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**MORTGAGE AND SECURITY AGREEMENT**

*among*

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HOOVER,**

**BUD'S BEST COOKIES, INC.**

*and*

**SOUTHTRUST BANK OF ALABAMA,  
NATIONAL ASSOCIATION**

**Dated as of December 1, 1991**

Executed in 5 counterparts of  
which this is counterpart # 1

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**THIS DOCUMENT PREPARED BY:**

**P. Nicholas Greenwood  
Bradley, Arant, Rose & White  
1400 Park Place Tower  
2001 Park Place  
Birmingham, Alabama 35203**

*Leon A. ...*

STATE OF ALABAMA )

SHELBY COUNTY )

This MORTGAGE and SECURITY AGREEMENT (herein called "the Mortgage") made and entered into as of December 1, 1991, among THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HOOVER, a public corporation under the laws of the State of Alabama (herein called the Board"), BUD'S BEST COOKIES, INC., an Alabama corporation (herein called "the Company" and the Board and the Company herein together called "the Mortgagors"), and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association, in its capacity as the issuer of the Letter of Credit hereinafter referred to (herein called "the Mortgagee").

RECITALS:

Simultaneously with the execution and delivery of this Mortgage, the Board will issue its Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991 (herein called "the Bonds") in the aggregate principal amount of \$5,000,000. The Bonds are being issued pursuant to a Trust Indenture dated as of December 1, 1991 (herein called "the Indenture"), between the Board and SouthTrust Bank of Alabama, National Association, as trustee thereunder (herein in such capacity called "the Trustee").

The proceeds derived from the sale of the Bonds are to be applied by the Board to acquire certain real property situated in the City of Hoover, Alabama (herein called "the Project Site"), including the existing building located thereon (herein called "the Building"), to construct certain additions and improvements to the Building and to acquire and install therein certain items of machinery, equipment and other personal property (herein called "the Equipment" and the Project Site, the Building, including the said additions and improvements and the Equipment being herein together called "the Project"). The Project will be leased by the Board to the Company pursuant to a Lease Agreement dated as of December 1, 1991 (herein called "the Lease") between the Board and the Company.

The purchaser of the Bonds has indicated that it is not willing to purchase the Bonds unless the Mortgagee issues to the Trustee, as security for the payment of the principal of and not more than 110 days' interest on the Bonds, the Mortgagee's Irrevocable

Letter of Credit in an aggregate principal amount not to exceed \$5,180,822 (herein called "the Letter of Credit"). In order to induce the Mortgagee to issue the Letter of Credit, (a) the Company has entered into a Letter of Credit Application and Reimbursement Agreement dated as of December 1, 1991 (herein called "the Credit Agreement") between it and the Mortgagee and (b) Albert L. Cason (herein called "the Guarantor") has entered into a Guaranty Agreement dated as of December 1, 1991 (herein called "the Credit Guaranty") between the Guarantor and the Mortgagee pursuant to which the Guarantor has guaranteed to the Mortgagee the payment by the Company of all amounts which may become due under the Credit Agreement and this Mortgage. Among the conditions stated in the Credit Agreement to the issuance of the Letter of Credit by the Mortgagee is the requirement that the Mortgagors execute and deliver this Mortgage to the Mortgagee.

The Mortgagors desire to enter into this Mortgage in order (a) to induce the Mortgagee to enter into the Credit Agreement and to issue the Letter of Credit, (b) to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Company contained in this Mortgage and in the Credit Agreement and (c) to secure the prompt payment of the following obligations (herein sometimes referred to collectively as "the Secured Obligations"):

(i) The obligations of the Company under the terms of the Credit Agreement to reimburse the Mortgagee, with interest thereon, for all payments made by the Mortgagee pursuant to the Letter of Credit and all other obligations of the Company to the Mortgagee with respect to the Letter of Credit and the Credit Agreement, whether now existing or hereafter incurred or arising, and whether matured or unmatured, and all interest accrued and unpaid on such sums; and

(ii) Any and all sums becoming due and payable by the Company to the Mortgagee under the terms of this Mortgage or under the terms of the Credit Agreement, including, but not limited to, advances made by the Mortgagee pursuant to the terms and conditions of this Mortgage or the Credit Agreement; and

(iii) All renewals and extensions of any or all of the obligations of the Company described in subparagraphs (i) and (ii) above, whether or not a written agreement is executed in connection with any such renewal or extension.

