

THIS DOCUMENT PREPARED BY:

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THE STATE OF ALABAMA)
 :
 JEFFERSON COUNTY)

MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

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THAT, WHEREAS, the undersigned ARTHUR P. COOK, a married man, Individually; and A. PHILIP COOK, JR., a married man, Individually (hereinafter called "Mortgagors"), have become justly indebted to JEFFERSON FEDERAL SAVINGS & LOAN ASSOCIATION OF BIRMINGHAM, a federally chartered savings and loan association, (hereinafter called "Mortgagee"), in the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND and NO/100 (\$175,000.00) DOLLARS evidenced by one promissory note (the "Note" or "said note") of even date herewith payable to the order of Mortgagee, with interest thereon from date hereof according to the terms of the Note, said principal and interest sums being due and payable according to the terms of said note; except that the entire unpaid principal balance of said note, with all accrued and unpaid interest thereon, if not sooner paid, shall be due and payable on July 1, 1996.

WHEREAS, Mortgagors, as hereinafter defined, is desirous of securing the prompt payment of said note and the several installments of principal and interest and the monthly payments provided for in said note and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the ultimate disbursement of the sum not of ONE HUNDRED SEVENTY-FIVE THOUSAND and NO/100 DOLLARS (\$175,000.00) to Mortgagors, in hand paid by Mortgagee, the receipt, adequacy and sufficiency whereof are hereby acknowledged, and for the purpose of securing

the prompt payment of said indebtedness as it becomes due, Mortgagors do hereby grant, bargain, sell, assign and convey unto said Mortgagee, its successors and assigns, the real property described in Exhibit "A" which is attached hereto and incorporated herein as if set out in full and expressly made a part hereof by reference.

Together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water courses, rights, liberties, privileges, easements, tenements, hereditaments, and appurtenances thereunto appertaining, and the reversions and remainders, and all present and future leases, rents and profits connected with or derived from said premises, all of the said property, whether real or personal.

All of the hereinabove described real property, and the buildings and improvements situated thereon are hereinafter referred to as "Mortgaged Premises".

TO HAVE AND TO HOLD the same with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining unto said Mortgagee, its successors and assigns forever.

And Mortgagor hereby covenants that Mortgagors are lawfully seized of said real property in fee simple, and have a good right to sell and convey the same; that the property is free from all encumbrances, except as set forth in Exhibit "B" attached hereto and made a part hereof, and that Mortgagors and Mortgagors' successors and assigns will forever defend the same unto Mortgagee and its successors and assigns against the claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions and agreements:

1. Payment of Indebtedness. Mortgagors shall pay the indeb-

tedness evidenced by said note and interest thereon when and as it shall become due, whether in due course or under any condition, covenant or agreement herein contained; together with any other indebtedness which Mortgagors may owe to Mortgagee pursuant to the terms and provisions of the within Mortgage or other Loan Documents.

2. Cost of Protecting Mortgagee's Lien. Mortgagors shall immediately pay to Mortgagee all sums, including costs, expenses, reasonable agent's or attorney's fees which Mortgagee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste, or to which Mortgagee is made a party because of its interest, in the Mortgaged Premises, or to establish or sustain the lien of this Mortgage, or its priority, or to defend against liens, claims, rights, estates, easements, or restrictions asserting priority to this Mortgage; or in payment, settlement, discharge or release of any asserted lien, claim, right, easement, or restriction made upon advice of competent counsel that the same is superior to the lien of this Mortgage, either in law or in fact; or to enforce any obligation of or to foreclose this Mortgage, or to recover any sums hereby secured; and for payment of all sums due under this paragraph including interest at the rate equal to three percent (3%) in excess of the interest rate provided in said Note.

3. Taxes, Liens and Other Charges. Mortgagors shall pay as the same shall become due all taxes and assessments that may be levied or accrue upon said Mortgaged Premises or any part thereof, or upon Mortgagee's interest therein, or upon this Mortgage, or the indebtedness or the evidence of indebtedness secured hereby, and all other charges that may become liens upon the Mortgaged Premises; and shall not permit any lien which might take precedence over this Mortgage to accrue and remain on the Mortgaged Premises, or any part thereof, or on the buildings and improvements thereon.

