

**OPEN-END CREDIT, FUTURE ADVANCE REAL ESTATE MORTGAGE AND SECURITY AGREEMENT**

Mortgagors (last name first):

Smith, Jay A., Jr.

Smith, Judy S.

2557 Magnolia Place

Birmingham, AL 35242

City

State

Zip

Mortgagee:

 **First Commercial Bank**

Post Office Box 11746  
Birmingham, Alabama 35202-1746

*This instrument was prepared by:*

Barbara Logan  
Private Banking Officer

**THE STATE OF ALABAMA**

Jefferson County

**KNOW ALL MEN THESE BY THESE PRESENTS: That whereas**

Jay A. Smith, Jr. and Judy S. Smith, a married couple

(whether one or more, hereinafter called the "Borrower") ha ve become justly indebted to FIRST COMMERCIAL BANK with offices in Birmingham, Alabama, (together with its successors and assigns, hereinafter called "Mortgagee") pursuant to an open-end line of credit, for an initial advance in the sum of \*\*\*\*\* Dollars (\$ \*\*\*\*\*) and for all FUTURE ADVANCES, provided, however, that the maximum indebtedness at any one time shall not exceed Ten Thousand and no/100\*\*\*\*\* Dollars (\$ 10,000.00) (the "Credit Limit"), which advances Mortgagee is obligated to make pursuant to the terms and conditions of that certain Home Equity Line of Credit Agreement (the "Agreement"), of even date herewith, entered into by and between the Borrower and Mortgagee, the terms and conditions of which are hereby incorporated by reference.

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and any FUTURE ADVANCES made pursuant to the Agreement and any renewals or extensions thereof and the interest thereon, and all other indebtedness (including future advances) now or hereafter owed by any of the above-named to Mortgagee, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not, and to secure compliance with all the covenants and stipulations hereinafter contained, the undersigned

Jay A. Smith, Jr. and Judy S. Smith, a married couple

(whether one or more, hereinafter called

"Mortgagors") do hereby assign, grant, bargain sell and convey unto Mortgagee the following described real property situated in Shelby County, State of Alabama, viz:

Lot 63, according to the Survey of The Magnolia's at Brook Highland, as recorded in Map Book 13, Page 102 A & B, in the Probate Office of Shelby County, Alabama.

BOOK 356 PAGE 902

SOURCE OF TITLE: Jefferson Title Corporation

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in anywise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by Mortgagors in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric, solar and other heating, lighting, ventilating, air-conditioning, refrigerating and cooling apparatus, elevators, plumbing, sprinkling, smoke, fire, and intrusion detection devices, and other equipment and fixtures now or hereafter attached or appertaining to said premises, all of which shall be deemed to be real property and conveyed by this mortgage, and all of which real property, equipment and fixtures are sometimes hereinafter called the "mortgaged property."

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

And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including future advances), Mortgagors hereby assign and transfer to Mortgagee, and grant to Mortgagee a security interest in, all building materials, household appliances, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by Mortgagors, or any of them, located, whether permanently or temporarily, on the mortgaged property, and all building materials, household appliances, equipment, fixtures and fittings now owned or hereafter acquired by Mortgagors, or any of them, located or stored on any other real property, which are or shall be purchased by Mortgagors, or any of them, for the purpose, or with the intention, of making improvements on the mortgaged property or to the premises located on said property. The personal property herein transferred includes, without limitation, all lumber, bricks, building stones, building blocks, sand, cement, roofing materials, paint, doors, windows, storm doors, storm windows, nails, wires and wiring, hardware, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials, equipment and appliances of every kind and character used or useful in connection with improvements to real property.

