

STATE OF ALABAMA
SHELBY COUNTY

979

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made and entered into by and between WOODBROOK APARTMENTS, LTD., an Alabama limited partnership (herein referred to as "Mortgagor" or as "Borrower"), and FIRST COMMERCIAL BANK (hereinafter referred to as the "Bank" or as the "Lender" or as the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagee has issued an irrevocable letter of credit (the "Letter of Credit") in favor of SouthTrust Bank of Alabama, National Association, in the face amount of \$500,000, for the account of Mortgagor; and

WHEREAS, the said Mortgagor is obligated to the Mortgagee under the terms of (a) an Application for Irrevocable Letter of Credit (hereinafter called the "Application"), of even date herewith, and (b) a Reimbursement Agreement (referred to, together with this mortgage and the Application, as the "Loan Documents"); and

WHEREAS, this instrument is entered into in order to induce the Mortgagee to issue the Letter of Credit, and as additional security for the payment and performance by Mortgagor of all the obligations of Borrower under the Loan Documents (the "Obligations").

This instrument secures:

- (1) Payment and performance of the Obligations under all the Loan Documents, including all extensions, renewals and modifications of the Loan Documents.
- (2) The payment and performance of the Mortgagor's obligations under this Mortgage.
- (3) The payment of all sums advanced or paid out by the Mortgagee under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

Please Return This Instrument To QUY V. MARTIN, JR. HASKELL SLAUGHTER YOUNG & LEWIS 800 First National - Southern Natural Bidg. BIRMINGHAM, ALABAMA 35203

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QUY V. MARTIN, JR.
BOO First National-Southern Natural Bidg.
BIRMINGHAM, ALABAMA 35203

NOW THEREFORE, in consideration of the premises and to secure the true and faithful payment and performance by the Mortgagor of all the Obligations under the Loan Documents and compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, the following-described property (all of which as described in (A) through (C) below, is referred to herein as the "Property," or the "premises"):

- (A) The real estate described in Exhibit A attached hereto and incorporated herein by reference as fully as though set forth herein.
- (B) All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the property, whether now or hereafter acquired by Borrower, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services on the Property, including without limitation all swimming pools, tennis courts, and related facilities, and all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the Property, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the Property (the "Improvements").
- (C) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the property or not, and whether in storage or otherwise, wheresoever the same may be located. Property herein conveyed and mortgaged shall include, but 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, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto the Mortgagee, its successors and assigns forever. And the Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of said premises and has a good right to sell and convey the same as aforesaid; that the said premises are free of all encumbrances except for the prior liens described in Exhibits A-1 attached hereto (collectively and severally referred to, together with any one or more promissory notes secured thereby, as the "Prior Lien"), and

Mortgagor will warrant and forever defend the title to the same unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

Mortgagor warrants and covenants that all payments, conditions and provisions made and provided for in any Prior Lien shall be performed promptly when due, but if Mortgagor suffers or permits default under any Prior Lien, then such shall constitute a default hereunder and Lender may, at its option and without notice, commence proceedings for the sale of the Property in accordance with the provisions herein made. If default is suffered or permitted under any Prior Lien, then, in addition to Lender's other options as aforesaid, Lender may (but shall not be obligated to) cure such default by making such payments, or performing otherwise as the holder of the Prior Lien may permit, or Lender may purchase or pay in full such Prior Lien, and all sums so expended by Lender, shall be secured hereunder or, at the option of Lender, under such Prior Lien instruments; provided however, such payment, performance and/or purchase of the Prior Lien by Lender shall not for the purpose of this instrument be construed as satisfying the defaults of Mortgagor under said Prior Lien.

In the event any Prior Lien is foreclosed and such foreclosure proceedings bring an amount sufficient to pay in full said Prior Lien and there remains an excess sum payable to Mortgagor, then Mortgagor does hereby irrevocably assign the interest of Mortgagor in and to said fund to Lender and the holder of said excess funds is hereby authorized and directed to pay same directly over to Lender without including the name of Mortgagor in said payment and a receipt by Lender shall be as binding on Mortgagor as if Mortgagor had signed same and Mortgagor further relieves the party paying said sum to Lender, of the necessity of seeing to the application of said payment.