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4. Insurance. Mortgagors will continuously maintain hazard insurance of such type or types and amounts as Mortgagee may from time to time require including fire and extended coverage insurance, builder's risk insurance, rents insurance, flood hazard insurance, and war risk insurance (if available from the United States Government or an agency thereof), on the improvements now or hereafter on the Mortgaged Premises, and Mortgagors will pay promptly when due any premiums therefor. All insurance shall be carried in companies approved by Mortgagee and the policies and renewals thereof shall be delivered to and held by Mortgagee with loss payable clauses in favor of and in form acceptable to Mortgagee. Also, Mortgagors shall deliver to Mortgagee receipts for the premiums paid at least ten (10) days prior to the due date of such premiums. In the event of loss, Mortgagors will give immediate notice by mail to Mortgagee, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagors and Mortgagee jointly; and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, either to the reduction of the indebtedness hereby secured, or to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagors in and to any insurance policies then in force, and any and all proceeds due or which may become due thereon, shall pass to the purchaser or grantee.

5. Municipal, Governmental Charges, Etc. Mortgagors shall: (a) insure the Mortgaged Premises as hereinabove provided, (b) pay all or any part of said taxes or assessments so levied,

accrued or assessed on and against the Mortgaged Premises, (c) pay immediately and discharge any and all liens, debts and charges which might become liens superior to this Mortgage, and (d) keep the Mortgaged Premises in good condition and repair. The failure of Mortgagors to perform any one or more of the covenants in this paragraph of the within Mortgage shall constitute an event of default hereunder, and this Mortgage shall be subject to foreclosure at the option of Mortgagee. Mortgagee may, however, at its option, insure the Mortgaged Premises and pay said taxes, assessments, debts, liens and charges, or enter upon the Mortgaged Premises and make such repairs as it may deem necessary, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specially secured and shall be secured by this Mortgage, and shall bear interest at the rate equal to three percent (3%) in excess of the interest rate provided in said Note from date paid or incurred; and, at the option of Mortgagee, shall be immediately due and payable. Mortgagee shall have no obligation to procure such insurance, to pay such taxes, or assessments, debts, liens or charges, or make such repairs.

6. Extension. Mortgagee in its sole discretion may by agreement with Mortgagors extend the time for the repayment to it of any sum or sums advanced hereunder by Mortgagee for the alteration, modernization, improvement, maintenance, or repair of the Mortgaged Premises, for taxes or assessments against the same, and for any other purpose authorized hereunder; and upon the request of Mortgagee, Mortgagors shall execute and deliver a supplemental note or notes for the sum or sums advanced by Mortgagee for such purposes. Said note or notes shall be secured hereby on a parity with and as fully as if the advances evidenced thereby were included in the original principal indebtedness. Absent agreement to the contrary, the sum or sums so advanced shall be due and payable thirty (30) days after demand by

Mortgagee. In no event shall the maturity extend beyond the ultimate maturity of the original principal indebtedness as it may be extended, provided, however, that Mortgagee shall be under no obligation whatsoever to waive any of the provisions of this instrument with respect to the reimbursement of Mortgagee for any of the outlays made by it, and unless such extension is made by notes executed by Mortgagors and accepted by Mortgagee as herein provided, Mortgagors shall repay Mortgagee the amount together with interest on each and every payment or advance made by Mortgagee on or before the next installment of said Mortgage debt as provided in said principal note hereby secured.

7. No Waiver. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its rights to exercise such option or to declare such maturity by reason of any past or present default on the part of Mortgagors; and the procurement of insurance or the payment of taxes or other liens, debts, or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, debts, liens or charges; and this Mortgage shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness, or any part thereof, secured hereby.

8. Quarterly-Annual Escrow Deposits. Mortgagors on written request of Mortgagee shall with the quarterly-annual payments of principal and interest, pay to Mortgagee an additional sum in an amount equal to one-fourth (1/4 th) of the ad valorem taxes, hazard insurance premium, and assessments, if any, next to become due as estimated by Mortgagee. Money so held shall not bear interest, and upon default may be applied by Mortgagee on account of the indebtedness secured by this Mortgage.

9. Condition Subsequent. If Mortgagors shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall do and perform all acts and agreements to be done and performed by Mortgagors under the terms and provisions of this Mortgage, then this conveyance shall be and become null and void.