BOOK 356 PAGE 903  
This mortgage secures an open-end line of credit under which the Borrower may borrow and repay, and reborrow and repay, amounts from the Mortgagee from time to time up to a maximum aggregate amount. The Agreement does not require that the Borrower make any initial draw on or maintain any minimum outstanding loan balance under the line of credit. Therefore, at times there may be no outstanding indebtedness under the Agreement. However, this mortgage shall become effective immediately upon its execution and delivery, notwithstanding the lack of any initial advance and shall not be deemed satisfied nor shall title to the Real Estate be divested from the Mortgagee by the payment in full of all the indebtedness at any one time outstanding. This mortgage shall continue in effect until all of the indebtedness shall have been paid in full, the Agreement shall have been terminated, the Mortgagee shall have no obligation to extend any further credit to the Borrower thereunder and an appropriate, properly executed, written instrument in satisfaction of this mortgage shall have been duly recorded in the probate office in which this mortgage is originally recorded. The Mortgagee agrees to execute such an instrument promptly following receipt of the Borrower's written request therefor, provided that all of the conditions set forth above have been fulfilled.

For the purpose of further securing the payment of said indebtedness Mortgagors warrant, covenant and agree with Mortgagee, its successors and assigns, as follows:

1. That they are lawfully seized in fee and possessed of the mortgaged property and have a good right to convey the same as aforesaid, that they will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that the mortgaged property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.

(Complete if applicable) This Mortgage is junior and subordinate to that certain mortgage dated April 23, 19 91, and recorded at volume 342 at page 84 in the Probate Office of Shelby County, Alabama. transferred and assigned to Trustmark National Bank, by instrument recorded in Book 350, Page 678.

The Mortgagor authorizes the holder of a prior mortgage encumbering the Real Estate, if any, to disclose to the Mortgagee the following information: (a) the amount of indebtedness secured by such mortgage; (b) the amount of such indebtedness that is unpaid; (c) whether any amount owed on such indebtedness is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; or (e) any other information regarding such mortgage or the indebtedness secured thereby which the Mortgagee may request from time to time.

2. That they will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed upon the mortgaged property, and should default be made in the payment of the same, or any part thereof, Mortgagee may pay the same (but Mortgagee is not obligated to do so). If the mortgaged property or any part thereof is a unit in a condominium or a planned unit development, Mortgagors shall perform all of Mortgagors' obligations under the declaration or covenants creating or covering the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents. Should Mortgagors default in any of such obligations, Mortgagee may perform Mortgagors' obligations (but Mortgagee is not obligated to do so).

3. That they will keep the buildings on the mortgaged property continuously insured in such amounts, in such manner and with such companies as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind and such other hazards (including flood and water damage) as Mortgagee may specify from time to time, with loss, if any, payable to Mortgagee, and will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof, and will pay the premiums therefor as the same become due. Mortgagors shall have the right to provide such insurance through a policy or policies independently obtained and paid for by Mortgagors or through an existing policy. Mortgagee may, for reasonable cause, refuse to accept any policy of insurance obtained by Mortgagors. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damage to the mortgaged property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind and other hazards for the benefit of Mortgagors and Mortgagee or for the benefit of Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by the insurer to Mortgagee, which is hereby granted full power to settle and compromise claims under all policies, to endorse in the name of Mortgagors any check or draft representing the proceeds of any such insurance, and to demand, receive and give receipt for all sums becoming due thereunder. Said insurance proceeds, if collected, may be credited on the indebtedness secured by this mortgage, less costs of collection, or may be used in repairing or reconstructing the premises on the mortgaged property, at Mortgagee's election. Any application of the insurance proceeds to repairing or reconstructing premises on the mortgaged property shall not extend or postpone the due date of any installment payments of the indebtedness hereby secured or reduce the amount of such installments.

