

MORTGAGE

(Participation)

This mortgage made and entered into this 18th day of September, 1995, by and between RAMON A. CROCKETT, JR. and wife NATALIE A. CROCKETT

(hereinafter referred to as mortgagor) and BANK OF ALABAMA

(hereinafter referred to as mortgagee), who maintains an office and place of business at 2340 Woodcrest Place, Birmingham, Alabama 35209

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign, and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of ~~Jefferson~~ *Shelby* State of Alabama

See Exhibit A attached hereto and made a part hereof.

Inst # 1995-26102

09/19/1995-26102
12:44 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MCD 254.50

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

The mortgagor covenants that he is lawfully seized and possessed of and has the right to sell and convey said property; that the same is free from all encumbrances except as hereinabove recited; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure the payment of a promissory note dated September 18, 1995 in the principal sum of \$ 150,000.00 signed by mortgagors individually and in behalf of Home Systems, Inc., of which the mortgagors are officers and directors and of which Ramon A. Crockett, Jr. is the sole stockholder which matures on or before 20 years and 3 months from the date hereof.

Said promissory note was given to secure a loan in which the Small Business Administration, an agency of the United States of America, has participated. In compliance with section 101.1(d) of the Rules and Regulations of the Small Business Administration [13 C.F.R. 101.1(d)], this instrument is to be construed and enforced in accordance with applicable Federal law.

1. The mortgagor covenants and agrees as follows:

a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.

b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the said mortgagee.

c. He will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by the mortgagor.

d. For better security of the indebtedness hereby secured, upon the request of the mortgagee, its successors or assigns, he shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby agrees to permit mortgagee to cure such default, but mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said promissory note or any part thereof secured hereby.

f. He will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to mortgagee instead of to mortgagor 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 or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.

g. He will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. He will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.

i. He will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of the mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to mortgagee, who may apply the same to payment of the installments last due under said note, and mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

2. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or his assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default, the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

3. The mortgagor covenants and agrees that if he shall fail to pay said indebtedness or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the mortgagee or assigns, regardless of maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisal (the mortgagor having waived and assigned to the mortgagee all rights of appraisal):

(I) at judicial sale pursuant to the provisions of 28 U.S.C. 2001 (a); or

(II) at the option of the mortgagee, either by auction or by solicitation of sealed bids, for the highest and best bid complying with the terms of sale and manner of payment specified in the published notice of sale, first giving four weeks' notice of the time, terms, and place of such sale, by advertisement not less than once during each of said four weeks in a newspaper published or distributed in the county in which said property is situated, all other notice being hereby waived by the mortgagor (and said mortgagee, or any person on behalf of said mortgagee, may bid with the unpaid indebtedness evidenced by said note). Said sale shall be held at or on the property to be sold or at the Federal, county, or city courthouse for the county in which the property is located. The mortgagee is hereby authorized to execute for and on behalf of the mortgagor and to deliver to the purchaser at such sale a sufficient conveyance of said property, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said mortgagor hereby constitutes and appoints the mortgagee or any agent or attorney of the mortgagee, the agent and attorney in fact of said mortgagor to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be effectual to bar all equity or right of redemption, homestead, dower, and all other exemptions of the mortgagor, all of which are hereby expressly waived and conveyed to the mortgagee; or

(III) take any other appropriate action pursuant to state or Federal statute either in state or Federal court or otherwise for the disposition of the property.

In the event of a sale as hereinbefore provided, the mortgagor or any persons in possession under the mortgagor shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

4. The proceeds of any sale of said property in accordance with the preceding paragraphs shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting or maintaining said property, and reasonable attorneys' fees; secondly, to pay the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by said promissory note, the mortgagee will be entitled to a deficiency judgment for the amount of the *deficiency without regard to appraisal*.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by said note, subject to the same terms and conditions. If the mortgagor shall pay and discharge the indebtedness evidenced by said promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 231 Commerce Parkway, Pelham, Alabama 35124 and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 2340 Woodcrest Place, Birmingham, Alabama 35209

☆ U.S. GPO: 1995-385-421/09085

IN WITNESS WHEREOF, the mortgagor has executed this instrument and the mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

*See Addendum attached
hereto and incorporated
herein.