10. Default; Acceleration of Maturity. If Mortgagors shall fail to pay or cause to be paid, as it matures, the indebtedness evidenced by said note and secured hereby or any part thereof, according to the terms thereof, or if Mortgagors shall fail to do or perform any other act or thing herein required, or agreed to be done or performed, or if the interest of Mortgagee in the Mortgaged Premises becomes impaired by reason of the filing of or enforcement of any prior lien or encumbrance thereon, or if Mortgagors should become insolvent, or if Mortgagors should file or cause to be filed an insolvency or bankruptcy proceeding in a State or Federal court, or if at any time Mortgagors admit their inability to pay the indebtedness secured hereby as it becomes due, or if an involuntary petition in bankruptcy is filed against Mortgagors and same is not dismissed within thirty (30) days after such filing, or if Mortgagors make an assignment for the benefit of its creditors, then, in any one or more of such events, the whole indebtedness hereby secured shall, at the option of Mortgagee, and without notice, become immediately due and payable and this Mortgage shall be subject to foreclosure; and in any such event, Mortgagee shall have the right and is hereby authorized, to enter upon and take possession of the Mortgaged Premises, and, after or without taking possession, to sell the same before the Main Entrance of the Shelby County Courthouse in the City of Columbiana, Alabama, at public outcry for cash, first giving notice of the time, place and terms of said sale by publication once a week for three successive weeks prior to said sale in some newspaper published in Shelby County, Alabama; and upon the payment of the purchase money, Mortgagee, or any person con-

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ducting said sale for it, is authorized to execute to the purchaser at said sale a deed to the property so purchased, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. Mortgagee may bid at the sale and purchase the Mortgaged Premises, if the highest bidder therefor. At said foreclosure sale, the Mortgaged Premises may be offered for sale and sold as a whole without first offering it in any other manner, or may be offered for sale and sold in any other manner as Mortgagee may elect. The presence of any of the above-described security at the time and place of sale is expressly waived. In addition to the remedies provided for herein or those provided by law, the Mortgagee may, at its election, foreclose the within Mortgage by judicial proceedings.

11. Application of Foreclosure Proceeds. The proceeds of a foreclosure sale, judicial or otherwise, shall be applied; First, to the expenses of advertising and selling, including reasonable attorney's fees as provided in said Note or Notes; Second, to the repayment of any money with interest thereon, which Mortgagee may have paid or become liable to pay, or which it may then be necessary to pay for taxes, assessments, insurance or other charges, liens or debts as hereinabove provided; Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest, but interest to date of sale only shall be charged; Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Premises at the time of the sale after deducting any expenses of ascertaining who is such owner. If this Mortgage be foreclosed in Chancery, such reasonable attorney's fees shall be paid out of the proceeds of the sale.

12. Status of Mortgagor After Foreclosure. After foreclosure of this Mortgage and Security Agreement, Mortgagors and all holding under them, shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

13. Care of Premises. Mortgagors shall keep the Mortgaged Premises in good condition and repair, reasonable wear and tear excepted; shall not permit nor perform any act which would in any way impair the value of the Mortgaged Premises; shall not remove any fixture; shall not remove or demolish any building or improvement located on the above-described land which would impair the value of the premises without the written consent of Mortgagee; and shall neither commit nor permit waste of the Mortgaged Premises.

14. Right of Entry. If Mortgagors shall default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may at its option take immediate possession of the Mortgaged Premises and proceed to collect the rents, income and profits from the Mortgaged Premises, either with or without the appointment of a receiver. Any rents, income and profits collected by Mortgagee prior to foreclosure of this indebtedness, less the costs of collecting the same, including any real estate commission or attorney's fees incurred, shall be credited on the advances with interest thereon, hereby secured in such manner or proportion as Mortgagee may elect.

15. Mortgagors' Obligations as Lessor. Mortgagors shall perform every obligation of the lessor and shall enforce every obligation of the lessee in every lease that is assigned to Mortgagee or any tenancy in which the rents are assigned to Mortgagee; and shall not modify, alter, waive or cancel any such lease or any part thereof, nor anticipate for more than one month any rents that may be collectible under such lease or leases, or that may have been assigned to Mortgagee, and shall not assign any such lease or leases, or any such rents.