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NOW, THEREFORE, THIS MORTGAGE

WITNESSETH:

For the aforesaid purposes and in consideration of the respective agreements herein contained, the parties hereto agree with each other as follows:

ARTICLE I

GRANTING CLAUSES

In order (a) to induce the Mortgagee to enter into the Credit Agreement and to issue the Letter of Credit, (b) to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Mortgagors contained in this Mortgage and of the Company in the Credit Agreement and (c) to secure the prompt payment of the Secured Obligations, the Mortgagors do hereby grant, bargain, sell, alien and convey to the Mortgagee, its successors and assigns, the following described property (herein called "the Mortgaged Property"), and a security interest therein, whether the same are now owned by the Mortgagors or hereafter acquired:

I

All right, title and interest of the Mortgagors in and to the parcel of land situated in Shelby County, Alabama and described in Exhibit A hereto.

II

The Building and all other buildings, structures and other improvements now or hereafter situated on the Project Site, all permits, easements, licenses, rights-of-way, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Project Site and all fixtures now or hereafter installed on the Project Site or in the Building or in any of the such other buildings, structures and improvements now or hereafter located on the Project Site, it being the intention hereof that all property, rights and privileges hereafter acquired for use as a part of or in connection with or as an improvement to the Project Site shall be as fully covered hereby as if such property, rights and privileges were now owned by the Mortgagors and were specifically described herein;

III

All items (whether or not fixtures) of machinery, equipment, furniture, fixtures and other personal property that at any time under the provisions of the Lease and the Indenture constitute the "Equipment", including, without limitation, the items (whether or not fixtures) of machinery, equipment, furniture, fixtures and other personal property generally described in Exhibit B attached hereto and made a part hereof;

IV

All right, title and interest of the Company in and to any leases or subleases, written or oral, with respect to the use or occupancy of any portion of the Project Site, the Building or the Equipment, any and all extensions and renewals of any such leases, subleases or agreements, and all further leases, subleases or agreements by the Company, now existing or hereafter made;

V

All revenues from the Project Site, the Building and the Equipment, including, without limitation, right, title and interest of the Board in and to the Lease, but not including, however, any of the obligations of the Board thereunder;

VI

All right, title and interest of the Company in and to its leasehold estate in the Lease, together with all rights, privileges and options set forth therein;

VIII

Any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagors or to either of them with respect to the Mortgaged Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street, (c) any damage to or destruction of any part of the Project Site, the Building or the Equipment, or (d) any other injury to or decrease in value of the Mortgaged Property.

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

**PROVIDED, HOWEVER, that if the Mortgagors shall pay or cause to be paid the Secured Obligations and shall pay or cause to be paid any amounts that the Mortgagee may have expended pursuant to the authorization of this Mortgage, including, without limitation, amounts spent for the payment of taxes, assessments and other liens, insurance and interest on all such sums, and shall perform or cause to be performed all other obligations on the part of the Mortgagors contained herein and on the part of the Company in the Credit Agreement, this conveyance shall be null and void; otherwise this Mortgage shall be and remain in full force and effect;**

**PROVIDED, FURTHER, that so long as the Mortgagors are not in default hereunder, (a) all revenues and receipts derived by the Board from the leasing or sale of the Project Site, the Building and the Equipment (including the rentals payable to the Board under the Lease), shall be paid to the Trustee and applied as provided in the Indenture; (b) all rentals and other amounts payable to the Company under any sublease of the Project Site, the Building and the Equipment shall be paid to the Company without regard to the mortgage herein made from the Company to the Mortgagee of any such subleases; and (c) all awards or payments, including all interest thereon, with respect to the Mortgaged Property as a result of (i) the exercise of the power of eminent domain, (ii) the alteration of the grade of any street, (iii) any damage to or destruction of any part of the Mortgaged Property, or (iv) any other injury to or decrease in value of the Mortgaged Property, may be applied by Mortgagors to the restoration of the Project Site, the Building and the Equipment.**

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## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1 The Mortgagors hereby, jointly and severally, represent and warrant to the Mortgagee as follows:

(a) The Board is lawfully seized of good and marketable title in and to the Project, subject only to such encumbrances (other than the Lease and the Indenture) as are defined as "Permitted Encumbrances" in the Indenture; and the Mortgagors are lawfully seized of good and marketable title in and to the other Mortgaged Property free of all liens and encumbrances (other than this Mortgage); the Mortgagors have a good right to sell, mortgage and convey, and grant a security interest in, the Mortgaged Property; and the Mortgagors will warrant and forever defend the title to the Mortgaged Property unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever, except those claiming under "Permitted Encumbrances" as defined in the Indenture (not including, however, anyone claiming under the Lease or the Indenture).

