

331172

State of Alabama

SHELBY County }

This is a future advance mortgage.

ACCOMMODATION MORTGAGE

This indenture is made and entered into this 26th day of February, 1999 by and between BARRY F. COLE, A MARRIED MAN

(hereinafter called "Mortgagor", whether one or more) and National Bank of Commerce of Birmingham, a national banking association (hereinafter called "Mortgagee").
WHEREAS, Cole Equipment, Inc.

(the "Borrower") is(are) justly indebted to the Mortgagee in the amount of ONE HUNDRED THOUSAND AND NO/100 dollars (\$ 100,000.00) as evidenced by that certain promissory note dated February 26, 1999 which bears interest as provided therein.

WHEREAS, the Mortgagor has requested the Mortgagee to make available to the Borrower said indebtedness and, in reliance on the Mortgagor executing and delivering this mortgage to the Mortgagee, the Mortgagee has extended said indebtedness to the Borrower.

WHEREAS, the Mortgagor expressly acknowledges that the Mortgagor has received good and valid consideration for the execution and delivery of this mortgage and that the Mortgagee is relying on the security afforded by this mortgage in extending said indebtedness to the Borrower.

Now, therefore, in consideration of the premises, and to secure the payment of the debt evidenced by said note or notes and any and all extensions and renewals thereof, or of any part thereof, and all interest payable on all of said debt and on any and all such extensions and renewals (the aggregate amount of such debt and interest thereon, including any extensions and renewals and the interest thereon, is hereinafter collectively called "Debt") and the compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate situated in SHELBY County, Alabama (said real estate being hereinafter called "Real Estate"):

SEE ATTACHED EXHIBIT "A"

CALHABA title

This does not constitute the homestead of the mortgagor # 1999-13474

03/31/1999-13474
10:53 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MMS 171.00

Together with all the rights, privileges, tenements, appurtenances and fixtures appertaining to the Real Estate, all of which shall be deemed Real Estate and conveyed by this mortgage.

To have and to hold the Real Estate unto the Mortgagee, its successors and assigns forever. The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Real Estate and has a good right to sell and convey the Real Estate as aforesaid; that the Real Estate is free of all encumbrances, except as otherwise set forth herein, and the Mortgagor will warrant and forever defend the title to the Real Estate unto the Mortgagee, against the lawful claims of all persons.

This mortgage is subordinate to that certain mortgage from COLE EQUIPMENT CO.

to ROBERT E. LEE

dated MARCH 26, 1992 and recorded in INST. 1992-3063

in the Probate Office of SHELBY County, Alabama.

The Mortgagor hereby authorizes the holder of a prior mortgage encumbering the Real Estate, if any, to disclose to the Mortgagee the following information: (1) the amount of indebtedness secured by such mortgage; (2) the amount of such indebtedness that is unpaid; (3) whether any amount owed on such indebtedness is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; and (5) any other information regarding such mortgage or the indebtedness secured thereby which the Mortgagee may request from time to time.

If this mortgage is subordinate to a prior mortgage, the Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum payable under the terms and provisions of such prior mortgage, the Mortgagee may, but shall not be obligated to, cure such default, without notice to anyone, by paying whatever amounts may be due under the terms of such prior mortgage so as to put the same in good standing; and any and all payments so made, together with interest thereon at the rate of 8% per annum or the highest rate then permitted by law, whichever shall be less, shall be added to the indebtedness secured by this mortgage. Any such amount paid by Mortgagee, with interest thereon, shall be immediately due and payable; and, if such amount is not paid in full immediately by Mortgagor, then, at the option of the Mortgagee, this mortgage shall be in default and subject to immediate foreclosure in all respects as provided by law and by the provisions hereof.

For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (1) pay all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same; (2) keep the Real Estate continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable to the Mortgagee, as its interest may appear; and (3) if any of the improvements located on the Real Estate or if any part thereof is located within an area that has been, or should such area at any time be, designated or identified as an area having special flood hazards by any governmental authority having jurisdiction, obtain such flood insurance as is required by such governmental authority in amounts required by Mortgagee and by any applicable laws or regulations, with loss, if any, payable to the Mortgagee, as its interest may appear. Such insurance shall be in an amount sufficient to cover the Debt and the indebtedness secured by any prior mortgage. The original insurance policies and all replacements therefor, shall be delivered to and held by the Mortgagee until the Debt is paid in full. Each of the insurance policies must provide that it may not be cancelled without the insurer giving at least fifteen days prior written notice of such cancellation to the Mortgagee at the following address: National Bank of Commerce of Birmingham, P.O. Box 10686, Birmingham, Alabama 35202, Attention: Loan Department.