.....*Ramon A. Crockett Jr.*.....
Ramon A. Crockett, Jr.

.....*Natalie A. Crockett*.....
Natalie A. Crockett

Executed and delivered in the presence of the following witnesses:

.....*Meade Whitaker Jr.*.....

.....*Guthrie C. Bourne*.....

(Add Appropriate Acknowledgment)

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that RAMON A. CROCKETT, JR. and wife NATALIE A. CROCKETT, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the instrument they executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this 18th day of September, 1995.

.....*Judith Wallma*.....
Notary Public

(NOTARIAL SEAL)

My Commission Expires: 5-24-98

MORTGAGE

PREPARED BY:
Meade Whitaker, Jr.
2500 SouthTrust Tower
Birmingham, Alabama 35203

TO

RECORDING DATA

RETURN TO:

Name

Address

.....

EXHIBIT A

Part of Lot 7, Oak Mountain Commerce Place as recorded in Map Book 18 page 58 in the Office of the Judge of Probate of Shelby County, Alabama, being located in the SW 1/4 of the SW 1/4 of Section 31, Township 19 South, Range 2 West, more particularly described as follows: Commence at the NW corner of said 1/4 1/4 section said point being the Northwest corner of said Lot 7; thence in an Easterly direction along the Northerly line of said Lot 7, a distance of 514.26 feet to the Northeast corner of said Lot 7; thence 95 deg. 55 min. 44 sec. right in a Southerly direction along the Easterly line of said Lot 7, a distance of 471.27 feet to the point of beginning; thence continue along last described course a distance of 160.0 feet to the beginning of a curve to the right having a radius of 25.0 feet and central angle of 90 deg.; thence in a Southwesterly direction along said curve a distance of 39.27 feet; thence in a Westerly direction along a line tangent to said curve a distance of 95.71 feet to the beginning of a curve to the right having a radius of 25.0 feet and a central angle of 82 deg. 00 min. 06 sec.; thence in a Northwesterly direction along arc of said curve a distance of 35.78 feet to a point on the Easterly right of way line of Commerce Parkway; thence in a Northerly direction along line tangent to said curve and along said right of way line a distance of 94.84 feet to the beginning of a curve to the left having a radius of 553.32 feet and a central angle of 6 deg. 30 min. 00 sec.; thence in a Northerly direction along said curve and right of way line a distance of 62.77 feet; thence in a Northerly direction along a line tangent to said curve and along said right of way line a distance of 8.29 feet; thence 104 deg. 29 min. 51 sec. right, in an Easterly direction, a distance of 172.98 feet to the point of beginning; being situated in Shelby County, Alabama.

**ADDENDUM
TO
MORTGAGE
FROM
RAMON A. CROCKETT, JR. and
NATALIE A. CROCKETT
TO
BANK OF ALABAMA**

The following provisions are made a part of the foregoing mortgage:

1. **Security Interest.** This mortgage also constitutes a mortgage on and security interest in the following:

(A) All present and future structures, buildings, improvements and appurtenances (herein called the "Improvements") of any kind now or hereafter situated on the land described on Exhibit A (herein called the "Land") and all fixtures, fittings, apparatus, equipment and appliances of every kind and character now or hereafter attached or appertaining to the Improvements and all extensions, additions, improvements, betterments, renewals, substitutions, accessions, attachments and replacements to any of the foregoing, including, without limitation, all plumbing fixtures, ornamental and decorative fixtures, elevators, gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking and washing equipment and appliances and sprinkling, smoke, fire and intrusion detection devices, 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 Land.

(B) All building materials, equipment, fixtures, fittings and appliances of every kind and character now owned or hereafter acquired by mortgagors for the purpose of being used for or in connection with the Improvements, whether such building materials, equipment, fixtures, fittings and appliances are actually located on or adjacent to the Land and whether in storage or otherwise, wheresoever the same may be located, including, without limitation, all lumber and lumber products, bricks, building stones and blocks, sand, cement, roofing and flooring material, paint, doors, windows, hardware, nails, insulation, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures and all gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking and washing equipment and appliances.