16. Waiver of Exemption. Mortgagors waives all rights of exemption pertaining to real or personal property as to any indebtedness secured or that may be secured, by this Mortgage;

and Mortgagors waive the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Premises be set off against any part of the indebtedness secured hereby.

17. Leases-Subordinate. All leases covering all or any part of the Mortgaged Premises, shall be subordinate, junior, and inferior to this Mortgage, unless otherwise specified by Mortgagee. Mortgagee may, at its election, require that specified leases be made superior to this Mortgage at the expense of Mortgagors.

18. Mortgagee To Approve Management Agreement. Mortgagors shall not enter into any Agreement with a Real Estate Broker, Certified Property Manager or Manager of the Mortgaged Premises including any of the offices within the Mortgaged Premises without first obtaining the written approval of Mortgagee. Any such Management and/or Leasing Agreement shall at all times be junior, inferior and subordinate in all respects to this Mortgage and Security Agreement and all other Loan Documents.

19. Rights Cumulative. Any promise made by Mortgagors herein to pay money may be enforced by a suit at law, and the security of this Mortgage shall not be waived thereby, and as to such debts, Mortgagors waive all rights of exemption under the law and agree to pay a reasonable attorney's fee for the collection thereof.

20. Estoppel. No delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option, or estop Mortgagee from afterwards exercising same, or any other option at any time and the payment or contracting to pay by Mortgagee of anything Mortgagors have herein agreed to pay shall not constitute a waiver of the default of Mortgagors in failing to make said payments, and shall not estop Mortgagee from foreclosing this Mortgage on account of such failure of Mortgagors.

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21. Bind and Inure-Definitions. The covenants, conditions and agreements herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders, and the term "Mortgagee" shall include any Payee or Holder of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The word "Note" shall mean Note of even date herewith secured by this Mortgage and Security Agreement and any additional Note or Notes at any time secured hereby. The term "Loan Documents" as used herein and in the Note secured hereby shall mean this Mortgage and Security Agreement and the Note which same secures and UCC Financing Statements.

22. Eminent Domain. Mortgagors hereby assign to Mortgagee any and all awards or damages, actual and consequential, considerations or proceeds for the taking of any portion or all of the Mortgaged Premises, by the exercise of the right of eminent domain or condemnation, including but not limited to, damages or awards for changes to the grades of streets, or acquiring title to streets. The proceeds of such awards or damages, when received by Mortgagee, shall be applied, at the option of Mortgagee, either in reduction of the Mortgage indebtedness, or shall be paid to Mortgagors or Mortgagors' assigns as reimbursement for amounts expended by Mortgagors in restoring the Mortgaged Premises following a condemnation. Notwithstanding that the assignment of awards referred to herein shall be deemed to be self-executing, Mortgagors, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to

Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage then remaining unpaid, with interest thereon, at the rate specified herein or in the Note which this Mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this Mortgage and Security Agreement, and also, together with any other indebtedness which Mortgagors may owe to Mortgagee pursuant to the terms and provisions of the within Mortgage and Security Agreement or other Loan Documents.

23. Security Agreement-Uniform Commercial Code. Mortgagors and Mortgagee are respectively the Debtors and Secured Party in certain Uniform Commercial Code Financing Statements covering personal property referred to or described herein; and it is agreed that:

(a) This instrument shall also constitute a Security Agreement under the Uniform Commercial Code as in force in the State of Alabama.

(b) In order to further secure the payment of the indebtedness described herein and the performance of all the obligations, agreements, terms and conditions of this Mortgage and of the Note and any other Loan Documents, Mortgagors hereby grant to Mortgagee a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Mortgagors (except such property which is leased by Mortgagors from third parties or which is purchased with separate funds and is subject to a purchase money security interest) now or hereafter attached or affixed to or used in and about the building or buildings now or hereafter erected or placed on the property described in this instrument, and all building materials and equipment now or hereafter delivered to said property and intended to be attached thereto or installed therein,

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together with all accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which is hereinafter collectively called the "Collateral", and together with all proceeds of the Collateral.

