northwesterly direction along said right of way line a distance of 10.0 feet; thence 90 deg. 18 min. 30 sec. left in a Southwesterly direction along said right of way line a distance of 33.62 feet; thence 111 deg. 58 min. 38 sec. left in a Southeasterly direction a distance of 389.38 feet to the point of beginning; being situated in Shelby County, Alabama.

Part of the SE 1/4 of the SE 1/4 of Section 22, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: From the Northwest corner of Lot 9, Parkside, a map of which is recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 7, Page 136, run in an Easterly direction along the North line of said Lot 9 for a distance of 111.43 feet to an existing iron pin being the point of beginning; thence continue along last mentioned course for a distance of 54.90 feet to an existing iron pin; thence turn an angle to the left of 114 deg. 24 min. 08 sec. and run in a Northwesterly direction for a distance of 387.99 feet to an existing iron pin being on the South right of way line of Alabama Highway No. 119; thence turn an angle to the left of 71 deg. 58 min. 32 sec. and run in a Westerly direction along said right of way line for a distance of 52.58 feet to an existing iron pin; thence turn an angle to the left of 108 deg. 01 min. 28 sec. and run in a Southeasterly direction for a distance of 381.58 feet to the point of beginning; being situated in Shelby County, Alabama.

TOGETHER WITH all and singular the rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining, and all rights, title and interests, if any, of Mortgagor in and to any streets, alleys, roads or highways abutting the described premises; and

TOGETHER WITH structures, now or hereafter constructed thereon, and all building materials, equipment, and fittings of every kind or character now owned or hereafter acquired by Mortgagor for the purpose of constructing buildings and structures thereon, and improvements, fixtures and articles of personal property now or hereafter attached to or used or adapted for use in the operation of the mortgaged premises, all of which shall be deemed part of the realty, including, but without being limited to all carpeting, drapes, elevators, heating and incinerating apparatus and

equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, cooling, air conditioning, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures; and

TOGETHER WITH any awards hereafter made for any taking of or injury to said premises through eminent domain or otherwise, including awards or damages for change of grade, and also any return premiums or other payments upon any insurance at any time provided for the benefit of Mortgagee, all of which awards, damages, premiums and payments are hereby assigned to Mortgagee and may be at any time collected by it.

TOGETHER WITH (1) all of Mortgagor's rights further to encumber said property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Mortgagor hereby (i) representing as a special inducement to the Mortgagee to make the loan secured hereby that as of the date hereof there are no encumbrances to secure debt junior to this Mortgage and (ii) covenanting that there are to be none as of the date this Mortgage becomes of record, except in either case encumbrances having the prior written approval of Mortgagee herein, and (2) all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage other than this mortgage.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto Mortgagee, its successors and assigns, forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of said premises and has a good right to sell and convey the same as aforesaid; that the said premises are free of all encumbrances except as herein set out, and Mortgagor will warrant and forever defend the title to said premises unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

This Mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

(1) Mortgagor will pay all indebtedness secured hereby whether presently existing or hereafter incurred.

(2) That, for the benefit of Mortgagee, Mortgagor will constantly keep in force fire and extended coverage, malicious mischief, and rent coverage insurance policies and, when available and required by

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Mortgagee, war damage and other hazard insurance with respect to any and all buildings on said premises, such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if any, payable to said Mortgagee as its interest may appear, and Mortgagor hereby transfers, assigns, sets over and delivers to Mortgagee the fire and other insurance policies covering said property and any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified then Mortgagee may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest at the rate of 10% per annum from the date of payment by Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of Mortgagor, same may be applied in payment for any repair or replacement of such building, or buildings, without affecting the lien of this mortgage for the full amount hereby secured, provided, however, that the value of the building or buildings after such repairs or replacement, as determined by Mortgagee, shall equal or exceed the value of such building or buildings prior to such repair or replacement. Mortgagor agrees to give Mortgagee notice in writing of any damage to the mortgaged premises caused by fire or other casualty within ten (10) days after the occurrence of any such damage.

(3) That said premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted. Taxes and assessments or other charges which may be levied upon or accrue against said premises, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, except where contested in good faith by appropriate proceedings with adequate reserve therefor having been set aside on Mortgagor's books, and shall not in any event be permitted to become delinquent or to take priority over the lien of this mortgage.

(4) No building or other improvement on the premises shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this mortgage and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an

article of equal suitability owned by Mortgagor. In the event of any breach of this covenant the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of said principal sum immediately due and payable.

(5) That any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens such title policy shall be deemed to be sufficient security. Determination of whether said title policy protects Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

(6) That any and all legal requirements of any department of the city wherein said premises are located shall be fully complied with by Mortgagor, except where failure so to comply will not adversely affect Mortgagor's use or proposed use of the premises or Mortgagee's rights under this Mortgage.

(7) If Mortgagor fails to insure said property as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against said property or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this mortgage, Mortgagee may, at its option, insure said property and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specially secured, shall be secured by this mortgage, shall bear interest at the rate of 10% per annum from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(8) No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

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(9) If Mortgagee shall be made a party to any suit involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior to the lien of this mortgage in any respect, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee the same shall be secured by the lien of this mortgage in addition to the indebtedness specially secured hereby, and shall bear interest at the rate of 10% per annum from the date it is paid or incurred and shall be at once due and payable.

