

STATE OF ALABAMA)

SHELBY COUNTY)

MORTGAGE AND SECURITY AGREEMENT

This Mortgage is made and entered into on November 18, 1985, between H & W Development Company, an Alabama general partnership ("Mortgagor") and AmSouth Bank, National Association, a national banking association ("Mortgagee").

WITNESSETH, That

WHEREAS, the Mortgagor is or hereinafter shall be justly indebted to the Mortgagee in the amount of Two Hundred Fifty Thousand and 00/000 Dollars (\$250,000.00) as evidenced by that certain promissory note of even date herewith (the "Note");

WHEREAS, Mortgagor, in order to secure the Note, and in order to induce the Mortgagee to extend credit to the Mortgagor on the strength of the security provided by this Mortgage, has agreed to execute and deliver this Mortgage and convey the property described herein to Mortgagee as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and in order to induce the Mortgagee to extend credit to the Mortgagor, and in order to secure the prompt payment of the following (hereinafter sometimes referred to collectively as the "Indebtedness"):

- (1) Any and all sums, principal, interest and charges, becoming due and payable by the Mortgagor under or with respect to the Note;
- (2) Any and all sums becoming due and payable by Mortgagor to Mortgagee under the terms of this Mortgage, including but not limited to advancements made by Mortgagee pursuant to the terms and conditions of this Mortgage;
- (3) All renewals and extensions of any or all of the obligations of the Mortgagor described in (1) and (2) above, whether or not any renewal or extension agreement is executed in connection therewith; and
- (4) The full and complete performance of each and every obligation, covenant, duty and agreement of Mortgagor contained in this Mortgage;

Calhoun Title

I. GRANTING CLAUSES

Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey to Mortgagee, its successors and assigns, the following described real estate and all improvements, structures and fixtures now or hereafter situated thereon (the "Real Estate"):

A tract of land situated in the Southwest 1/4 of the Northeast 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows: Begin at the Northeast corner of said SW 1/4 of NE 1/4 and run West along the North line thereof for 661.23 feet; thence turn left 88° 57' 22" and run Southerly for 330.66 feet; thence turn right 89° 02' 14" and run Westerly for 258.06 feet to a point on the Easterly right of way line of U. S. Highway 280; thence turn left 95° 52' 30" and run Southeasterly along said Easterly right of way line for 60.32 feet; thence turn left 84° 07' 30" and run Easterly for 286.78 feet to the beginning of a curve to the right having a radius of 189.87 feet and a central angle of 90° 34' 50"; thence Easterly and Southerly along the arc of said curve for 300.17 feet; thence Southerly, tangent to said curve for 148.50 feet; thence turn left 90° and run Easterly 254.15 feet; thence turn right 90° 27' 45" and run Southerly for 218.26 feet; thence turn left 90° and run Easterly for 176.0 feet to a point on the East line of said SW 1/4 of NE 1/4; thence turn left 90° and run Northerly along said East line for 956 feet to the point of beginning.

Containing 10.7436 acres, more or less.

Together with all appurtenances, easements, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate.

TO HAVE AND TO HOLD the Real Estate, together with all the rights, privileges and appurtenances thereunto belonging, unto Mortgagee, its successors and assigns, forever.

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II. ASSIGNMENT OF CONDEMNATION AWARDS

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of Mortgagor contained herein, and to the extent of the full amount of the Indebtedness secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in the collection of any award or payment, Mortgagor hereby assigns to Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to Mortgagor with respect to the Real Estate as a result of (A) the exercise of the right of eminent domain, (B) the alteration of the grade or of any street or (C) any other injury to or decrease in value of the Real Estate. All such damages, condemnation proceeds and consideration shall be paid directly to Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in obtaining such sums, Mortgagee may, at its option, apply the balance on the Indebtedness in any order and whether or not then due, or to the restoration of the Real Estate, or release the balance to Mortgagor. Said application or release shall not cure or waive any default of Mortgagor.

III. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

In order to induce Mortgagee to extend credit to the Mortgagor, Mortgagor represents and warrants that:

A. Valid Title, etc. Mortgagor is lawfully seized of an indefeasible estate in fee simple in and to the Real Estate; it has a good right to sell and mortgage the Real Estate; the Real Estate is subject to no liens, encumbrances or security interests; and Mortgagor will forever warrant and defend the title to the Real Estate unto Mortgagee against the claims of all persons whomsoever.

B. Maintenance of Lien Priority. Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on and security interest in the Real Estate created hereby. Mortgagor shall execute, acknowledge and deliver such additional instruments as Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as first liens on and security interests in the Real Estate, except as

otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens and security interests hereby created shall be paid by Mortgagor.