(c) Mortgagors represent that they are the owners of the Collateral and have good right and authority to grant a security interest in the Collateral, that there is no presently outstanding adverse lien, security interest or encumbrance in or on the Collateral or its proceeds (except for the security interest granted in this Mortgage), and that there is no financing statement covering the Collateral or its proceeds on file in any public office other than those which may be of record in office of the Judge of Probate, Shelby County, Alabama, and the office of the Alabama Secretary of State.

(d) So long as the indebtedness secured hereby or any part thereof remains unpaid, Mortgagors covenant and agree with the Mortgagee as follows:

- (i) Mortgagors shall account fully and faithfully for and, if Mortgagee so elects, shall promptly pay or turn over to Mortgagee the proceeds in whatever form received from the disposition in any manner of any of the Collateral. Mortgagors shall at all times keep any proceeds from the Collateral separate and distinct from other property of Mortgagors and shall keep accurate and complete records of such proceeds.
- (ii) Mortgagors shall sign and execute along or with Mortgagee any financing statement or other document, or procure any document, and pay all connected costs, deemed advisable by Mortgagee to protect the security interest hereunder against the rights or interest of third persons.
- (iii) The Collateral will be used in the business of Mortgagors and shall remain in Mortgagors' possession or control at all times at Mortgagors' risk of loss and shall be located and maintained on the property described herein except for its temporary removal in connection with its ordinary use or unless Mortgagors notify Mortgagee in advance of its removal to another location.

(e) Upon the occurrence of any default under this instrument

or under the Note or under the other Loan Documents, Mortgagee may, with respect to the Collateral, exercise its rights of enforcement under the Uniform Commercial Code; and, in conjunction with, in addition to, or in substitution for those rights and remedies and all other rights and remedies provided under this instrument:

- (i) Mortgagee may enter upon any premises of Mortgagors to take possession of, assemble and collect the Collateral; and
- (ii) Mortgagee may require Mortgagors to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; and
- (iii) Mortgagee may remedy any default in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default; and
- (iv) written notice mailed to Mortgagors as provided herein five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and
- (v) any sale of all or any part of the Collateral shall be deemed to have been conducted in a commercially reasonable manner if held contemporaneously with, or included with, the sale of real property described herein under power of sale as provided in this Mortgage; and
- (vi) in the event of a sale, whether made by Mortgagee under the terms hereof, or under judgment of a court, the Collateral and all other property constituting the premises may, at the option of Mortgagee, be sold as a whole or in part; and
- (vii) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale.

(f) The Collateral is intended to be and shall be subject to all the other provisions of this instrument, and the terms and provisions of this paragraph shall not in any way limit any rights or remedies of Mortgagee with respect to the Collateral under other provisions of this instrument.

24. Annual Statements and Reports. Mortgagors shall, at its expense and without expense to Mortgagee, deliver to Mortgagee

(a) within ninety (90) days after the close of each fiscal year, an annual audit of the operation of the Mortgaged Premises, showing in complete detail the total income received and total expenses, together with annual balance sheets and profit and loss statements, prepared and certified by Mortgagor's Certified Public Accountant in form and substance satisfactory and acceptable to Mortgagee, and (b) such rent rolls and interim balance sheets and profit and loss statements as may be required by Mortgagee.

25. Examination of Books and Accounts. Mortgagors shall permit and allow Mortgagee at any time to examine the books, records and accounts of Mortgagors insofar as they relate to the Mortgaged Premises and to make copies thereof. Mortgagors shall exhibit to Mortgagee, or to any person designated by Mortgagee for that purpose, such books, accounts and records at such times and places as Mortgagee may designate.

26. Brundage Clause. In the event of the passage after the date of this Mortgage of any law of the State of Alabama, deducting from the land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured thereby, for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee, then and in such event, Mortgagors shall bear and pay the full amount of such taxes, provided, that if for any reason payment by Mortgagors of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of said Note or Notes, or the within Mortgage and Security Agreement, or otherwise, Mortgagee may, at its option, declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable or Mortgagee may, at its option, pay that amount or portion of

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such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Mortgagors shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

27. Governmental Approvals. Mortgagors shall obtain and at all times keep in full force and effect during the term of this Mortgage or any extension thereof such governmental and municipal approvals as may be from time to time necessary to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Premises described herein and/or the occupancy thereof.