(b) Payment of Secured Obligations. The Mortgagors shall pay all the Secured Obligations when due, whether presently existing or hereafter incurred, and shall comply with and perform or cause to be complied with or performed their obligations, under the Lease, the Indenture, the Credit Agreement and this Mortgage.

(c) Priority of Lien. The Mortgagors shall maintain, preserve and protect the priority of this Mortgage as a lien on, and a security interest in, the Mortgaged Property. The Mortgagors shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as liens on and security interests in the Mortgaged Property, subject only to the encumbrances referred to in the foregoing subparagraph (a) of this Section. All costs and expenses incurred in connection with the maintenance, protection, preservation, continuation or extension of the liens and security interests hereby created shall be paid by the Mortgagors.

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(d) Required Insurance. The Mortgagors will take out and continuously maintain in effect or cause to be taken out and thereafter continuously maintained in effect the insurance required by Section 6.10 of the Lease to be maintained with respect to the Project, whether or not the Lease shall then be in effect. All such insurance policies, other than those evidencing the insurance required by clause (b) of Section 6.10 of the Lease shall name as an additional insured the Mortgagee as its interest shall appear. All policies evidencing the insurance required to be carried by Section 6.10 of the Lease and this Section 2.1(d) shall be deposited with the Mortgagee; provided however, that in lieu thereof, the Mortgagors may deposit with the Mortgagee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Each such policy shall contain an agreement by the insurer that such policy cannot be cancelled until the Mortgagee has been given twenty (20) days prior written notice of such insurer's intent to cancel. Prior to the expiration or cancellation of any such policy, the Mortgagors will furnish to the Mortgagee evidence reasonably satisfactory to the Mortgagee that such policy has been renewed or replaced by another policy.

(e) Compliance with Provisions of the Lease. The Company covenants, represents and warrants to the Mortgagee that so long as the Credit Agreement is still in effect, it will comply with all the obligations required on its part to be performed under the Lease, whether or not the Lease is then in effect. In the event that the Company fails or refuses to perform any of its obligations under the Lease, the Mortgagee may, but shall not be obligated to, perform any and all of such obligations of the Company under the Lease, including, but not limited to, the payment of any or all rent and other sums due from the Company thereunder. Any costs or expenses incurred by the Mortgagee in performing the obligations of the Company under the Lease, including any rent or other sums paid by the Mortgagee, shall constitute part of the Secured Obligations and shall be secured hereby.

(f) Access to Mortgaged Property. The Mortgagors shall upon application by the Mortgagee give the Mortgagee access to and permit it to inspect and examine the Mortgaged Property and any records pertaining thereto.

(g) Satisfaction of Liens. Any lien which may be filed under the provisions of the statutes of Alabama relating to liens of mechanics and materialmen shall be promptly paid and discharged by the Mortgagors and shall not be permitted to be on a parity with or to take priority over the lien of this Mortgage, provided that the Mortgagors, upon first furnishing to the Mortgagee reasonable security for the payment of all liability, costs and



expenses with respect thereto and satisfactory evidence that the enforcement of such lien has been stayed, may in good faith contest, at the Mortgagors expense, the validity of any such lien or liens.

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**ARTICLE III**  
**EVENTS OF DEFAULT**

An Event of Default under the Credit Agreement shall constitute an event of default hereunder.