4. That commencing upon written request by Mortgagee and continuing until the indebtedness secured hereby is paid in full, Mortgagors will pay to Mortgagee concurrently with, and on the due dates of, payments on the indebtedness hereby secured a sum equal to the ground rents, if any, next due on the mortgaged property, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus water rents, fire district charges, taxes and assessments next due on the mortgaged property (all as estimated by Mortgagee), less any sums already paid to Mortgagee therefor, divided by the number of months or other payment periods to elapse before one month or payment period prior to the date when such ground rents, premiums, water rents, fire district charges, taxes and assessments will become due, such sums to be held by Mortgagee in trust, to pay said ground rents, premiums, water rents, fire district charges, taxes and assessments. All payments mentioned in the preceding sentence and the payments to be made on the indebtedness secured hereby shall be added together and the aggregate amount thereof shall be paid by Mortgagors each month or other payment period in a single payment to be applied by Mortgagee to the following items in the order set forth: (a) ground rents, taxes, water rents, fire district charges, assessments, fire and other hazard insurance premiums; (b) interest on the indebtedness secured hereby; and (c) the balance, if any, shall be applied toward the payment of the sum hereby secured. Any deficiency in the amount of such aggregate monthly or other periodic payments shall constitute a default under this mortgage. Any excess funds accumulated under this paragraph after payment of the items herein mentioned shall be credited in calculating the monthly or other periodic payments of the same nature required hereunder in the subsequent year; but if the actual amount of any such item shall exceed the estimate therefor, Mortgagors shall without demand forthwith make good the deficiency. Failure by Mortgagors to do so before the due date of such item shall be a default hereunder. If the mortgaged property is sold under foreclosure or is otherwise acquired by Mortgagee after default, any remaining balance of the accumulations under this paragraph shall be credited to the principal of the secured indebtedness as of the date of the foreclosure sale or as of the date the property is otherwise acquired.

5. That they will take good care of the mortgaged property and the personal property above and will not commit or permit any waste thereon or thereof, and that they will keep the same repaired and at all times will maintain the same in as good condition as it now is, reasonable wear and tear alone excepted. If Mortgagors fail to make repairs to the mortgaged property, Mortgagee may make such repairs at Mortgagors' expense (but Mortgagee is not obligated to do so). Mortgagee, its agents and employees, may enter the mortgaged property and any improvements thereon at any reasonable time for the purpose of inspecting or repairing such improvements.

6. That all amounts expended by Mortgagee for insurance or for the payment of taxes or assessments or to discharge liens on the mortgaged property or other obligations of Mortgagors or to make repairs to the mortgaged property or any improvements thereon shall become a debt due Mortgagee, shall be payable at once without demand upon or notice to any person, shall bear interest at the rate of interest payable on the principal of the note described above, or if no such rate of interest is specified in the note or if the rate specified would be unlawful, at the rate of 10 per annum from the date of payment by Mortgagors of such debt and the interest thereon shall be secured by this mortgage.

Upon failure of Mortgagors to reimburse Mortgagee for all amounts so expended, at the election of Mortgagee and with or without notice to any person, Mortgagee may declare the entire indebtedness secured by this mortgage due and payable and may foreclose this mortgage as hereinafter provided or as provided by law.

7. That no delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present defaults on the part of Mortgagors, and that the procurement of insurance or payment of taxes or other liens or assessments or obligations by Mortgagee shall not be taken or deemed as a waiver of the right to accelerate the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, liens, assessments or obligations, it being agreed by Mortgagors that no terms or conditions contained in this mortgage can be waived, altered or changed except by a writing signed by Mortgagee.

8. That those mortgagors who are obligated to pay the indebtedness hereby secured will well and truly pay and discharge such indebtedness as it shall become due and payable, including the note or notes described above and future advances, any renewals or extensions thereof, and any other notes or obligations of such Mortgagors to Mortgagee, whether now or hereafter incurred.

9. That if default shall be made in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions of this mortgage, Mortgagee may proceed to collect the rent, income and profits from the mortgaged property, either with or without the appointment of a receiver (to which appointment Mortgagors hereby consent), and Mortgagee may notify the lessees or other payors thereof to make payment directly to Mortgagee. Any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate or property management commissions and attorney's fees incurred, shall be credited first to advances made by Mortgagee and the interest thereon, then to interest due on the indebtedness hereby secured, and the remainder, if any, shall be applied toward the payment of the principal sum hereby secured.