(10) All expenses incurred by Mortgagee, including attorney's fee, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured.

(11) Mortgagor agrees to pay a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this mortgage.

(12) Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be selfexecuting, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this mortgage and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate specified herein, or in the note which this mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this Mortgage; provided, however, that such awards may be used, at the option of Mortgagor, to replace or rebuild any building or buildings hereby conveyed without affecting the lien of this Mortgage for the full amount secured hereby, provided, however, that the value of the building or buildings after such replacement or repair, as determined by Mortgagee, shall equal or exceed the amount of such award.

(13) If Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may proceed to collect the rent, income and profits from the premises, either with or without the appointment of a receiver; any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be



credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

(14) It is further agreed that if Mortgagor shall fail to pay, or cause to be paid, the whole or any portion of the principal sum or any installment of interest thereon, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialman's lien, insurance premiums, taxes or assessment now, or which may hereafter be, levied against, or which may become a lien on, said property, or should default be made in any of the covenants, conditions and agreements herein contained, then and in that event the whole of said principal sum, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the debt hereby secured shall have the right to enter upon and take possession of said property and after, or without, taking such possession of the same, sell the mortgaged property at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages; the Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the mortgaged premises, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(15) In the event of the enactment of any law by the State of Alabama, after the date of this Mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this Mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation or is prohibited by law from making such payment, the whole of the principal sum secured by this Mortgage, together with the interest due thereon, shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

(16) Should Mortgagor become insolvent or bankrupt; or should a receiver of Mortgagor's property be appointed; or should Mortgagor intentionally damage or attempt to remove any improvements upon said mortgaged real estate; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on said property prior to the lien hereof; or in case of an error or defect in the above described note or this instrument or in the execution or the acknowledgment thereof; or if a homestead claim be set up to said property or any part thereof adverse to this mortgage and if the said Mortgagor shall fail for thirty (30) days after demand by the Mortgagee, or other holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or homestead claim, or to correct any error in said note or this instrument or its execution; then, upon any such default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness, or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this mortgage by the power of sale herein contained or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect.

(17) It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of said lands and premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.



If the Mortgagor shall grant any lien of any nature on the property conveyed hereby junior to this mortgage, such junior lien shall be subject to the condition that the time for the payment of the indebtedness hereby secured and the manner and amount of payment thereof, the rate of interest payable thereon, and the benefits of the security afforded hereby and by the note evidencing the indebtedness secured hereby, or any obligation contained in said note or in an instrument substituted therefor; may, without the consent of such junior lienholder, and without any obligation to give notice of any kind thereto, be changed, increased, extended, reextended or suspended on any terms whatsoever without in any manner affecting the priority of this mortgage as security for the payment of the indebtedness secured hereby.

(18) Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor that if it or any one or more of them shall hold possession of the above described property or any part thereof subsequent to foreclosure hereunder, it or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(19) The mortgaged property is improved with an approximately 4,850 sq. ft. office and warehouse building, space in which is leased to various tenants, under the provisions of lease agreements. Mortgagor hereby assigns such leases to Mortgagee as additional security for the repayment of the indebtedness secured hereby. Mortgagor agrees not to collect rent under any of said leases for more than two months in advance of the accrual thereof and to faithfully perform the covenants imposed on Mortgagor by the said leases, and agrees that any default in the performance of the obligations under any of said leases shall constitute a default under the provisions of this mortgage and shall entitle Mortgagee to all remedies provided herein in the event of default hereunder.

(20) Mortgagor covenants and agrees that, unless plans and specifications for construction have been first submitted to Mortgagee, and have been approved by it in its judgment as entailing no prejudice to the loan secured hereby, there shall be no additional improvements constructed on the property herein mortgaged, or on any adjoining land owned or controlled by Mortgagor or related business entities.

(21) Provided always that if Mortgagor pays the indebtedness secured by this Mortgage (including advances hereafter made), and reimburses Mortgagee, its successors and assigns, for any amounts it may

have expended pursuant to the authorization of this Mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

(22) Wherever and whenever in this Mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall not be deemed to have been given or served unless in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor: John R. Saunders  
Saunders, Inc.  
250 Office Park Drive  
P.O. Box 59200  
Birmingham, Alabama 35259

To Mortgagee: First Commercial Bank  
P.O. Box 11746  
Birmingham, Alabama 35202

Attn: Thomas A. Broughton, III.

or to such other address as either party may have given to the other by notice as hereinabove provided.

(23) The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

IN WITNESS WHEREOF, Mortgagor has executed these presents on this the 12 day of May, 1987.

John R. Saunders  
John R. Saunders

STATE OF ALABAMA     )  
                                  :  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John R. Saunders, who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily.

Given under my hand and official seal of office this the 12 day of May, 1987.

Alan M. Anderson  
Notary Public

[NOTARIAL SEAL]

My Commission expires: 7-25-89

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1987 MAY 14 PM 1:06

Thomas A. Anderson, Jr.  
JUDGE OF PROBATE

1. Deed Tax \$ \_\_\_\_\_  
2. Mtg. Tax 268.50  
3. Recording Fee 27.50  
4. Indexing Fee 1.00  
TOTAL 297.00