

622

CONSTRUCTION LOAN MORTGAGE DEED AND SECURITY AGREEMENT

Mortgagors/Debtors (last name first):

MOUSTAPHA, Ismail & Layla
2650 Paden Place
mailing address
Birmingham, Alabama 35226
City State Zip

Mortgagee/Secured Party:

FIRST COMMERCIAL BANK
P.O. Box 10726
Birmingham, 35202

STATE OF ALABAMA)
COUNTY OF SHELBY)

This instrument prepared by:
Izas Bahakel, Atty.
2131-12th Avenue North
Birmingham, Alabama 35234
(205) 328-9796

KNOW ALL MEN BY THESE PRESENTS That whereas Ismail F. Moustapha and Layla M. Moustapha (whether one or more, the "Mortgagor") has become justly indebted to FIRST COMMERCIAL BANK, an Alabama banking corporation (together with its successors and assigns, the "Mortgagee") in the principal sum of Three Hundred Fifty Thousand Dollars and 00/100-----DOLLARS (\$350,000.00-----), or so much as may from time to time be advanced pursuant to a promissory note of even date herewith (the "Note"), together with interest thereon, payable on demand or as otherwise provided herein; and

NOW, THEREFORE, the Mortgagor, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same with interest thereon, and all other indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereafter incurred, and all extensions and renewals thereof or of any indebtedness of the Mortgagor to the Mortgagee, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, have bargained and sold, and do hereby bargain, sell, alien, grant, and convey unto the Mortgagee, its successors and assigns the following described real estate, situated in Shelby County, State of Alabama, to wit (hereinafter referred to as the "Real Estate"):

Lot 7, according to the survey of Southlake, a residential subdivision as recorded in Map Book 11, Page 85, in the Probate Office of Shelby County, Alabama.

Subject to easements, restrictions and reservations of record.

TOGETHER WITH all building materials, equipment, fixtures, and fittings of every kind or character now owned or hereafter acquired by the Mortgagor and used or useful in connection with the improvements located or to be located on the Real Estate, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the Real Estate or not, and whether in storage or otherwise, wheresoever the same may be located. The personal property herein conveyed and mortgaged shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building material of every kind and character used or useful in connection with said improvements.

TOGETHER WITH all the improvements now or hereafter erected on the Real Estate, and all rents, issues, and profits hereof and the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, including all gas, electric, steam, hot air and other heating, lighting and cooking apparatus, engines, boilers, motors, bathtubs, sinks, water closets, basins, pipes, faucets, and other plumbing fixtures which are, or shall be, attached to any improvements now or hereafter erected on the Real Estate, all of which shall be deemed realty as between the parties hereto and all persons claiming by, through or under

Ismail Fahmy Moustapha
2650 - Paden Pl.
Bham Ala. 35226

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them, and conveyed by this Mortgage as a part of the security for said indebtedness.

(All of the foregoing described Real Estate, improvements now or hereafter erected thereon, buildings, materials, and fixtures, and all other property subject to or intended to be subject to the lien of this Mortgage is sometimes hereinafter referred to as the "Premises").

TO HAVE AND TO HOLD the Premises, and every part hereof, unto the Mortgagee, its successors and assigns, forever.

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 is lawfully seized in fee simple of the Premises and has a good right to sell and convey the same as aforesaid; the Premises are free and clear of all liens and encumbrances and the Mortgagor will warrant and forever defend its title to the same unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

2. THIS IS A FUTURE ADVANCE MORTGAGE, and the indebtedness shall be advanced by Mortgagee to Mortgagor in accordance with a construction loan agreement of even date herewith (the "Construction Loan Agreement"), the terms of which Construction Loan Agreement are made a part of this Mortgage. This Mortgage shall also secure any and all other indebtedness now or hereafter owing from the Mortgagor to the Mortgagee.

3. The Mortgagor will pay duly and punctually the Note secured hereby and all other sums required to be paid by the Mortgagor hereunder.

4. The Mortgagor shall keep the Premises continuously insured against loss by fire and other hazards, casualties and contingencies, extended coverages, and other such coverage, in such manner and with such companies and for such amounts as may be required by the Mortgagee, with loss, if any, payable to Mortgagee, as its interest may appear, and the Mortgagor does hereby transfer, assign, set over, and deliver to the Mortgagee, the fire and other insurance policies covering said property, and it is further agreed that such policies shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of notice, sale, deed, or other proceedings in consummation of such foreclosure. If the Mortgagor fails to keep said property insured as above specified then the 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 on this Mortgage and bear interest at the rate in the Note from the date of payment by the Mortgagee. Any sum, or sums, of money received for any damage by fire or other casualty to the Premises may be retained by the Mortgagee and applied toward payment of the indebtedness secured hereby, either in whole or in part, or, at the option of the Mortgagee, the same may be held by Mortgagee or paid over to a trustee, to be named by the Mortgagee, to be applied in payment for any repair to or replacement of the Premises, or for any other purpose or object satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount hereby secured.