10. That if possession of the mortgaged property is allowed to remain in any other person or entity to the exclusion of Mortgagors for a period of one year or more, or if all or any part of the mortgaged property or any interest therein is sold, assigned, transferred or conveyed by Mortgagors, or any of them, without Mortgagee's prior written consent, excluding only (a) the creation of a lien or encumbrance expressly subordinate to this mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (d) the grant of any leasehold interest of one year or less (including all mandatory or optional renewal periods) not containing an option to purchase, Mortgagee may, at Mortgagee's option, declare all indebtedness secured by this mortgage to be due and payable immediately with or without notice to Mortgagors. Mortgagee may condition its consent to any such transfer of possession of, or an interest in, the mortgaged property upon the transferee's agreeing to pay a greater rate of interest on all or any part of the indebtedness secured by this mortgage or to adjust the payment schedule of all or any part of the indebtedness secured by this mortgage, upon Mortgagee's approval of the creditworthiness of the transferee, and upon the transferee's payment to Mortgagee of a reasonable transfer or assumption fee. Upon breach by Mortgagors, or any of them, of the covenants herein contained, Mortgagee may, at its election, proceed to foreclose this mortgage as hereinafter provided or as provided by law.

11. That all the covenants and agreements of Mortgagors herein contained shall extend to and bind their respective heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to Mortgagee shall inure to the benefit of the successors and assigns of Mortgagee.

12. That the provisions of this mortgage and the note or notes secured hereby are severable, and that the invalidity or unenforceability of any provision of this mortgage or of any such note or notes shall not affect the validity and enforceability of the other provisions of this mortgage or of such note or notes. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee at law and in equity, and such rights and remedies may be exercised concurrently or consecutively. A carbon or photostatic copy of this mortgage may be filed as a financing statement in any public office.

UPON CONDITION, HOWEVER, that if: (a) all the indebtedness hereby secured (including future advances whether or not made under the terms of the Agreement, extensions and renewals, finance charges, fees and expenses referred to herein, and all other obligations and indebtedness secured hereby) shall be paid and discharged; (b) Mortgagee is reimbursed for any amounts Mortgagee has expended in payment of liens or insurance premiums or prior mortgages with respect to Real Estate; (c) Mortgagor fulfills all of Mortgagor's obligations under this mortgage; (d) the Agreement is terminated and the Bank's obligation to extend credit thereunder has ceased; and (e) an appropriate written instrument in satisfaction of this mortgage has been executed by a duly authorized officer of Mortgagee and properly recorded, then, and in that event only, this conveyance and the security interest herein granted shall be and become null and void; but should default be made in the payment of any indebtedness hereby secured or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by Mortgagee under the authority of any provision of this mortgage, or should the interest of Mortgagee in the mortgaged property or any of the personal property described above become endangered by reason of the enforcement of any lien or encumbrance thereon, or should a petition to condemn any part of the mortgaged property be filed by any authority, person or entity having power of eminent domain, or should any law, either state or federal, be passed imposing or authorizing the imposition of a specific tax upon this mortgage or the indebtedness hereby secured or permitting or authorizing the deduction of any such tax from the principal or interest secured by this mortgage or by virtue of which any tax or assessment upon the mortgaged property shall be charged against the owner of this mortgage, or should at any time any of the covenants contained in this mortgage or in any note or other evidence of indebtedness secured hereby be declared invalid or unenforceable by any court of competent jurisdiction, or should Mortgagors fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part thereof which may at said date not have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived by Mortgagors, and Mortgagee shall have the right to enter upon and take possession of the mortgaged property and after or without taking such possession to sell the same before the Court House door of the County (or the division thereof) where said property, or any substantial part of said property, is located, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said County; and upon the payment of the purchase price, Mortgagee or the auctioneer at said sale is authorized to execute to the purchaser for and in the name of Mortgagors a good and sufficient deed to the property sold. And upon the occurrence of any such event, Mortgagee shall have the rights and remedies of a secured party after default by its debtor under the Alabama Uniform Commercial Code, including, without limitation, the right to take possession of any of the property herein transferred 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, Mortgagors agree to assemble such property and to make the same available to Mortgagee at such place as Mortgagee shall reasonably designate. Mortgagors agree that notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of said property, or of any part thereof, will be held shall be sufficient if delivered to Mortgagors or mailed to Mortgagors at the address set forth above, or such other address as Mortgagors shall have furnished to Mortgagee in writing for that purpose, not less than five days before the date of such sale or other intended disposition of said property. Mortgagee shall apply the proceeds of said sale or sales under this mortgage as follows: First, to the expenses of advertising, selling and conveying, including a reasonable attorney's fee after default if the amount of the unpaid balance exceeds \$300; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment of the indebtedness hereby secured and interest thereon in such order as Mortgagee may elect, whether such debts shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to Mortgagors or to whomsoever then appears of record to be the owner of Mortgagor's interest in said property. Mortgagee may bid and become the purchaser of the mortgaged property at any foreclosure sale hereunder. Mortgagors hereby waive any requirement that the mortgaged property be sold in separate tracts and agree that Mortgagee may, at its option, sell said property en masse regardless of the number of parcels hereby conveyed.