28. Usury. Anything to the contrary notwithstanding contained herein or in the Note which is secured hereby, the total liability for payment in the nature of interest shall not exceed the limits now imposed by the usury laws of the State of Alabama.

29. Mortgagee's Right To Inspect. Mortgagee is hereby authorized and empowered, at its option, to make periodic inspections of the Mortgaged Premises at all reasonable times for the purpose of evaluating and determining the physical condition and state of repair of the Mortgaged Premises and the percentage of occupancy of same.

30. Mortgagors' Obligation To Reimburse Mortgagee. If Mortgagee shall at any time be made a party to any legal action or proceeding affecting or questioning the title or possession of, or the priority of this Mortgage on the mortgaged premises, Mortgagor agrees to pay all loss, damage, costs, fees, claims, liabilities, or expenses of any kind, including, but not limited to a reasonable attorney's fee incurred by Mortgagee in such legal action or proceedings, and this Mortgage shall secure payment thereof.

31. No Sale, or Further Encumbrance Without Mortgagee's Consent. Mortgagors shall not, sell, transfer, convey, pledge,

encumber, grant a security interest in, or otherwise hypothecate or dispose of the Mortgaged Premises or any interest therein, whether or not as collateral security or for any other obligations of Mortgagors. Anything to the contrary notwithstanding contained in this paragraph Mortgagors shall not cause or permit any junior lien, encumbrance, or mortgage to be placed on the Mortgaged Premises or any other security granted to Mortgagee under the Loan Documents.

32. Subsurface Conditions. Mortgagors warrant and represent unto Mortgagee that Mortgagors have caused the subsurface conditions to be examined and studied by professional soils engineers and that there are no sink holes, cave-ins or other subsurface or surface conditions which will prevent the herein above described real property from being used for commercial, industrial, or professional office purposes.

33. No Obligation To Marshall Assets-Subrogation. Notice is hereby given that no holder of any mortgage, or other encumbrance affecting all or a part of the Mortgaged Premises which is inferior or may become inferior to this Mortgage shall have any right to require Mortgagee to marshal assets. Mortgagee shall be subrogated to the claims, liens and mortgages of all parties whose claims, liens or mortgages are discharged or paid from and with the proceeds of the loan secured hereby.

34. Compliance With All Laws and Regulations. Mortgagor, their successors and assigns, shall comply with and not violate any law, statute, ordinance, rule, or regulation, enacted or enforceable by any governmental entity or subdivision thereof, having jurisdiction over the Mortgaged Premises, or Mortgagors.

35. Further Assurances. Mortgagors, their successors and assigns, will at all times on request of Mortgagee, its successors or assigns, execute and do all such assurances, deeds, and things, as may be deemed reasonably necessary or advisable by

Mortgagee to carry out the intention of this Mortgage and Security Agreement and all other Loan Documents.

36. No Oral Changes. This Mortgage and Security Agreement and the other Loan Documents may not be amended, changed, modified or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment, change, modification or termination is sought.

37. Captions. The captions in this Mortgage and Security Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

38. Severability. If any provision of this Mortgage and Security Agreement or the application thereof to any person, legal entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and Security Agreement and the application of such provisions to other persons, legal entities or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

39. Applicable Law. This Mortgage and Security Agreement is intended as a contract and conveyance under and shall be construed and enforced in accordance with the laws of the State of Alabama, on the date hereof, and, to the extent applicable by the regulations of the Federal Home Loan Bank Board.

40. Title and Priority. Mortgagors warrant and represent unto Mortgagee that title to the Mortgaged Premises is vested in Mortgagors, Arthur P. Cook and A. Philip Cook, Jr., subject to the exceptions contained in said Exhibit B. Mortgagors warrant and represent that this is a valid Second Mortgage on Parcel I described in Exhibit A and a valid Fifth Mortgage on Parcel II described in Exhibit A.