And for the purpose of further securing performance of the Loan Documents the Mortgagor hereby agrees to pay all taxes, assessments, or other liens taking priority over this Mortgage, when imposed legally upon said Property, and should default be made in the payment of same, or any part thereof, said Mortgagee, at its option, may pay the same; and to further secure said Obligations and every portion thereof, the Mortgagor agrees to keep said Property continuously insured in such manner and in such companies as may be satisfactory to the Mortgagee, for at least the insurable value of the improvements located upon the Property, against loss by fire and against all losses now or hereafter covered by Extended Coverage Insurance or any policy or similar type, and against such other hazards as Mortgagee may reasonably require, with loss, if any, payable to said Mortgagee, as its interest may appear, and if 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 such losses, for its own benefit, the proceeds from such insurance, if collected, to be credited on the indebtedness secured by this Mortgage, less cost of collecting same, or, at the election of the Mortgagee, may be used in repairing or reconstructing the premises; all amounts so expended by said Mortgagee for insurance, or for the payment of taxes, assessments, or any other Prior Lien, shall become a debt due and at once payable, without demand upon or notice to any

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person, to said Mortgagee, additional to the indebtedness hereby specially secured, and shall be secured by the lien of this Mortgage, and shall bear interest from date of payment by said Mortgagee, and at the election of the Mortgagee, and without notice to any person, the Mortgagee may declare the entire indebtedness secured by the Loan Documents due an payable, and this Mortgage subject to foreclosure, and same may be foreclosed, as hereinafter provided.

Mortgagor agrees to take good care of the premises above described, and not to commit or permit any waste thereon, and to keep the same repaired, and at all times to maintain the same in as good condition as they now are, reasonable wear and tear alone excepted.

In addition to the property hereinabove mortgaged and conveyed to secure the indebtedness herein referred to, Mortgagor does hereby sell, transfer, assign, set over, pledge and hypothecate unto Mortgagee as further security for the obligation secured hereby, each and every policy of hazard insurance now and hereafter delivered to Mortgagee in accordance with the provisions of this Mortgage, together with all of the right, title and interest of Mortgagors in and to each and every such policy, and without limitation, all of Mortgagors' right, title and interest in and to any premiums paid on such hazard insurance including all rights to return premiums, all subject to the rights, if any, of the holder of any Prior Lien to said policies and premiums.

Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the maturity of any obligation secured by this Mortgage, shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this Mortgage can be waived, altered or changed except as evidenced in writing, signed by the Mortgagor, and by the Mortgagee, by an officer thereof.

After any default on the part of the Mortgagor the Mortgagee shall, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court or tribunal, without notice to any party, a receiver of the rents, issues and profits of said premises, with power to lease and control the said premises, and with such other powers as may be deemed necessary.

All of the existing and future rents, royalties, income and profits of the Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Mortgagee. Upon any default by the Borrower, Mortgagee may in its discretion at any time without notice to the Borrower collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Mortgagee to collect any rents, royalties, income or profits will make the Mortgagee a "mortgagee-in-possession" of the Property. Possession by a courtappointed receiver will not be considered possession by the Mortgagee. All rents, royalties, income and profits collected by the Mortgagee or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs

of operation and management of the Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order the Mortgagee directs in its absolute discretion and without regard to the adequacy of its security.

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Borrower will not execute any leases, management or leasing agreements, or occupancy agreements affecting any of the Property without first having received the prior written approval from Mortgagee of the form and content of the same and/or of the managing agent. Without limiting the foregoing, any managing, leasing, or similar fee shall be subordinated to the lien of this instrument.

Without the prior written consent of the Mortgagee, the Borrower shall not accept prepayments of rent exceeding one month under any leases or occupancy agreement affecting any of the Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair the Borrower's interest in the rents, royalties, income and profits of the Property. The Borrower will perform all covenants of the lessor under any such leases or occupancy agreement.