IV. COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees that, until the Indebtedness is paid in full:

A. Payment of Taxes and Other Assessments.

Mortgagor will pay or cause to be paid all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Real Estate or on the interests created by this Mortgage, and any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Real Estate or on the lien and other interests created by this Mortgage, and at least ten days before said taxes, assessments and other governmental charges are due Mortgagor will deliver receipts therefor to Mortgagee. Mortgagor may, at its own expense, in good faith contest any such taxes, assessments and other governmental charges and, in the event of any such contest, may permit the taxes, assessments or other governmental charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed. If any tax or assessment is levied, assessed or imposed by any governmental authority on Mortgagee as a legal holder of the Note or any interest in this Mortgage or in any other documents securing the Note, then unless all such taxes and assessments are paid by Mortgagor as they become due and payable (and in the opinion of counsel for Mortgagee, such payment by Mortgagor is lawful and does not place Mortgagee in violation of any law), Mortgagee may, at its option, declare the Indebtedness immediately due and payable.

B. Insurance. Mortgagor shall keep or cause to be kept the Real Estate insured against loss or damage by fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by Mortgagee, in such amounts, in such manner and in such companies as Mortgagee may approve. All such policies shall provide that any losses payable thereunder shall

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(pursuant to standard mortgagee clauses, without contribution, to be attached to each policy) be payable to Mortgagee. Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with Mortgagee. At least ten days prior to the date the premiums on each such policy or policies shall become due and payable, Mortgagor shall furnish to Mortgagee evidence of the payment of such premiums. Each of such policies shall contain an agreement by the insurer that the same shall not be cancelled without at least ten days' prior written notice to Mortgage. With respect to all such insurance policies, Mortgagee is hereby authorized, but not required, on behalf of Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and whether due or not, or to the restoration of the Real Estate, or to release the same to Mortgagor, but any such application or release shall not cure or waive any default by Mortgagor. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Real Estate in extinguishment of the Indebtedness, complete title to all insurance policies held by Mortgagee and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Real Estate.

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C. Waste, Demolition, Alteration or Replacement. Mortgagor will cause the Real Estate and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Real Estate without the express prior written consent of Mortgagee, will comply with all laws and regulations of any governmental authority with reference to the Real Estate and the manner and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Mortgagor agrees not to remove any of the fixtures or personal property included in the Real Estate without the express prior written consent of Mortgagee and unless the same is immediately replaced with like property of at least equal value and utility.

V. DEFEASANCE

If the Mortgagor shall pay in full: (A) all of the Indebtedness, including but not limited to, all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same; and (B) all sums becoming due and payable by Mortgagor under the terms of this Mortgage, including but not limited to, advancements made by Mortgagee pursuant to the terms and conditions of this Mortgage; and (C) Mortgagor shall have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Real Estate shall revert to Mortgagor, and the entire estate, right, title and interest of Mortgagee will thereupon cease; and Mortgagee in such case shall, upon the request of Mortgagor and at Mortgagor's cost and expense, deliver to Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

VI. EVENTS OF DEFAULT

Mortgagor shall be in default under this Mortgage upon the happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively referred to as "Events of Default"):

- 1. (a) any representation or warranty made herein or in the Note or in any other document or instrument evidencing, securing or executed in connection with the Indebtedness (the "Loan Documents") shall prove to be false or misleading in any material respect;
- 2. (b) any report, certificate, financial statement or other instrument finished in connection with the Indebtedness or any Loan Document shall prove to be false or misleading in any material respect;
- 3. (c) default shall be made in the prompt payment of the principal of and interest payable on the Note when due and payable;
- 4. (d) default shall be made with respect to any indebtedness (other than the Note) of the Mortgagor when due or the performance of any other obligation incurred in connection with any indebtedness for borrowed money of Mortgagor, if

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the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or any such indebtedness shall not be paid when due;

- (e) default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of any Loan Document;
- (f) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of Mortgagor to be observed or performed pursuant to the terms of this Mortgage;
- (g) any other event of default shall occur under any Loan Document;
- (h) the Mortgagor or any maker, endorser, surety or guarantor of the Note (hereinafter collectively called the "Obligors" and individually an "Obligor") fails to pay such Obligor's debts generally as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors;
- (i) final judgment for the payment of money in excess of an aggregate of \$5,000 shall be rendered against the Mortgagor or any Obligor, and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed;
- (j) the interest of Mortgagee in the Real Estate shall become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the Indebtedness;

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- (k) any of the stipulations contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction; or
- (l) the Real Estate, or any part thereof, or any interest therein, is sold, conveyed, transferred or further encumbered.

VII. RIGHTS OF MORTGAGEE UPON DEFAULT

A. Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, Mortgagee may at its option and without demand or notice to Mortgagor, declare the Indebtedness, all or any part thereof, immediately due and payable. Unless otherwise provided herein and to the extent permitted by law, Mortgagor hereby waives demand, presentment for payment, protest, notice of protest, dishonor and default, notice of intent to declare the Indebtedness immediately due and payable and notice of declaration that the Indebtedness is immediately due and payable, and any and all rights it may have to a hearing before any judicial authority prior to the exercise by Mortgagee of any of its rights under this Mortgage or any other agreements securing or executed in connection with the Indebtedness.

B. Operation of Property by Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person, firm or corporation designated by Mortgagee), may, but will not be obligated to, enter upon and take possession of any or all of the Real Estate, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; and Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mortgagor with respect to the Real Estate. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Real Estate shall be returned to Mortgagor, provided there has been no foreclosure sale. This provision is a right created by this Mortgage and is cumulative of, and shall in no way affect, the right of Mortgagee to the appointment of a receiver given Mortgagee by law.