41. Cross-Default. This Mortgage and Security Agreement and

the Note which same secures is hereby expressly cross-defaulted to those certain Mortgages and the Notes which same secure in the original amount of \$430,000.00 and \$100,000.00, held and owned by Mortgagee, dated November 21, 1975, and July 20, 1978, respectively, recorded in Volume 350, Page 492 and Volume 380, Page 831 in the Office of the Judge of Probate of Shelby County, Alabama. A default of this Mortgage and Security Agreement and the Note which same secures shall constitute a default of the said Mortgages and Notes which same secure recorded in Volume 350, Page 492 and Volume 380, Page 831 in said Probate Office. A default of either or both of said Mortgages recorded in Volume 350, Page 492 and Volume 380, Page 831 in said Probate Office shall constitute a default of this Mortgage and Security Agreement and the Note which same secures.

42. Land Use Controls. Mortgagors warrant and represent unto Mortgagee that the mortgaged premises and all buildings and improvements situated thereon are in full compliance with all land use controls applicable thereon, including zoning ordinances and regulations issued pursuant thereto, subdivision regulations, and protective covenants (if any).

43. This Mortgage Governs. This Mortgage and Security Agreement, the Note secured hereby and all other Loan Documents of even date herewith state the entire agreement between Mortgagor and Mortgagee and merges in this First Mortgage and Security Agreement, the Note secured hereby and all other Loan Documents, all statements, representations and covenants heretofore made, and any agreements not incorporated herein and in the Note and other Loan Documents are void and of no force and effect. In the event of any conflict between the Loan Documents and the Mortgagee's Loan Commitment dated May 6, 1986, of Mortgagee, the Loan Documents shall prevail in all respects.

44. Time is of the Essence. Time, whenever, wherever and

however used in this Mortgage and Security Agreement and all other Loan Documents shall be of the essence.

NO PART OF THE PROPERTY CONVEYED HEREIN CONSTITUTES THE HOMESTEAD OF THE MORTGAGORS OR THE MORTGAGOR'S SPOUSES.

IN WITNESS WHEREOF, the undersigned Mortgagors and their respective wives have set their hands and seals hereunto on this the 25th day of June, 1986.

WITNESS:

Mary Douglas Hawkins

Arthur P Cook (SEAL)
ARTHUR P. COOK
Individually

Mary Douglas Hawkins

A Philip Cook (SEAL)
A. PHILIP COOK, JR.
Individually

THE STATE OF ALABAMA

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Arthur P. Cook and A. Philip Cook, Jr. whose names 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, they executed the same voluntarily on the date the same bears date.

Given under my official seal, this 25th day of June, 1986.

E. Kay Wallace
NOTARY PUBLIC
My Commission Expires November 28, 1988

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EXHIBIT "A"

PARCEL I

A part of the SW 1/4 of SW 1/4 and the SE 1/4 of SW 1/4 of Section 30, Township 18 South, of Range 1 West, and being more particularly described as follows: Begin at the NW corner of the SE 1/4 of SW 1/4 of said Section 30, thence east along the north line of same a distance of 481.59 feet to the centerline of a public road; thence 122 degrees 59 minutes to the right in a southwesterly direction a distance of 59.87 feet to the point of a curve to the left, having a central angle of 11 degrees 51 minutes a radius of 560.01 feet; thence along the arc of said curve a distance of 115.84 feet to the point of tangent; thence along said tangent a distance of 322.42 feet to the point of a curve to the right, having a central angle of 20 degrees 12 minutes a radius of 571.76 feet; thence along the arc of said curve a distance of 201.58 feet to the point of tangent; thence along said tangent a distance of 54.25 feet to the point of a curve to the right having a central angle of 95 degrees 25 minutes a radius of 63.80 feet; thence along the arc of said curve a distance of 106.25 feet to the point of tangent; thence along said tangent a distance of 79.52 feet to the point of another curve to the left, having a central angle of 26 degrees 14 minutes a radius of 373.29 feet; thence along the arc of said curve a distance of 170.91 feet to the point of tangent; thence along said tangent a distance of 218.72 feet; thence 85 degrees 31 minutes to the right in a northeasterly direction a distance of 281.09 feet; thence 5 degrees 11 minutes to the left in a northeasterly direction a distance of 172.13 feet to the north line of the SW 1/4 of SW 1/4 of said Section 30, thence 79 degrees 12 minutes to the right along said north line a distance of 244.73 feet to the point of beginning.