IN WITNESS WHEREOF, each of the undersigned Jay A. Smith, Jr. and Judy S. Smith, a married couple

has hereunto set his or her signature and seal or has caused this instrument to be executed by its officer(s) thereunto duly authorized, this

26th day of July, 1991.

X Jay A. Smith, Jr. (Jay A. Smith, Jr.)  
(SEAL)  
XX Judy S. Smith (Judy S. Smith)  
(SEAL)

(SEAL)  
(SEAL)

ATTEST:

Its \_\_\_\_\_  
(Corporate Seal)

By \_\_\_\_\_



Mortgagee herein certifies that residential property is conveyed by this mortgage and that the maximum principal indebtedness to be secured by this mortgage at any one time is \$10,000.00 upon which the mortgage tax of \$15.00 is paid herewith, as allowed by Alabama Code, §40-22-2(1)(b).

FIRST COMMERCIAL BANK

BY Barbara Logan Mortgagee  
ITS: Barbara Logan  
Private Banking Officer

THE STATE OF ALABAMA,

INDIVIDUAL ACKNOWLEDGEMENT

Jefferson COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that

Jay A. Smith, Jr. and Judy S. Smith, a married couple

whose name s 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, have executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26th day of July, 19 91

(Notarial Seal)

My Commission Expires July 12, 1994

Burrill W. Shelton  
Notary Public

INDIVIDUAL ACKNOWLEDGEMENT

THE STATE OF ALABAMA,

COUNTY

I, the undersigned, a Notary Public in and for said County, in said 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 voluntarily on the day the same bears date.

Given under my hand and official seal this                      day of                     , 19                     

(Notarial Seal)

Notary Public

THE STATE OF ALABAMA,

COUNTY

CORPORATE ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that

                     whose name as                      President

of the                     , a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance,                      he; as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this                      day of                     , 19                     

(Notarial Seal)

Notary Public

PLEASE RETURN  
TO

 First Commercial Bank  
BIRMINGHAM, ALABAMA

OPEN-END CREDIT,  
FUTURE ADVANCE  
REAL ESTATE  
MORTGAGE  
AND SECURITY  
AGREEMENT

THE STATE OF ALABAMA,

COUNTY.

Office of the Judge of Probate

I hereby certify that the within mortgage was filed

in this office for record on the                     

day of                     , 19                     

at                      o'clock                      M., and duly record in

Volume                      of Mortgages, at page

                    , and examined.

Judge of Probate