

## EASEMENT AGREEMENT

THIS AGREEMENT made and entered into this 23<sup>rd</sup> day of December, 1998, by and between FIRST COMMERCIAL BANK (hereinafter referred to as "FCB") and N. KEITH BYRD (hereinafter referred to as "Byrd") as follows:

### WITNESSETH:

WHEREAS, FCB is the fee owner of the property described in Exhibit "A" attached hereto and made a part of; and

WHEREAS, Byrd is purchasing the property described in Exhibit "B" for the purposes of developing a retail store thereon; and

WHEREAS, FCB has agreed to grant to Byrd a non-exclusive easement and right-of-way across the property described in Exhibit "A" for the purpose of ingress and egress to Byrd's property described in Exhibit "B."

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions herein set forth, it is agreed by the parties as follows:

1. FCB hereby grants and conveys to Byrd, and to his successors and assigns, and to the customers, invitees, employees, and guests, a permanent non-exclusive easement for the free and uninterrupted passage of motor vehicles of all kinds over and across the property described in Exhibit "A" attached hereto. It is understood and agreed, however, that such easement and means of ingress and egress shall be and shall remain private and specifically shall not be public driveways or roadways and shall be for the joint and common use only by the parties hereto, their successors and assigns.

2. It is understood and agreed that this Agreement does not grant or convey any rights for Byrd to use the parking areas of FCB or any rights for Byrd to use the easement for parking of motor vehicles of any type or kind.

3. Byrd shall be permitted to make two curb cuts in the easement to give Byrd direct access to his property; the primary curb cut will be made in coordination with FCB's existing curb cut; and the secondary curb cut will be to the rear of Byrd's property at a location acceptable to FCB. The secondary curb cut shall be used for deliveries to Byrd's property, for refuse and garbage pick-up and for employee parking only. All deliveries shall be made on-site and the delivery vehicle shall not block or impede traffic on the easement.

4. To the extent that the easement is used by Byrd for construction activities, then and in such event, Byrd shall be solely responsible for any damage caused by such use, and Byrd agrees that FCB, may take all reasonable measures to repair and restore the driveway easement (or any other portion of the property so damaged) as quickly as

possible and to charge Byrd for the cost of the same.

5. FCB and Byrd agree that the driveway easement shall be maintained in accordance with generally accepted engineering and construction specifications necessary to accommodate the uses and anticipated traffic. FCB and Byrd shall share in the cost of maintaining the driveway based on a formula determined by the square footage of the lot size of the property owned by FCB (excluding the undeveloped property) and the square footage of the lot size of the property owned by Byrd (excluding the floodway area) in relation to the total square footage of the two lots. FCB agrees to be responsible for all administrative functions required for the maintenance of the driveway, including the selection and payment of contractors employed to perform such maintenance work and the collection of invoices for the maintenance and repair services. Said driveway shall be maintained in good, safe, and reasonable conditions. Maintenance of the driveway shall include the provision for proper water drainage, the provision for maintenance of asphalt and concrete due to normal wear and tear, and keeping the driveway clear of trash, debris, and obstructions.

6. In the event Byrd shall fail to pay his share of maintenance costs or other repair costs as provided in Paragraphs 4 and 5, within thirty (30) days after written notice, FCB shall have the right to file liens against the property owned by Byrd in the amount of said costs, including reasonable attorneys fees and other legal expenses, plus interest as allowed by law.

7. As a condition and covenant of the easements granted herein, FCB and Byrd covenant and agree that neither FCB nor Byrd, their successors and assigns, or any of their affiliated companies, shall in any way be liable for any injury or damage whatsoever to persons or property which may result from FCB's or Byrd's use of the driveway, and/or lack of safety, latent or patent, of the land upon which said easement herein is granted, and FCB and Byrd each assumes all risk of personal injury and death of their respective employees, and/or damage to their respective properties and their respective employees and from their use of said driveway.

8. The covenants and agreements herein contained shall be covenants running with the land and shall bind and inure to the benefit of FCB and Byrd and their respective successors and assigns.

9. This agreement may be amended by FCB in order to grant to other property owners or lessees the same rights and privileges granted to Byrd, and the grant shall be evidenced by a joinder agreement executed by the other property owners and/or lessees in recordable form. The joinder agreement will amend the provision relating to the sharing of the cost of maintenance of the driveway and include the square footage in the formula for sharing the maintenance costs.

10. This agreement shall be governed by the laws of the State of Alabama.

11. This agreement shall be recorded at the expense of FCB.

IN WITNESS WHEREOF, First Commercial Bank and N. Keith Byrd have set their hands and seals this 23<sup>rd</sup> day of December, 1998.

**FIRST COMMERCIAL BANK**

By: Forest W. Whitley, Jr. (L.S.)  
Its First Vice President

N. Keith Byrd (L.S.)  
**N. KEITH BYRD**

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON   )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that FOREST W. WHITLEY, JR. whose name as FIRST VICE PRES. of FIRST COMMERCIAL BANK, a Banking Corporation, 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 in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the same that bears date.

Given under my hand and official seal this the 23<sup>rd</sup> day of December, 1998.