5. The Premises shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted, and all taxes and assessments or other charges, which may be levied upon or accrue against the Premises, as well as all other sums which may be or become liens or charges against the same, shall be paid and discharged promptly by the Mortgagor as

and when so levied or assessed and shall not be permitted to become delinquent or to take priority over the lien of this Mortgage.

6. Any claim of lien which may be filed under the provisions of the Statutes of Alabama, relating to the liens of mechanics or materialmen, shall be paid promptly and discharged by the Mortgagor and shall not be permitted to take priority over the lien of this Mortgage.

7. The Mortgagor shall comply fully with any and all legal requirements of any governmental agency wherein the Premises are located, and Mortgagor shall indemnify and hold Mortgagee harmless from and against any claims, losses, or expenses resulting from Mortgagor's failure to do so.

8. Should default be made in the payment of any insurance premiums, taxes, assessments, or other liens, or any other sum, as herein provided, the Mortgagee, its successors or assigns, shall be authorized to pay same and the sum, or sums so paid shall be and become a part of the indebtedness secured by this Mortgage, or the Mortgagee or assigns may take possession of the Premises, collect the rents due or to become due thereon and apply the same in payment of such premiums, taxes, assessments, or other liens or, upon application made to any court of competent jurisdiction, be entitled as a matter of right to the appointment of a receiver of the rents, issues, and profits to be derived therefrom and with power to lease and control the Premises for the benefit of the Mortgagees or, at its option, the Mortgagee may declare the whole of said indebtedness due and payable at once and this Mortgage may be foreclosed as hereinafter provided, but no delay or failure of the Mortgagee to exercise these rights or any other option herein shall be deemed a waiver of such rights.

9. The Mortgagor agrees to pay reasonable attorneys' fees and expenses incurred by the Mortgagee in applying for a receiver, in protecting its interest in any litigation involving the Premises, whether at trial level or on any appeal, in presenting claims under any administration or other proceeding where proof of claims is required by law to be filed, or in foreclosing this Mortgage by suit in any court the power of sale herein provided, or under such fees and expenses to be part of the debt hereby secured.

10. If the Mortgagor shall fail to pay or cause to be paid any installment of the principal sum, or any interest thereon, as and when due under the terms of the Note, and any extensions or renewals thereof, 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 mechanics' liens, materialmen's lien, insurance premiums, taxes or assessments, now, or which may hereafter be, levied against, or which may become a lien on, or are payable in respect to, the Premises, or should default be made in any of the covenants, conditions, and agreements herein contained or in the Construction Loan Agreement, then the whole of said principal sum, with interest thereon, and all other sums secured hereby shall, at the option of the Mortgagee, be and become immediately payable, and the Mortgagee shall have the right to enter upon and take possession of the Premises and sell after or without taking such possession of the same 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 successive weeks in a newspaper of general circulation published in said county. The proceeds of such sale shall be applied (1) to the expenses incurred in making the sale, including a reasonable attorney's fee for such services as may be necessary in this collection of said indebtedness or the foreclosure of the

Mortgage; (2) to the payment of whatever sum, or sums, the Mortgagee may have paid or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon at the rate provided in the Note; (3) to the payment and satisfaction of interest due on the principal indebtedness secured hereby; (4) to the payment and satisfaction of the principal indebtedness secured hereby; and (5) the balance, if any, shall be paid over to the Mortgagor or its assigns. Notwithstanding the foregoing, this Mortgage may be foreclosed as now or hereafter provided by law in case of past due mortgages, in which event a reasonable attorney's fee shall, among other expenses and costs, be allowed and paid out of the proceeds of the sale of the Premises. 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 and the Mortgagee may become the purchaser at said sale. The auctioneer making the sale is hereby authorized and empowered to execute a deed in the name and on behalf of the Mortgagor to such purchaser, and the certificate of the Mortgagee, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority. Mortgagee shall also have all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including, without limitation, the right to take possession of that part of the Premises which is personal property and to sell the same at one or more public or private sales, at the election of Mortgagee. At Mortgagee's request, Mortgagor agrees to assemble such personal property and to make the same available to Mortgagee at such place as Mortgagee reasonably shall designate at Mortgagee's request. Whether the Premises are comprised by one separate parcel or by separate parcels or are non-contiguous or are subdivided into lots or are to be subdivided or are divided by natural boundaries or are comprised by both real and personal property, then in any event of any of the foregoing, Mortgagee shall have the right on foreclosure of this Mortgage to sell the Premises in separate lots or parcels or in any combination of such lots, parcels, or divisions, or en masse, as Mortgagee may in its sole discretion deem best, and shall not be obligated to first offer the Premises in any such sub-parcels, lots, or divisions at such sale.