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## ARTICLE IV

### REMEDIES OF MORTGAGEE UPON DEFAULT

Upon the occurrence of an Event of Default, the Mortgagee shall have the following rights and remedies:

(a) **Acceleration.** The Mortgagee may notify the Trustee that an Event of Default under the Credit Agreement and under this Mortgage has occurred and may, by notice to the Mortgagors, effective upon dispatch, declare all of the Secured Obligations, including, but not limited to, the obligation of the Company to reimburse the Mortgagee under the Credit Agreement to be forthwith due and payable, whereupon all such obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagors, and the Mortgagee may immediately enforce payment of all such amounts and exercise any or all of its rights and remedies under this Mortgage and the Credit Agreement.

(b) **Possession and Operation of Mortgaged Property.** The Mortgagee may peaceably take possession of the Mortgaged Property or any part thereof and collect the rent, income and profits therefrom, either with or without the appointment of a receiver, and use, operate, manage and control said property. The Mortgagee shall be entitled, as a matter of right, without notice to any other person and without regard to the adequacy of the security or the solvency of the Mortgagors, to the appointment of a receiver.

(c) **Foreclosure Sale.** The Mortgagee shall have the right to enter upon and take possession of the Mortgaged Property and after, or without, taking such possession of the same, sell the Mortgaged Property en masse or in parcels, as Mortgagee may deem best, at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon payment of the purchase money the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed, bill of sale or other appropriate instrument to the property so purchased in the name and on behalf of the Mortgagors, or either of them, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages, and Mortgagee, or the then holder of the indebtedness thereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The Mortgagee may conduct any number of sales from time to time, and the power of sale hereby granted shall not be exhausted by any one or more such sales as to any part of the

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Mortgaged Property remaining unsold, but shall continue unimpaired until all the Mortgaged Property shall have been sold or all indebtedness secured hereby paid.

**(d) Personal Property and Fixtures.** In addition to the foregoing powers, the Mortgagee shall have and may exercise with respect to any or all personal property and fixtures constituting a part of the Mortgaged Property, all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code (and other applicable similar statutes) with reference to the Mortgaged Property or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Mortgaged Property and any part or parts thereof in any manner, to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after the occurrence of an Event of Default hereunder, without regard to preservation of the Mortgaged Property or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Mortgaged Property and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and the right to take any action deemed appropriate or desirable by the Mortgagee, at its option and in its sole discretion, to repair, restore or otherwise prepare the Mortgaged Property for sale or lease or other use or disposition. To the extent permitted by law, the Mortgagors expressly waive any rights or remedies of the Mortgagee with respect to, and the formalities described by law relative to, the sale or disposition of the Mortgaged Property, or to the exercise of any other right or remedy of the Mortgagee existing after the occurrence of an Event of Default. The Mortgagors agree that in the event notice is given to the Mortgagors in accordance with the provisions hereof at least five (5) days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for the giving of notice. The Mortgagors hereby grant the Mortgagee the right, at its option after the occurrence of an event of default, to transfer at any time to itself or its nominee the Mortgaged Property or any part thereof and to receive the moneys, income, proceeds and benefits attributable to the same and to hold the same as part of the Mortgaged Property or to apply it on, or as a reserve against, the Secured Obligations in such order and manner as the Mortgagee may elect.

**(e) Conveyance After Sale.** The Mortgagors hereby authorize and empower the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagors, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure, good and sufficient deeds of conveyance or bills of sale thereto.

**(f) Application of Proceeds.** All payments then held or thereafter received by the Mortgagee as proceeds of the Mortgaged Property, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under

or with respect to this Mortgage, the Credit Agreement shall be applied by the Mortgagee as follows:

(i) to reimburse the Mortgagee for any payments made by the Mortgagee under the Letter of Credit, to accrued but unpaid interest and fees under the Credit Agreement and to the payment of all costs and expenses of any kind then or thereafter at any time reasonably incurred by the Mortgagee in exercising its rights under this Mortgage and under the Credit Agreement or otherwise reasonably incurred by the Mortgagee in collecting or enforcing payment of the Secured Obligations, as well as to the payment of any other amount then or thereafter at any time owing by the Mortgagors or the Company to the Mortgagee under the Credit Agreement or under this Mortgage, all in such priority as among such principal, interest, amounts, cost, expenses and other amounts as the Mortgagee shall elect;

(ii) any balance remaining after payment in full of all amounts referred to in the foregoing subsection (i) above shall be applied by the Mortgagee to any other obligations then owing by the Mortgagors to the Mortgagee or by the Company to the Mortgagee;