Condominiums. If any portion of the Real Estate and the improvements, buildings or fixtures now or hereafter built thereon constitute a condominium(s) under Alabama law, this paragraph shall apply. The property comprises _____ unit(s) (together with an undivided interest in the common elements) in a condominium known as N/A (the "Condominium"). Mortgagor shall promptly pay, when due, all assessments imposed by the owner's association or other governing body of the Condominium (the "Owner's Association") pursuant to the provisions of the declaration, by-laws, code regulations or other constituent document of the Condominium. So long as the Owner's Association maintains a master or blanket insurance policy on the Condominium which provides insurance coverage against fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, and such other hazards as Mortgagee may require, and in such amounts and for such periods as Mortgagee may require, then the requirements in the Mortgage requiring the Mortgagor to maintain fire insurance are deemed satisfied. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the property whether to the unit or common elements, any such proceeds payable to Mortgagor are hereby assigned and shall be paid to Mortgagee for application in accordance with the provisions of the Mortgage. Mortgagor shall not, except after notice to Mortgagee and with Mortgagee's prior written consent, partition or so divide the property or consent to: (a) the abandonment or termination of the Condominium, except for abandonment or termination provided by law in the cases of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (b) any material amendment to the declaration, by-laws or code of regulations of the Owner's Association, or equivalent constituent document of the Condominium, including, but not limited to, any amendment which would change percentage interest of the unit owners of the Condominium; or (c) the effectuation of any decision by the Owner's Association to terminate professional management and assume self-management of the Condominium.

Subject to the rights of the holder of the prior mortgage set forth above, if any, the Mortgagor hereby assigns and pledges to the Mortgagee as further security for the payment of the Debt each and every policy of hazard or flood insurance, if applicable, now or hereafter in effect which insures said improvements, or any part thereof, together with all the right, title and interest of the Mortgagor in and to each and every such policy, including but not limited to all of the Mortgagor's right, title and interest in and to any premiums paid on such hazard insurance or flood insurance, including all rights to return premiums. If the Mortgagor fails to keep the Real Estate insured as specified above then, at the election of the Mortgagee and without notice to any person (with the exception of any notices required to be given by the Mortgagee in accordance with any laws or regulations pertaining to flood insurance), the Mortgagee may declare the entire Debt due and payable and this mortgage subject to foreclosure, and this mortgage may be foreclosed as hereinafter provided; and, regardless of whether the Mortgagee declares the entire Debt due and payable and this mortgage subject to foreclosure, the Mortgagee may, but shall not be obligated to, insure the Real Estate for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss, for its own benefit, such proceeds may be used in repairing or reconstructing the improvements located on the Real Estate. All amounts spent by the Mortgagee for insurance or for the payment of Liens shall become a debt due by the Mortgagor and at once payable, without demand upon or notice to the Mortgagor, and shall be secured by the lien of this mortgage, and shall bear interest from date of payment by the Mortgagee until paid at the rate of 8% per annum or the highest rate then permitted by law, whichever shall be less.

Subject to the rights of the holder of the prior mortgage set forth above, if any, the Mortgagor hereby pledges and assigns to the Mortgagee as further security for the payment of the Debt the following rights, claims, rents, profits, issues and revenues:

1. all rents, profits, issues, and revenues of the Real Estate from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Mortgagor, so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, profits, issues and revenues;

2. all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Real Estate, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Real Estate, or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets, and all payments made for the voluntary sale of the Real Estate, or any part thereof, in lieu of the exercise of the power of eminent domain. The Mortgagee is hereby authorized on behalf of, and in the name of, the Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. The Mortgagee may apply all such sums so received, or any part thereof, after the payment of all the Mortgagee's expenses, including court costs and attorney's fees, on the Debt in such manner as the Mortgagee elects, or, at the Mortgagee's option, the entire amount or any part thereof so received may be released or may be used to rebuild, repair or restore any or all of the improvements located on the Real Estate.

The Mortgagor agrees to take good care of the Real Estate and all improvements located thereon and not to commit or permit any waste thereon, and at all times to maintain such improvements in as good condition as they now are, reasonable wear and tear expected.

(a) The Real Estate is not and never has been in violation of any applicable Environmental Law; (b) the Real Estate is free of Hazardous Substances; and (c) there are no pending investigations, claims or threats of claims with respect to the Real Estate by any governmental authority or other person relating to any Environmental Law.

As used in this mortgage, "Hazardous Substances" shall mean and include all pollutants, contaminants, toxic or hazardous waste, and other substances (including without limitation asbestos and urea formaldehyde foam insulation), the removal of which is required or the manufacture, use, maintenance or handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the occupants of the property on which it is located or the occupants of the property on which it is located or the occupants of the property adjacent thereto. "Environmental Law" shall mean and include any federal, state or local law or ordinance relating to pollution or protection of the environment, including any relating to Hazardous Substances, and any and all regulations, codes, plans, orders, decrees, judgments, injunctions, notices and demand letters issued, entered, promulgated or approved thereunder.

The Mortgagor shall: (a) not permit any Hazardous Substances to be brought onto the Real Estate; (b) if any Hazardous Substances are brought or found on the Real Estate, immediately remove and properly dispose thereof and diligently undertake all cleanup procedures required under applicable Environmental Laws; (c) promptly give notice to the Mortgagee in writing if the Mortgagor should receive notice of any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Mortgagor or the Real Estate; and (d) permit the Mortgagee from time to time to inspect the Real Estate and observe the Mortgagor's operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Real Estate. (Nothing contained in this section shall be deemed to impose any obligations on the Mortgagee with respect to Hazardous Substances or otherwise.)