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C. Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default, Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit for a foreclosure of its lien on and security interest in the Real Estate, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Upon the occurrence of an Event of Default, Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Real Estate, with power to lease and control the Real Estate and with such other powers as may be deemed necessary.

D. Foreclosure Sale. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Real Estate is taken, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Real Estate is located, to sell the Real Estate (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Real Estate, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Real Estate, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Real Estate in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of

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the Real Estate not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

E. Mortgagor's Warranties After Sale. Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Real Estate sold at foreclosure good and sufficient deeds of conveyance, and the title of such purchaser or purchasers when so made by Mortgagee or such auctioneer, Mortgagor binds itself to warrant and forever defend to the extent of the right, title and interest therein of Mortgagor.

F. Application of Proceeds. The proceeds of any and all foreclosure sales of the Real Estate shall be applied as follows: (i) to the payment of all necessary expenses incident to the execution of said sale or sales, (ii) to the payment of the Indebtedness, to the amount of the accrued interest and principal legally due thereon and all other sums secured hereby and to the payment of attorneys' fees as provided in the Note, and (iii) the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law.

G. Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Indebtedness due, and provided that if any sale is made because of such Event of Default, such sale may be made subject to the unmatured part of the Indebtedness secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness secured by this Mortgage, but as to such unmatured part of the Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Indebtedness whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Real Estate for any matured part of the Indebtedness without exhausting any power of foreclosure and the power to sell the Real Estate for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

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H. Waiver of Appraisement Laws. Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Real Estate (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Indebtedness or any creation or extension of a period of redemption from any sale made in collecting the Indebtedness (commonly known as stay laws and redemption laws).

I. Prerequisites of Sales. In case of any foreclosure sale of the Real Estate, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of money secured or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

VIII. MISCELLANEOUS PROVISIONS

A. Waiver and Election. The exercise by Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien and security interest granted by this Mortgage, either on any matured portion of the Indebtedness or for the whole of the Indebtedness, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication or necessary notices for foreclosure, as provided in this Mortgage, preclude the prosecution of a later suit thereon.

B. Landlord-Tenant Relationship. Any sale of the Real Estate under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Mortgagor.

C. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of Mortgagee to effectuate the provisions hereof.

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D. Application of Payments. If the lien or the security interest created by this Mortgage is invalid or unenforceable as to any part of the Indebtedness or is invalid or unenforceable as to any part of the Real Estate, the unsecured or partially secured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness which is not secured or not fully secured by said lien or security interest created hereby.

E. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns.

F. Advances by Mortgagee. If Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessments and other charges, the keeping of the Real Estate in repair, or any other term or covenant herein contained, Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Real Estate for the purpose of performing any such term or covenant. Mortgagor agrees to repay all sums advanced upon demand, with interest from the date such advances are made, determined on the same basis as the principal in the Note (to the fullest extent permitted by applicable law), and all sums so advanced with interest shall be secured hereby.

G. Release or Extension by Mortgagee. Mortgagee, without notice, may release any part of the Real Estate or any person liable for the Indebtedness without in any way affecting the rights of Mortgagee hereunder as to any part of the Real Estate not expressly released and may agree with any party with an interest in the Real Estate to extend the time for payment of all or any part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of the Note, this Mortgage or any other instrument evidencing or securing the Indebtedness.

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H. Partial Payments. Acceptance by Mortgagee of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only, and the failure of Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Indebtedness has been paid, Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

I. Titles not to be Considered. All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

J. Construction of Mortgage. This Mortgage may be construed as a mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and security interest created hereby and the purposes and agreements herein set forth.

IN WITNESS WHEREOF, H & W Development Company, an Alabama general partnership, by its duly authorized general partners, has executed this instrument on the day and year first above written.

H & W DEVELOPMENT COMPANY,
an Alabama General Partnership

By _____
Its General Partner

By _____
Its General Partner

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John Howard and Forrest E. Waters, Jr., whose names as general partners of H & W Development Company, an Alabama general partnership, are signed to the foregoing conveyance and who are known to me, acknowledged before me

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on this day that, being informed of the contents of the conveyance, they, as such general partners and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this 18 day of November, 1985.

Reba Hood Harl
Notary Public

[AFFIX NOTARIAL SEAL]

This instrument was prepared by:

Kay K. Bains
Cabaniss, Johnston, Gardner, Dumas & O'Neal
1900 First National-Southern Natural Building
Birmingham, Alabama 35203
(205) 252-8800

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STATE OF ALABAMA
I CERTIFY THIS
INSTRUMENT TO BE TRUE

1985 NOV 20 AM 8:33

Reba Hood Harl
JUDGE OF CIRCUIT COURT

RECORDING FEES	
Mortgage Tax	<u>375.00</u>
Deed Tax	<u> </u>
Mineral Tax	<u> </u>
Recording Fee	<u>35.00</u>
Index Fee	<u> 1.00</u>
TOTAL	<u>411.00</u>