(iii) any balance remaining after payment in full of all amounts referred to in the foregoing subsections (i) and (ii) above shall be held by the Mortgagee as a cash collateral reserve against the making of any payment under the Letter of Credit (if the Credit Agreement is then in effect), and the Mortgagee shall not be required to pay, or to account to anyone for, any interest or other earnings on any such reserve or any other reserve held by the Mortgagee under the terms of this Mortgage; and

(iv) any balance remaining after payment in full of all amounts referred to in the foregoing subsections (i), (ii) and (iii) above shall be paid by the Mortgagee to the Trustee, the Mortgagors or to whomsoever may then be legally entitled thereto.

(g) Condemnation and Insurance Awards. All awards or payments, including all interest thereon, with respect to the Mortgaged Property as a result of (i) the exercise of the power of eminent domain, (ii) the alteration of the grade of any street, (iii) any damage to or destruction of any part of the Mortgaged Property, or (iv) any other injury to or decrease in value of the Mortgaged Property, shall be paid to the Mortgagee. All such awards and payments shall be first applied to the payment of all costs and expenses (including attorneys' fees) reasonably incurred by the Mortgagee in obtaining said sums, and then applied, at the option of the Mortgagee, to the balance of the Secured Obligations in any order and whether or not then due, or held as a reserve against the Secured Obligations, or, subject to the approval of the Mortgagee, applied to the restoration of the Mortgaged Property.

(h) No Waivers. No failure of the Mortgagee to exercise any option herein given to declare the maturity of the Secured Obligations hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of the Mortgagors. No action taken by the Mortgagee pursuant to Section 5.1(c) of this Mortgage shall be construed as a waiver of its right to declare the maturity of the Secured Obligations as a result of the failure by the Mortgagors to comply with the provisions of the Lease, the Credit Agreement or this Mortgage. No delay or omission by the Mortgagee to exercise any available right, power or remedy hereunder shall impair or be construed a waiver thereof or in acquiescence in the circumstances giving rise thereto; every right, power or remedy given herein the Mortgagee may be exercised from time to time and as often as deemed expedient.

(i) Waiver of Stay and Redemption Laws. The Mortgagors waive, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for any extension of time for the enforcement of the collection of the Secured Obligations or any creation or extension of a period of redemption from any sale made in the Secured Obligations (commonly known as stay laws and redemption laws.

(j) Prerequisites to Sales. In the case of any sale of any part of the Mortgaged Property as authorized herein, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance even hereunder, all statements of facts, or other recitals therein made, as to the nonpayment of any of the Secured Obligations 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 fact so stated or recited are true. The exercise by the 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 Secured Obligations or for the whole of the Secured Obligations, 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 of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the Credit Agreement are cumulative and not exclusive of any remedies provided by law.

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**ARTICLE V**

**MISCELLANEOUS**

**Section 5.1 (a) Amendments.** No amendment, modification, termination or waiver of any of the provisions of this Mortgage or the Credit Agreement, nor consent to any departure by the Mortgagors or the Company therefrom, shall be effective unless the same shall be in writing and signed by an officer of the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagors or either of them in any case shall entitle the Mortgagors or either of them to any other or further notice or demand in similar or other circumstances.

**(b) Release or Extension by Mortgagee.** The Mortgagee, without notice, may release any part of the Mortgaged Property or any person liable for the Secured Obligations without in any way affecting the rights of the Mortgagee hereunder as to any part of the Mortgaged Property not expressly released and may agree with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Secured Obligations or to waive the prompt and full performance of any term, condition or covenant of this Mortgage or the Credit Agreement.

**(c) Advances by Mortgagee.** if the Mortgagor shall fail to comply with the provisions of the Lease, the Credit Agreement or this Mortgage with respect to the securing of insurance, the payment of taxes, assessments and other charges, the maintenance of the Mortgaged Property, or any other term or covenant contained in the Lease, the Credit Agreement or this Mortgage, the Mortgagee may, but shall not be required to, make advances to perform the same, and where necessary, enter the Mortgaged Property for the purpose of performing any such term or covenant. The Mortgagors agree to repay all sums advanced upon demand, with interest from the date such advances are made, at the same rate of interest provided in Section 1.03 of the Credit Agreement, and all sums so advanced, with interest, shall be secured hereby.

