

# 1406 SUBORDINATION AGREEMENT

In order to induce SouthTrust Bank of Alabama N.A., hereinafter referred to as "Bank," to make or renew loans and extend credit to M & K Industries, A General Partnership hereinafter referred to as "Borrower," in such manner and amounts and upon such terms and conditions as the Borrower and the Bank may from time to time agree, and in consideration of each such loan, renewal or extension of credit which the Bank may make, Southern Development Council, Inc., hereinafter referred to as "Creditor," hereby wholly subordinates any and all claims which the Creditor may now or hereafter have against the Borrower, including without limitation those claims set forth on Schedule I below, to any and all claims which the Bank may now or hereafter have against the Borrower.

Until payment in full with interest of all said claims of the Bank, the Creditor agrees not to accept any payment or satisfaction of any kind of, or any security for, and not to surrender or release, any of said claims hereby subordinated. If the Creditor should so receive any such payment, satisfaction or security, the Creditor agrees forthwith to deliver the same to the Bank in the form received, endorsed or assigned as appropriate, for application on account of, or as security for, said claims of the Bank, and until so delivered agrees to hold the same in trust for the Bank. At any time and insofar as any of said claims hereby subordinated may be evidenced by any instrument in writing, the Creditor agrees to affix to each such instrument, in form and manner satisfactory to the Bank, a statement to the effect that the same is subject to this agreement and, upon request, agrees to assign or endorse and deliver all such instruments to the Bank.

The Creditor hereby assigns, transfers and sets over to the Bank all of said claims hereby subordinated. In the event of default by the Borrower with respect to any of its obligations to the Bank or in the event of the commencement of any liquidation, bankruptcy, insolvency, reorganization or dissolution proceedings by or against the Borrower or the Creditor or the death of either of them or of any partner of either of them, all of said claims of the Bank and all of said claims hereby assigned to the Bank shall, at the option of the Bank, be due and payable immediately, without demand or notice, and the Bank may, in its discretion, and in its own name or the name of the Creditor or otherwise, take any action for the collection of said claims hereby assigned, by process of law, by proof of debt in any proceedings, or otherwise, may receive the proceeds thereof and give acquittance therefor, and, after deducting the costs and expenses of any action taken, including reasonable attorneys' fees, may apply the proceeds on account of said claims of the Bank and shall account to the Creditor for any balance remaining.

The Bank shall not be under any duty to take any action in connection with any of said instruments delivered or claims assigned to it and shall not be responsible in any respect in connection therewith, whether for actions it may take or refrain from taking or otherwise, except for willful malfeasance.

The Creditor agrees from time to time, upon request of the Bank, to make, execute and deliver any endorsements, assignments, financing statements, proofs of claim, affidavits, consents, agreements or other instruments which the Bank may, in its discretion, deem necessary or desirable to effectuate the purposes of this agreement. The Creditor hereby irrevocably constitutes and appoints the Bank and any of its present or future officers individually as attorneys-in-fact for and on behalf of the Creditor, with full power of substitution, in the name of the Creditor or otherwise, to execute and deliver all of the aforesaid writings which the Creditor has agreed to execute and deliver.

Without notice to the Creditor and without in any way impairing or affecting this agreement, the Bank may from time to time, in its discretion, for value or without value, renew or extend the time of payment of any of said claims of the Bank, modify in any manner or release in whole or in part any security therefor or the obligations of any endorsers, sureties or guarantors thereof, or release from the terms of this or any other subordination agreement any claims subordinated.

The Borrower, for the consideration hereinabove stated, authorizes and approves any act or thing which may be done in accordance herewith and agrees not to make any payment of or on account of, give any security for, or accept any surrender or release in whole or in part of, any of said claims hereby subordinated.

The Creditor and the Borrower agree to make and maintain in their books of account notations satisfactory to the Bank of the rights and priorities of the Bank hereunder and from time to time on request to furnish the Bank with financial statements. The Bank may inspect the books of account and records of the Creditor or the Borrower at any time during business hours. The Creditor and the Borrower waive notice of acceptance hereof and all other notice or demand whatever. No waiver by the Bank of any right hereunder shall be valid unless in writing and no waiver of any right shall be deemed a waiver of any other right. Nothing herein shall limit or affect in any manner any right the Bank may have by virtue of any other instrument or agreement. The words "Creditor" and "Borrower" as used herein shall include the plural as well as the singular and if "Creditor" or "Borrower" includes two or more, they shall be jointly and individually bound hereby. The word "claims" as used herein means all liabilities without limitation, whether due or not due, direct or contingent, determined or undetermined in amount, originally owed to the present owner or acquired by the present owner from another, and however evidenced or arising, and any part thereof.

This agreement shall inure to the benefit of the Bank, its successors and assigns, and shall be binding upon the Creditor and the Borrower and their respective heirs, administrators, executors, successors and assigns. This shall be a continuing agreement and shall be irrevocable and shall remain in full force and effect until all of said claims of the Bank shall have been paid in full and until the Bank shall have received notice in writing of the Creditor's election to terminate this agreement as to future loans or extensions of credit. Notwithstanding such notice or any other notice or the death or incompetency of any party thereto, this agreement shall continue in full force and effect as to all claims of the Bank then outstanding and any renewals or extensions thereof and all interest owed and thereafter accruing thereon.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or the duly authorized officers of the undersigned have executed this agreement on their behalf, this 16 day of September, 19 91

CREDITOR

Southern Development Council, Inc.

E. O'Neil Browder, President

BORROWER  
M & K Industries, A Partnership

Karl F. Reed, II Partner

Margaret W. Reed Partner  
Margaret W. Reed

## SCHEDULE I

STC-52703

Mortgage from M & K Industries (Karl F. Reed, II and Margaret W. Reed, Partners) to Southern Development Council dated August 31, 1989 in the amount of \$116,000 and recorded in Mortgage Book 276 page 848 in the office of the Judge of Probate, Shelby County, Alabama.

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

91 SEP 19 PM 1:47

JUDGE OF PROBATE

SouthTrust Bank  
of Alabama, N.A.  
P.O. Box 2554  
Birmingham, Alabama 35290

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WITNESS

WITNESS