PARCEL II

Part of the SW 1/4 of SW 1/4 of Section 30, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows: From the northwest corner of said 1/4-1/4 section run in a southerly direction along the west line of said 1/4-1/4 section for a distance of 400.55 feet; thence turn an angle to the left of 90 degrees and run in an easterly direction for a distance of 825.23 feet to a point on the southwest right of way line of Cahaba Beach Road which is the point of beginning, thence turn an angle to the right of 145 degrees 59 minutes and run in a southwesterly direction for a distance of 103.18 feet, thence turn an angle to the left of 28 degrees 57 minutes and run in a southwesterly direction for a distance of 101.89 feet, thence turn an angle to the right of 89 degrees 30 minutes and run in a northwesterly direction for a distance of 71.16 feet, thence turn an angle to the right of 1 degree 41 minutes 50 seconds and run in a southwesterly direction for a distance of 334.42 feet; thence turn an angle to the left of 115 degrees 28 minutes 40 seconds and run in a southerly direction for a distance of 431.64 feet; thence turn an angle to the left of 13 degrees 18 minutes 40 seconds and run in a southeasterly direction for a distance of 147.95 feet; thence turn an angle to the left of 60 degrees 07 minutes and run in a southeasterly direction for a distance of 43.66 feet; thence turn an angle to the left of 79 degrees 24 minutes 40 seconds and run in a northeasterly direction for a distance of 90.61 feet; thence turn an angle to the right of 58 degrees 58 minutes 30 seconds and run in an easterly direction for

a distance of 174.65 feet to an existing iron pin; thence turn an angle to the right of 5 degrees 43 minutes 24 seconds and run in an easterly direction for a distance of 330.17 feet to an existing iron pin being on the west right of way line of said Cahaba Beach Road, thence turn an angle to the left and run along said west right of way line for a distance of 532 feet, more or less, to the point of beginning, containing 6.04 acres, more or less.

EXHIBIT "B"

1. Ad valorem taxes for the current year 1986.
2. Right of way to Alabama Power Company as recorded in Real 8, page 905 in the Probate Office of Shelby County, Alabama. Parcel II
3. Right of way for public road conveyed to Shelby County and to the Public as shown in Deed Book 41, page 391 in said Probate Office. Parcel I
4. Transmission line permit to Alabama Power Company recorded in Deed Book 126, page 182 in said Probate Office. Parcel I
5. Mineral and mining rights and rights are excepted for that part of the subject property which lies within the SW1/4 of SW1/4 of Section 30, Township 18, Range 1 West and as shown by deed recorded in Deed Book 116, page 329 in said Probate Office. Parcel I
6. A roadway 20 feet wide referred to in deed Book 116, page 329 in said Probate Office. Parcel I
7. Right of way to Alabama Power Company recorded in Volume 163, page 147 and Volume 297, page 44 in said Probate Office. Parcel II
8. Right of way for road as recorded in Volume 116, page 91 in said Probate Office. Parcel II
9. Easement and license agreement as recorded in Volume 355, page 817 in said Probate Office. Parcel II
10. Lease agreement between The Industrial Development Board of Shelby County and Cook Publication, Inc. as recorded in Volume 355, page 734 in said Probate Office. Parcel II
11. Mortgage from Arthur P. Cook and Margaret Cook, A. Philip Cook, Jr. and Deane Cook to Jefferson Federal Savings & Loan Association filed for record 11/24/75 and recorded in Volume 350, page 492 in the Probate Office of Shelby County, Alabama. Parcel II
12. Mortgage from Arthur P. Cook, Margaret Cook, Philip Cook, Jr. and Deane Cook to Jefferson Federal Savings & Loan Association filed for record 7/25/78 and recorded in Volume 380, page 831 in said Probate Office. Parcels I & II
13. Mortgage from The Industrial Development Board of Shelby County to AmSouth Bank, N.A. filed for record 5/25/84 and recorded in Volume 449, page 279 in said Probate Office. Parcel II
14. Mortgage from Cook Publications, Inc., Arthur P. Cook, Margaret B. Cook, A. Philip Cook, Jr. and Deane P. Cook and The Industrial Development Board of Shelby County filed for record 5/25/84 and recorded in Volume 449, page 373 in said Probate Office. Parcel II

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

1986 JUN 25 PM 4: 25

Thomas W. Henderson, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		<u>261.50</u>
3. Recording Fee		<u>57.50</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>321.00</u>