**(d) Partial Payments.** Acceptance by the Mortgagee of any payments of less than the amount due on the Secured Obligations shall be deemed acceptance on account only, and the failure of the Mortgagors 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 Secured Obligations has been paid, the 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.

(e) Mortgage to Constitute Security Agreement. This Mortgage shall constitute a Security Agreement under the Alabama Uniform Commercial Code to the extent that such Code is applicable to the creation of a security interest in the Mortgaged Property or parts thereof.

(f) Notices. Wherever and whenever in this Mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall not be deemed to have been given or served, unless in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

(a) if to the Board:

The Industrial Development Board of the  
City of Hoover  
City Hall  
1699 Montgomery Highway  
Hoover, Alabama 35216

(b) If to the Company:

Bud's Best Cookies, Inc.  
2070 Parkway Office Circle  
Birmingham, Alabama 35244

(c) If to the Trustee:

SouthTrust Bank of Alabama, National Association  
Post Office Box 2554  
Birmingham, Alabama 35290  
Attention: Corporate Trust Department

(d) If to the Mortgagee:

SouthTrust Bank of Alabama, National Association  
Post Office Box 2554  
Birmingham, Alabama 35290  
Attention: Metropolitan Loan Department

All such notices or demands shall be effective on the second day after the day deposited in the mail addressed as aforesaid.



(g) **Binding Effect.** This Mortgage shall inure to the benefit of, and shall be binding upon, the Mortgagors and the Mortgagee and their respective heirs, successors and assigns. Singular or plural words used herein to designate the Mortgagors shall be construed to refer jointly and severally to the Mortgagors.

(h) **Severability.** In the event any provision of this Mortgage shall be held in invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. All rights or remedies of the Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law, including, without limitation, those with respect to personal property provided by the Alabama Uniform Commercial Code.

(i) **Article and Section Captions.** The article and sections headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

(j) **Governing Law.** This Mortgage shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

(k) **Limited Liability of Board.** No provision hereof shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon the Board or give rise to or impose a lien or charge upon its property other than the Mortgaged Property. All obligations incurred by the Board hereunder are payable solely from the revenues and receipts to be derived from any leasing or sale of the Project, including insurance proceeds and condemnation awards. The City of Hoover, Alabama is not liable for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Board. No agreement of the Board shall be construed to constitute an indebtedness of The City of Hoover, Alabama within the meaning of any constitutional or statutory provision whatever. Further, none of the directors, officers, employees or agents of the Board shall have any personal or pecuniary liability whatever hereunder or any liability for the breach by the Board of any of the agreements on its part herein contained. Nothing contained in this Section, however, shall relieve the Board from the observance and performance of the several and agreements on its part herein contained or relieve any director, officer, employee or agent of the Board from performing all duties of their respective offices that may be necessary to enable the Board to perform the covenants and agreements on its part herein contained.

IN WITNESS WHEREOF, the Mortgagors and the Mortgagee have caused this Mortgage to be executed in their names and the Board and the Company have caused their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, in five (5) counterparts, each of which shall be deemed an original, and the parties hereto have caused this Mortgage to be dated as of December 1, 1991.

BUD'S BEST COOKIES, INC.

By Robert C. O'Quinn  
Its President

THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF HOOVER

By Don T. Burton  
Its Vice-Chairman

Attest:

George Ammons  
Its Secretary

SOUTHTRUST BANK OF ALABAMA,  
NATIONAL ASSOCIATION

By James F. Hester  
Its Senior Vice President

STATE OF ALABAMA,

JEFFERSON COUNTY

I, the undersigned Notary Public in and for said county in said state, hereby certify that ALBERT L. CASON, whose name as President of BUD'S BEST COOKIES, INC., an Alabama corporation, 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 executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal, this 3<sup>rd</sup> day of January, 1992.

Cathy C. Frankler  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 6/7/95

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STATE OF ALABAMA,

JEFFERSON COUNTY

I, the undersigned Notary Public in and for said County, and said State, hereby certify that Bar T. Buntson, whose name as Vice Chairman of the Board of Directors of THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HOOVER, a public corporation under the laws of the State of Alabama, 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal, this 3rd day of January, 1992.