The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against all claims, causes of action, judgments and other loss, cost and expense that are related to or arise from any clean-up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Real Estate, or any part thereof, that may be required by any Environmental Law or governmental authority.

Notwithstanding any other provision of this mortgage or the note or notes evidencing the Debt, if the Real Estate, or any part thereof, or any interest therein, is sold, conveyed or transferred, without the Mortgagee's prior written consent, the Mortgagee may, at its option, declare the Debt immediately due and payable; and the Mortgagee may, in its sole discretion, require the payment of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option to accelerate the Debt. The Mortgagor agrees that the Mortgagee may, if the Mortgagee desires, accelerate the Debt or escalate the rate of interest payable on the Debt for the purpose of (1) obtaining a higher rate of interest on the Debt or (2) protecting the security of this mortgage.

The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the Debt due and payable shall be deemed a waiver of the Mortgagee's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this mortgage may be waived, altered or changed except by a written instrument signed by the Mortgagor and signed on behalf of the Mortgagee by one of its officers.

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

Upon condition, however, that if the Mortgagor pays the Debt (which Debt includes the indebtedness evidenced by the promissory note or notes referred to hereinbefore and any and all extensions and renewals thereof and all interest on said indebtedness and on any and all such extensions and renewals) and reimburses the Mortgagee for any amounts the Mortgagee has paid in payment of Liens, or insurance premiums, and sums due under any prior mortgage, and interest thereon, and fulfills all of its obligations under this mortgage, this conveyance shall be null and void. But if: (1) any warranty or representation made in this mortgage is breached or proves false in any material respect; (2) default is made in the due performance of any covenant or agreement of the Mortgagor under this mortgage; (3) default is made in the payment to the Mortgagee of any sum paid by the Mortgagee under the authority of any provision of this mortgage; (4) the Debt, or any part thereof, remains unpaid at maturity; (5) the interest of the Mortgagee in the Real Estate becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon; (6) any statement of lien is filed against the Real Estate, or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen (without regard to the existence or nonexistence of the debt or the lien on which such statement is based); (7) any law is passed imposing or authorizing the imposition of any specific tax upon this mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal or interest of the Debt, or by virtue of which any tax, lien or assessment upon the Real Estate shall be chargeable against the owner of this mortgage; (8) any of the stipulations contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction; (9) Mortgagor, or any of them (a) shall apply for or consent to the

In witness whereof, the undersigned Mortgagor has (have) executed this instrument on the date first written above.

Address: National Bank of Commerce
1927 First Avenue North
Birmingham, Al 35203

County

LNS-0330

ACKNOWLEDGEMENT FOR INDIVIDUAL(S)

State of Alabama

Shelby County

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Barry F. Cole

_____, whose name(s) is (are) signed to the foregoing instrument, and who is (are) known to me, acknowledged before me on this day that, being informed of the contents of said instrument, (he)(she)(they) executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26th day of February 1999.

AFFIX NOTARIAL SEAL

Judy K. Ray
Notary Public, State of Alabama at Large.
My commission expires: Mar. 31, 2002.
~~BONDED THRU NOTARY PUBLIC UNDERWRITERS.~~

ACKNOWLEDGEMENT FOR CORPORATION

State of Alabama

_____ County

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that _____

whose name as _____ of _____

_____, a 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 said instrument, (he)(she)(they), 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 _____ day of _____, _____.

AFFIX NOTARIAL SEAL

Notary Public

My commission expires: _____

RETURN TO: National Bank of Commerce of Birmingham, P.O. Box 10686, Birmingham, Alabama 35202
Attention: Loan Department

EXHIBIT A

A parcel of land in the NW 1/4 of the SE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama as described as follows:

Commence at the SE corner of the NW 1/4 of SE 1/4, Section 12, Township 20 South, Range 3 West; thence N 89 deg. 53 min. 05 sec. West and run 900.88 feet along the 1/4-1/4 line; thence North 25 deg. 49 min. 04 sec. E and run 391.6 feet; thence N 64 deg. 10 min. 56 sec. W and run 375.0 feet; thence N 25 deg. 49 min. 04 sec. E and run 120.0 feet to the point of beginning; thence N 64 deg. 10 min. 56 sec. W and run 225.0 feet; thence N 25 deg. 49 min. 04 sec. E and run 90.0 feet; thence S 64 deg. 10 min. 56 sec. E and run 255.0 feet; thence S 25 deg. 49 min. 04 sec. W and run 90.0 feet; thence N 64 deg. 10 min. 56 sec. W and run 30 feet to the point of beginning; being situated in Shelby County, Alabama.

Inst # 1999-13474

**03/31/1999-13474
10:53 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MMS 171.00**