(C) All furniture, furnishings, machinery, equipment, appliances and other personal property of every kind and character now owned or hereafter acquired by mortgagors located on or used in connection with the Land and the Improvements and all extensions, additions, improvements, betterments, renewals, substitutions, accessions, attachments and replacements

to any of the foregoing, including, without limitation, all furniture (including desks, tables, chairs, sofas, shelves, lockers and cabinets), office furnishings, appointments and supplies, office machines, equipment, appliances and apparatus, gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking, washing and cleaning equipment and appliances, floor and window coverings and treatments (including rugs, carpets, draperies, shades, curtains and awnings), building maintenance equipment, appliances and apparatus, tools, implements and instruments, and machinery, equipment and apparatus used or useful in the manufacture fabrication, production, processing, assembly, handling, conversion, treatment, storage and distribution of goods, raw materials, products, merchandise, articles, stock, wares and commodities.

(D) All appurtenances to the Land and all rights of mortgagors in and to any streets, roads, public places, easements or rights of way relating to the Land, including, without limitation, all rights of mortgagors to any sewer and septic systems and sewer lines, and all agreements, permits, easements, equipment, licenses, resolutions and related rights pertaining to any sewer and septic systems on the Land.

(E) All the rents, revenues, receipts, royalties, issues, income and profits of the Land or any Improvements and all rights of mortgagors under all present and future leases and subleases affecting the Land and the Improvements.

(F) All proceeds and claims arising on account of any damage to or taking of the Land or any Improvements thereon or any part thereof and all causes of action and recoveries for any loss or diminution in the value of the Land or any Improvements.

(G) All general intangibles relating to the development or use of the Land, including, without limitation, all governmental permits relating to construction on the Land, all names under or by which the Land or any Improvements on the Land may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Land.

(H) All shares of stock or other evidence of ownership of any part of the Land that is owned by mortgagors in common with others and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land.

2. Personal Property. (a) This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which mortgagee is granted a security interest hereunder and constitutes a lien on such property, and mortgagee shall have all 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. Mortgagors hereby agree to execute and deliver on demand and to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as mortgagee may

require in order to impose or perfect, or continue the perfection of, the lien or security interest created hereby. Upon any failure of mortgagors to execute and deliver any such instruments, mortgagee may execute and record any such instruments for and in the name of mortgagors, and mortgagors irrevocably appoint mortgagee the agent and the attorney-in-fact of mortgagors for such purpose. Upon the occurrence of an event of default hereunder, mortgagee shall have the right to cause any of the property described herein 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 mortgagee. Any person, including both mortgagors and mortgagee, shall be eligible to purchase all or any part of such property at such disposition.

(b) The expenses of retaking, holding, preparing for sale, selling or the like shall be borne by mortgagors and shall include mortgagee's attorneys' fees and legal expenses. Upon demand of mortgagee, mortgagors shall assemble such personal property and make it available to mortgagee at the land described on Exhibit A, a place which is hereby deemed to be reasonably convenient to mortgagee and mortgagors. Mortgagee shall give mortgagors 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 mortgagors, 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 mortgagors.

3. Mortgagors agree to furnish to Lender mortgagors' personal financial statements as of December 31, 1995, and each December 31 thereafter, within 60 days of said date, which are certified by mortgagors as true and correct.

4. **Waiver of Jury Trial. MORTGAGORS HEREBY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN, THE NOTE, OR ANY OTHER INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION THEREWITH, INCLUDING THIS MORTGAGE. MORTGAGORS CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE OR MORTGAGEE'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF MORTGAGORS RIGHT TO A TRIAL BY JURY. MORTGAGORS ACKNOWLEDGE THAT THIS WAIVER IS KNOWINGLY MADE AND IS BARGAINED FOR AND THAT MORTGAGEE HAS BEEN INDUCED TO MAKE THE LOAN IN PART BY THE PROVISIONS OF THIS PARAGRAPH.**

5. **Joint and Several Liability.** If mortgagors consist of more than one person or entity, each will be jointly and severally liable to perform the obligations of mortgagors.

6. **Successors.** The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of mortgagors and mortgagee.

7. **Amendments.** This Mortgage may not be modified or amended except by a written agreement signed by the parties.



Ramon A. Crockett, Jr.



Natalie A. Crockett

Inst # 1995-26102

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