Patricia L. Herring  
Notary Public

[NOTARIAL SEAL]

My Commission Expires Commission Expires October 28, 1992

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STATE OF ALABAMA,

JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, and said State, hereby certify that JAMES F. HOUSE, whose name as Senior Vice President of SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association, 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association.

GIVEN under my hand and official seal, this 3rd day of January, 1992.

Cathy C. Franklin  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 6/7/95

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### EXHIBIT A

A tract of land situated in the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , Section 19, and the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$ , Section 20, all in Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From the NE corner of the said NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , run in a southerly direction along the east line of said  $\frac{1}{4}$ - $\frac{1}{4}$  section for a distance of 436.37 feet to the point of beginning; thence turn an angle to the right of 126°40'55" and run in a northwesterly direction for a distance of 62.42 feet; thence turn an angle to the left of 57°59'05" and run in a southwesterly direction for a distance of 42.46 feet; thence turn an angle to the right of 4°20'41" and run in a southwesterly direction for a distance of 52.10 feet; thence turn an angle to the left of 6°46'41" and run in a southwesterly direction for a distance of 165.35 feet; thence turn an angle to the right of 19°38' and run in a westerly direction for a distance of 194.85 feet; thence turn an angle to the left of 14°32'45" and run in a southwesterly direction for a distance of 131.13 feet; thence turn an angle to the left of 20°13' and run in a southwesterly direction for a distance of 134.15 feet; thence turn an angle to the left of 73°01' and run in a southeasterly direction for a distance of 25.76 feet; thence turn an angle to the right of 90° and run in a southwesterly direction for a distance of 53.00 feet to a point on the curved east right-of-way line of Parkway Office Circle, said curved right-of-way having the following characteristics: Radius of 370.00 feet, a central angle of 7°40'54" and being concave in a southwesterly direction, thence turn an angle to the left and run along the arc of said curve for a distance of 49.60 feet (chord measures 49.57 feet and chord line is obtained by turning a left interior angle of 99°10'48") to the end of said curve, thence turn an angle to the right and run along a line tangent to end of said curve which is also said east right-of-way line and run in a southwesterly direction for a distance of 161.86 feet to a point of curve, said curve being concave in a northeasterly direction and having a radius of 400.00 feet and a central angle of 22°26'; thence turn an angle to the left and run along the arc of said curve (which is also the east right-of-way line of said road) for a distance of 156.61 feet to the end of said curve; thence turn an angle to the left and run along a line tangent to the end of said curve for a distance of 77.85 feet; thence turn an angle to the left of 68°25'35" and run in a northeasterly direction for a distance of 957.73 feet to a point on the west right-of-way line of Interstate Highway #65; thence turn an angle of 74°45'55" to the left and run along said west right-of-way line for a distance of 97.04 feet; thence turn an angle to the right of 9°59'25" seconds and run in a northeasterly direction for a distance of 184.41 feet along said west right-of-way line; thence turn an angle to the left of 19°51'03" and run in a northwesterly direction along said west right-of-way line for a distance of 247.00 feet; thence turn an angle to the left of 97°09'02" and run in a southwesterly direction for a distance of 154.84 feet; thence turn an angle to the left of 29°49'50" and run in a southwesterly direction for a distance of 66.34 feet; thence turn an angle to the right of 37°31'55" and run in a westerly direction for a distance of 100.00 feet; thence turn an angle to the right of 51°15'55" and run in a northwesterly direction for a distance of 87.52 feet to the point of beginning. Situated in Shelby County, Alabama.

**EXHIBIT B**

All items of machinery, equipment, furniture, fixtures and other personal property, including without limitation all goods constituting "Equipment" (with such quoted term to have the meaning given to it by Section 7-9-109(2) of the Code of Alabama 1975, as amended), whether now owned or hereafter acquired by The Industrial Development Board of the City of Hoover or Bud's Best Cookies, Inc. and acquired with the proceeds derived from the sale of the Bonds, or located on the Project Site, or in substitution or replacement for any such property, including all proceeds thereof.

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

92 JAN -7 AM 9:05

JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax	\$	
3. Recording Fee	\$	55.00
4. Indexing Fee	\$	4.00
5. No Tax Fee	\$	1.00
6. Certified Fee	\$	1.00
Total		\$61.00