If required by the Mortgagee, each lease or occupancy agreement affecting any of the Property must provide, in a manner approved by the Mortgagee, that the lease or occupancy agreement is junior and subordinate to the lien of this mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of the Borrower upon any foreclosure of this Mortgage.

Nothing herein shall render Mortgagee liable under any existing or future lease, regardless of the collection of rents thereunder, for any of the covenants or agreements of Borrower under such leases.

UPON CONDITION, HOWEVER, that if the Mortgagor shall truly and faithfully comply with the terms and conditions of the Loan Documents, and all extensions, modifications, novations, substitutions, or restatements of such Loan Documents, heretofore or hereafter, and make all payments therein agreed to be made by them, shall well and truly pay or cause to be paid to the Mortgagee any and all sums of money which it shall or may be required to pay to any person, firm or corporation by reason of the Loan Documents, and shall pay all other indebtedness secured by this Mortgage, and reimburse said Mortgagee for any amount it may have expended in payment of taxes and 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; BUT SHOULD default be made by Mortgagor under any provision of this Mortgage or in payment of any sum expended by the Mortgagee under the authority of any of the provisions of this Mortgage, or should the Mortgagor fail or refuse truly and faithfully to comply with the terms and conditions of the Loan Documents, or fail or refuse to make any payment therein agreed to be made by them or to perform any obligation of the Mortgagor described therein, or should any default occur in the performance and payment of all Obligations under any Loan Document by Mortgagor, or should the interest of said Mortgagee in said property become endangered by reason of the enforcement of any Prior Lien or encumbrance thereon, so as to endanger the debt hereby secured, or

should any law, either Federal or State, be passed imposing or authorizing the imposition of any specific tax upon this Mortgage, or the debt hereby secured, or should at any time any of the stipulations contained in this Mortgage be declared invalid or inoperative by any court of competent jurisdiction, then, in any one of said events, at the option of said Mortgagee, this Mortgage will be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages; and the Mortgagee shall be authorized to take possession of the premises hereby conveyed, and (1) whether or not possession is taken, after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the County wherein said property is located, to sell the same in front of the Courthouse door of the County wherein said property is located, at public outcry, to the highest bidder for cash; and (2) whether or not possession is taken, to bring a court action to foreclose this Mortgage or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise. In case of a sale of the Property under either of the above, the proceeds of said sale(s) shall be applied: First, to the expense of advertising, selling, and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or may then be necessary to expend, in paying insurance, taxes and other encumbrances, with interest thereon; third, to the satisfaction of all unpaid obligations and liabilities of the Mortgagor, under and in accordance with the terms of the Loan Documents, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the Mortgagor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner, or it may be offered for sale and sold in any other manner that Mortgagee may elect in its sole discretion. Lender may bid at any foreclosure sale and purchase all or any part of the Property.

This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which Mortgagee is granted a security interest thereunder, and Lender shall have all of the rights and remedies of a secured party under the ALABAMA UNIFORM COMMERCIAL CODE as well as all other rights and remedies available at law or in equity. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-infact of Borrower, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, Mortgagee shall have the right to cause any of the Property which is personal property and subject to the security interest of Mortgagee hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Mortgagee shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Borrower and Mortgagee shall be eligible to purchase any part or all of such property at such disposition.

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Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Mortgagee's attorneys' fees and legal expenses. Borrower, upon demand of Lender, shall assemble such personal property and make it available to Mortgagee at the Property, a place which is hereby deemed to be reasonably convenient to Mortgagee and Borrower. Mortgagee shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of the Mortgagor and the Mortgagee. If the Mortgagor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of the Mortgagor.

Each general partner of Shelby Development Company shall be jointly and severally liable for payment and performance of all of the Borrower's obligations hereunder, whether or not a signatory hereof.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal on this 14-7H day of 11/1, 1966

WOODBROOK APARTMENTS, LTD., an Alabama limited partnerhip

By: SHELBY DEVELOPMENT COMPANY, an Alabama General Partnership, its general partner, by its Partners

Robert R. Maner, Partner

Jr. Partner

WITNESS:

By

[SEAL]

WITNESS:

Ву

(SEAL)

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STATE OF ALABAMA
COUNTY OF

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that H. W. Goings, Jr., whose name as partner of SHELBY DEVELOPMENT COMPANY, general partner of WOODBROOK APARTMENTS, LTD., an Alabama limited partnership, 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 the within instrument, he, as such partner and with full authority executed the same voluntarily for and as the act of said general partnership, acting in his capacity as general partner of Shelby Development Company, general partner of Willowbrook Apartments.