11. In the event of the enactment of any law, Federal or State, after the date of this Mortgage, deducting from the value of the Premises for the purposes of taxation of any lien thereon, or imposing any liability upon the 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, the indebtedness secured hereby together with the interest due thereon, shall, at the option of the Mortgagee, without notice to any party, become immediately due and payable.

12. If all or any part of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by a governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payment of relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action, and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, rights of action, claims, and proceeds as the Mortgagee may require.

13. This Mortgage creates a security interest in the personal property of the Mortgagor herein above described, and shall also constitute a security agreement and a financing statement as to fixtures under the Alabama Uniform Commercial Code. Mortgagor covenants and agrees to execute, file, and refile such financing statements, continuation statements, or other documents that Mortgagee shall require.

14. If all or any part of the Premises or an interest therein is sold or transferred without Mortgagee's prior written consent, excluding (a) the creation of a purchase money security interest for household appliances or, (b) a transfer by devise, descent, or by operation of law upon the death of a joint tenant, Mortgagee may, at its option, declare all the sums secured by this Mortgage immediately due and payable. If Mortgagee at its sole option has waived the option to accelerate provided in this paragraph 14, and if Mortgagor's successor in interest has executed a written assumption agreement accepted in writing by Mortgagee, Mortgagor shall remain secondarily liable nonetheless for all obligations under this Mortgage, the Note, and the Construction Loan Agreement.

15. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and the Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

16. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.

17. The loan evidenced by the Note and secured by this Mortgage is to be disbursed in accordance with the terms and provision of the Construction Loan Agreement. The Note, this Mortgage, and the Construction Loan Agreement shall always be taken and read together as consisting part of a single loan transaction. The Mortgagor agrees fully, duly and promptly to discharge each and every of its agreements contained in the Construction Loan Agreement. Any default under the provisions of the Construction Loan Agreement shall be and constitute an event of default under the terms of this Mortgage, and Mortgagee may take such action as it deems necessary to protect its security.

18. Homestead Representation. (Check as appropriate):

- ☐ Each individual executing this Mortgage represents, warrants, and covenants that no part of the Premises constitutes the homestead of such individual or his or her spouse.
- ☒ Each individual executing this mortgage represents, warrants, and covenants that the Premises constitute the homestead of such individual and his or her spouse.

19. PROVIDED ALWAYS that if the Mortgagor pay the Note secured hereby and any renewal or extension thereof and all other indebtedness secured by this Mortgage and reimburse said Mortgagee, its successors or assigns, for any amount it may have expended 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.

Singular and plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this Mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the heirs, personal representatives, successors, and assigns of the undersigned and every option, right, and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his or her signature and seal, or has caused this instrument to be executed by its officer(s) thereunto duly authorized, on this 7th day of December, 19 88.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Ismail F. Moustapha (SEAL)

Layla M. Moustapha (SEAL)

(SEAL)

(SEAL)

STATE OF ALA. SHELBY
I CERTIFY THIS
INSTRUMENT WAS FILED

88 DEC -8 PM 1:48

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

1. Deed Tax \$
2. Mtg. Tax 525.00
3. Recording Fee 15.00
4. Indexing Fee 1.00
TOTAL 541.00

By Michael D. Reas
Its Private Banking Officer

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

(individual acknowledgement)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Ismail F. Moustapha and Layla M. Moustapha, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance they executed the same volutarily on the day the same bears date.

Given under my hand and official seal this 7th day of December, 19 88.

Betty J. Brown
NOTARY PUBLIC

MY COMMISSION EXPIRES JUNE 2, 1992

STATE OF ALABAMA)
COUNTY OF _____)

(individual acknowledgement)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that _____, whose name _____ signed to the foregoing conveyance, and who _____ known to me, acknowledged before me on this day that, being informed of the contents of the conveyance _____ executed the same volutarily on the day the same bears date.