[SEAL]

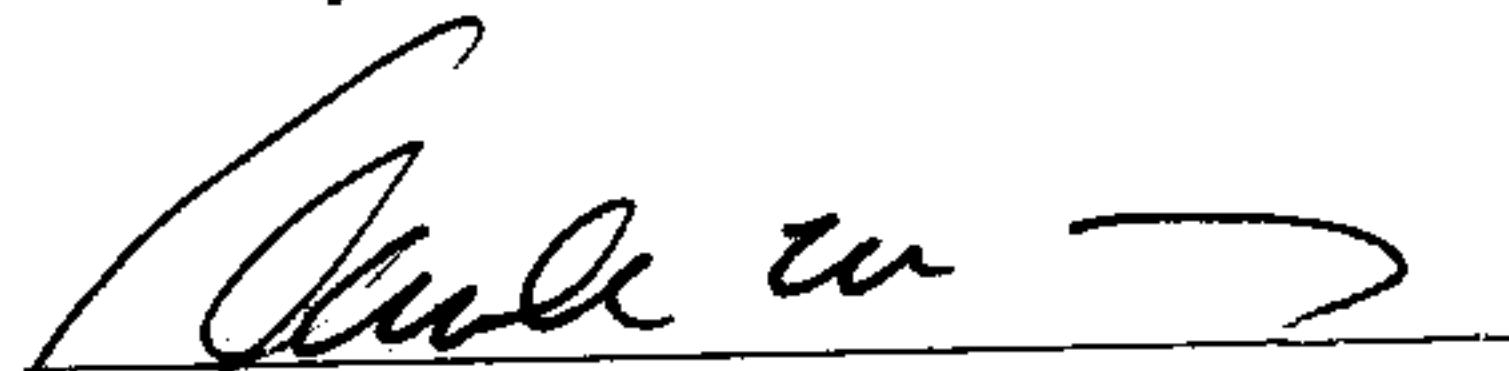
Paul M. [Signature]  
NOTARY PUBLIC  
My commission expires: 12/28/99

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON   )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that N. Keith Byrd whose name 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 executed the same voluntarily.

Given under my hand and official seal this the 23<sup>rd</sup> day of December, 1998.

[SEAL]

  
NOTARY PUBLIC  
My commission expires: 12/21/99

This Instrument was Prepared By:  
Claude McCain Moncus  
Corley, Moncus & Ward, P.C.  
400 Shades Creek Parkway, Suite 100  
Birmingham, AL 35209  
(205) 879-5959



EXHIBIT "A"

STATE OF ALABAMA  
SHELBY COUNTY

A parcel of land situated in the Northwest Quarter of Section 6, Township 20 South, Range 2 West, Shelby County, Alabama, said easement being for the use of an existing paved drive and being more particularly described as follows:

Commence at the Northwest corner of the Northwest Quarter of Section 6, Township 20 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said quarter section 369.52 feet; thence deflect  $90^{\circ}00'00''$  and run to the right in a Southerly direction 1089.47 feet to a point; thence deflect  $57^{\circ}15'38''$  and run to the left in a Southeasterly direction 39.00 feet more or less to the centerline of Old Bishop Creek; thence continue along last described course in a Southeasterly direction along the meanderings of the centerline of Old Bishop Creek 83.94 feet; thence deflect  $05^{\circ}53'00''$  and run to the right in a Southeasterly direction along the meanderings of said centerline 72.37 feet; thence deflect  $05^{\circ}17'00''$  and run to the left in a Southeasterly direction along the meanderings of said centerline 122.18 feet; thence deflect  $27^{\circ}23'29''$  and run to the left in a Southeasterly direction along the meanderings of said centerline 50.87 feet; thence deflect  $84^{\circ}54'55''$  and leaving said creek run to the left in a Northerly direction 278.57 feet; thence deflect  $04^{\circ}39'14''$  and run to the left in a Northerly direction 100.00 feet; thence deflect  $93^{\circ}39'02''$  and run to the right in an Easterly direction 210.00 feet to the Westerly right-of-way of U.S. Highway #31; thence deflect  $94^{\circ}06'06''$  and run to the left in a Northerly direction along the Westerly Right-of-Way of U.S. Highway #31 192.70 feet to the Point Of Beginning of the herein described easement; thence deflect  $85^{\circ}42'07''$  and run to the left in a Westerly direction 82.41 feet to a point of curvature; thence turn an interior angle of  $194^{\circ}34'47''$  to the tangent of a curve to the left having a central angle of  $18^{\circ}57'41''$  and a radius of 250.00 feet and run along the arc of said curve in a Southwesterly direction 82.73; thence turn an interior angle of  $90^{\circ}00'00''$  from the tangent of the last and run to the right in a Northwesterly direction 24.50 feet; thence turn an interior angle of  $90^{\circ}00'00''$  to the tangent of a curve to the right having a central angle of  $20^{\circ}52'22''$  and a radius of 274.50 feet and run to the right along the arc of said curve in a Northeasterly direction 100.00 feet; thence run tangent to the last described curve in an Easterly direction 77.90 feet to a point on the Westerly right of way of U.S. Highway #31; thence turn an interior angle of  $84^{\circ}17'36''$  and run to the right in a Southerly direction along said right of way 39.51 feet to the point of beginning.

**EXHIBIT "B"**

Lot 1, according to the First Commercial Bank Survey, as recorded in Map Book 24, Page 106, in the Probate Office of Shelby County, Alabama.

Inst. # 1998-51947

12/23/1998-51947  
02:52 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 CRH 21.00