GIVEN under my hand and official seal of office, this 14th day of , 1986.

STATE SEAL]

Notary Public

My Commission Expires:

7/26/87

STATE OF ALABAMA

COUNTY OF

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Robert R. Maner, whose name as partner of SHELBY DEVELOPMENT COMPANY, general partner of WOODBROOK APARTMENTS, LTD., an Alabama limited partnership, 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 the within instrument, he, as such partner and with full authority executed the same voluntarily for and as the act of said general partnership, acting in his capacity as general partner of Shelby Development Company, general partner of Willowbrook Apartments.

GIVEN under my hand and official seal of office, this Later day of , 1986.

NOTARIAL SEAL]

My Commission Expires:

7/26/87

EXHIBIT A-1

"PRIOR LIENS"

Promissory Note dated this date made by Borrower in favor of Southtrust Bank of Alabama, National Association in face amount of \$2,150,000, secured by Real Estate Mortgage and Security Agreement and Assignment of Rents and Leases covering the Property described in Exhibit A. By accepting this mortgage, Mortgagee acknowledges that its rights hereunder are junior and subordinate to those of the holder of the said Prior Lien.

EXHIBIT "A"

PARCEL I:

Commence at the Northwest corner of the Southwest Quarter of Section 11, Township 21 South, Range 3 West; thence run in an Easterly direction along the North line of said Quarter-Quarter a distance of 1235.17 feet; thence turn an angle to the right of 90 degrees 60 minutes and run in a Southerly direction a distance of 18.74 feet to the point of beginning of property herein described; thence turn an angle to the left of 90 degrees 55 minutes 29 seconds and run in an Easterly direction a distance of 774.99 feet; thence turn an angle to the right of 94 degrees, 40 minutes, 29 seconds and run in a Southerly direction a distance of 151.78 feet; thence turn an angle to the left of 93 degrees, 45 minutes and run in an Easterly direction a distance of 245.00 feet to its intersection with the Westerly right-of-way line of Montevailo-Ashville Road; thence turn an angle to the right of 93 degrees, 45 minutes and run in a Southerly direction along the Westerly right-of-way line of said road a distance of 93.40 feet to the point of commencement of a curve to the right, having a central angle of 4 degrees, 04 minutes, 40 seconds and a radius of 2,841.09 feet; thence continue along the arc of said curve for a distance of 202.20 feet; thence from the tangent of last described curve extended, turn an angle to the right of 81 degrees, 12 minutes, 33 seconds and run in a Westerly direction a distance of 983.61 feet; thence turn an angle to the right of 90 degrees, 57 minutes, 47 seconds and run in a Northerly direction a distance of 449.79 feet to the point of beginning.

PARCEL II:

Commence at the Northwest corner of the Southwest 1/4 of Section 11, Township 21 South, Range 3 West; thence run East along the North line of said 1/4-1/4 1235.17 feet; thence turn 90 degrees right and run South 16.74 feet to the point of beginning; thence continue on the last described course 449.79 feet; thence turn 90 degrees 57 minutes 46 seconds left and run Easterly 773.61 feet; thence turn 103 degrees 49 minutes 54 seconds right and run Southwesterly 180.56 (eet; thence turn 89 degrees 45 minutes 26 seconds left and run Southeasterly 189.46 feet to the point of beginning of a curve to the left having a central angle of 91 degrees 07 minutes 08 seconds and a radius of 25 feet; thence run along the arc of said curve 39.76 feet to its intersection with the Westerly right of way line of Shelby County Highway #119; thence turn an angle to the right of 135 degrees \$1 minutes 19 seconds from the chord if extended from the last described curve to the chord of a curve to the right, said curve having a central angle of 3 degrees 47 minutes 00 seconds and a radius of 2753.73 feet; thence run along the are of said curve 181.83 feet; thence continue on the tangent if extended from said curve Southwesterly along said Westerly right of way line 12.80 feet; thence turn 87 degrees 34 minutes 11 seconds right and run Northwesterly 212.31 feet; thence turn 90 degrees 00 minutes 00 seconds left and run Southwesterly 137.33 feet to a point in the centerline of Buck Creek; thence turn 123 degrees 00 minutes 35 seconds right and run Northwesterly 70.23 feet along said centerline; thence turn 16 degrees 55 minutes 51 seconds left and run Northwesterly 169.09 feet along said centerline: thence turn 26 degrees 58 minutes 40 seconds left and run Northwesterly 123.93 feet along said centerline; thence turn 13 degrees 18 minutes 35 seconds right and run Northwesterly 61.16 feet along said centerline; thence turn 29 degrees 40 minutes 41 seconds right and run Northwesterly 168.05 feet along sald centerline; thence turn 65 degrees 03 minutes 32 seconds left and run Southwesterly 130.16 feet along said centerline; thence turn 29 degrees 25 minutes 03 seconds left and run Southwesterly 72.60 feet along said centerline; thence turn 3 degrees 34 minutes 28 seconds left Southwesterly 35.20 feet along said centerline; thence turn 20 degrees 30 minutes 52 seconds right and run Southwesterly 79.37 feet along said centerline; thence turn 47 degrees 35 minutes 07 seconds right and run Northwesterly 177.55 feet along said centerline; thence turn 49 degrees 48 minutes 02 seconds right and run Northwesterly 89.58 feet along said centerline; thence turn 8 degrees 47 minutes 59 seconds right and run Northwesterly 22.48 feet along said centerline; thence turn 28 degrees 26 minutes 26 seconds right and run Northeasterly 18.64 feet along said centerline; thence turn 22 degrees 06 minutes 47 seconds right and run Northeasterly 48.14 feet along said centerline; thence turn 24 degrees 23 minutes 17 seconds left and run Northeasterly 86.54 feet along said centerline; thence turn 15 degrees 22 minutes 56 seconds left and run Northerly 25.80 feet along said centerline; thence turn 27 degrees 43 minutes 06 seconds left and run Northwesterly 47.20 feet along said centerline; thence turn 68 degrees 35 minutes 31 seconds left and run Southwesterly 95.59 feet along said centerline; thence turn 18 degrees 23 minutes 40 seconds right and run Northwesterly 35.87 feet along said centerline; thence turn 15 degrees 54 minutes 27 seconds right and run Northwesterly 117.72 feet; thence turn 28 degrees 09 minutes 54 seconds right and run Northwesterly 147.16 feet along said centerline; thence turn 0 degrees 36 minutes 11 seconds left and run Northwesterly 131.44 feet along said centerline; thence turn 37 degrees 27 minutes 25 seconds right and run Northeasterly 53.61 feet along said centerline; thence turn 55 degrees 34 minutes 51 seconds right and run Northeasterly 64.90 feet along said centerline; thence turn 36 degrees (25) minutes 42 seconds right and run Basterly 74.07 feet along said centerline; thence turn 57 degrees 13 minutes 59 seconds left and run Northeasterly 13.45 feet along said centerline; thence turn 14 degrees 12 minutes 31 seconds left and run Northeasterly 40.69 feet along said centerline; thence turn 17 degrees 15 minutes 54 seconds, left and run Northeasterly 49.95 feet along said centerline; thence turn 86 degrees 18 minutes 21 seconds right and run Easterly 546.93 feet to the point of beginning.



STATE OF ALAL SHELBY CO.

I CERTIFY THIS

INSTRUMENT WAS FILLED

1983 MAY 15 AM 10: 35

JUCOE 56 4 60 4 7 2

1. Deed Tax \$

2. Mtg. Tax 750.00

3. Recording Fee 3250

TOTAL 783.50



