

STATE OF ALABAMA)
SHELBY COUNTY)

2048

SECURITY AGREEMENT

THE GARDEN SHOP, INC., an Alabama corporation (the "Debtor"), hereby grants to FIRST ALABAMA BANK, SHELBY COUNTY, an Alabama banking corporation, the secured party hereunder (the "Secured Party"), a security interest in and does hereby assign and transfer to Secured Party the following described personal property:

All equipment, machinery, furniture, fixtures and all personal property of every kind and character acquired and owned by Debtor and located on the premises described as 5485 Highway 280 East, Birmingham, Alabama 35242 (the "Premises"), and more fully described on Exhibit "A" attached hereto, any present or future leasehold interest of Debtor in any equipment, machinery, furniture, fixtures and personal property of any kind which may be located upon or affixed to the Premises, all present and hereafter acquired accounts, inventory, contract rights, instruments, documents, chattel paper, general intangibles, actions and rights in action pertaining to the Premises and the aforesaid property, including all rights to insurance proceeds, and all cash and non-cash proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the aforesaid (collectively, the "Collateral").

The security interest granted hereby is to secure payment and performance of liabilities and obligations of Debtor to the Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter referred to as "Obligations").

Secured Party shall have the right in its own name, or in the name of the Debtor, to demand, collect, receive, receipt for, sue for, compound and give acquittance for, any and all amounts due or to become due on the accounts, contract rights, inventory and chattel paper, and to endorse the name of Debtor on all commercial paper given in payment or take payment thereof, and in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve and realize upon the security interest of Secured Party in the accounts, contract rights, inventory and chattel paper, and the proceeds thereof.

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Secured Party shall not be required or obligated to collect any account or enforce any contract right or chattel paper and Debtor hereby releases Secured Party from any and all claims for loss or damage caused by or attributable to any failure to collect any account or enforce any contract right or any right under any chattel paper or any other loss or damage and from any and all claims alleged to arise from or in connection with any act or omission by or on behalf of Secured Party, its officers, agents, servants and employees except willful misconduct.

Debtor hereby agrees as follows:

Section 1. Warranties. Debtor represents and warrants as follows:

- (a) Debtor is duly organized and existing under the laws of the State of Alabama and is duly qualified and in good standing in every other state in which it is doing business.
- (b) The execution, delivery, and performance hereof are within Debtor's corporate powers, have been duly authorized, are not in contravention of law or the terms of Debtor's charter, bylaws, or other incorporation papers, or of any indenture, agreement, or undertaking to which Debtor is a party or by which Debtor is bound.
- (c) Debtor is or will be the lawful owner of all Collateral and has or will have good right to pledge, sell, assign and transfer the same and grant a security interest therein as of the date of this Agreement. None of the Collateral has been or will be pledged, sold, assigned or transferred to any other person than Secured Party or in any way encumbered except to Secured Party, and Debtor and Montgomery will warrant and defend all Collateral against the claims and demands of all persons.
- (d) The Debtor's address shown above is its chief place of business, and this is the only office where Debtor keeps records concerning any of the accounts or inventory.
- (e) Subject to any limitation therein or in connection therewith, all information furnished to Secured Party concerning Collateral and proceeds thereof or otherwise for the purpose of obtaining credit or an extension of credit is or will be at the time the same is furnished, accurate and correct in

all material respects and complete insofar as completeness may be necessary to give Secured Party a true and accurate knowledge of the subject matter.

- (f) Each of Debtor's accounts and all papers and documents relating thereto are genuine and in all respects what they purport to be. The same are valid and subsisting and arise out of bona fide contracts, sales of goods, wares, merchandise or other property sold and delivered to, or in the process of being delivered to, or out of and for services heretofore rendered by Debtor to, the account debtors and each of them. The amount of the account, represented as owing by each such account debtor is the correct amount actually and unconditionally owing by such account debtor, except for normal cash discounts, it is not disputed and except for such normal cash discounts, is not subject to any set-offs, credits, deductions or counter-charges. Debtor is the owner thereof free and clear of all liens and encumbrances of any nature whatsoever, and no surety bond was required or given in connection with any of said accounts or the contracts or purchase orders of which the same arose. In the case of contract rights, Debtor may amend or modify said contracts without the prior written consent of Secured Party, and any amendment or modification contrary hereto shall constitute an event of default.
- (g) ~~Debtor agrees herewith to mark its records to reflect the assignment of said accounts to Secured Party.~~ Secured Party shall have the right at any time, whether before or after default by Debtor, to notify any and all account debtors to make payment thereof directly to the Secured Party; but to the extent the Secured Party does not so elect, Debtor shall continue to collect the accounts. *CBH
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JOM*
- (h) Until default, Debtor may use the Collateral in any lawful manner not inconsistent with this Agreement or with the terms or conditions of any policy of insurance thereon and may also sell the Collateral in the ordinary course of business.
- (i) A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt. Until default, Debtor

- (c) Any demand upon or notice to Debtor or Montgomery that Secured Party may elect to give shall be effective when deposited in the mails addressed to Debtor at the address shown at the beginning of this Agreement.
- (d) If at any time or times, by assignment or otherwise, Secured Party transfers any Obligations and Collateral, or other security therefor, such transfer shall carry with it Secured Party's powers and rights under this Agreement with respect to the Obligations and Collateral or other security transferred and the transferee shall become vested with said powers and rights, whether or not they are specifically referred to in the transfer. If and to the extent that Secured Party retains any other Obligation or Collateral or other security, Secured Party will continue to have the rights and powers herein set forth with respect thereto.
- (e) Debtor shall pay to Secured Party on demand, together with interest at a rate of twelve percent (12%) per annum, any and all expenses, including legal expenses and reasonable attorneys' fees, reasonably incurred or expended by Secured Party in the collection or attempted collection of Collateral and in protecting and enforcing the Obligations and other rights of Secured Party hereunder.
- (f) Whenever there is no outstanding Obligation and no commitment on the part of Secured Party under any agreement which might give rise to an Obligation, Debtor may terminate this Agreement upon written notice to Secured Party. Prior to such termination, this shall be a continuing Agreement in every respect.
- (g) All terms used herein which are defined in the Uniform Commercial Code of Alabama have the same meaning herein as in said Code, and this Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the law of Alabama.
- (h) Secured Party shall have the right from time to time to amend this Agreement and to change interest rates and service charges upon giving written notice to Debtor.
- (i) "Secured Party" and "Debtor" as used in this instrument include the successors, representatives, receivers, trustees and assigns of those parties.

may also use and consume any raw materials or supplies, the use and consumption of which are necessary to carry on Debtor's business.

- (j) Debtor shall pay prior to delinquency all taxes, charges, liens and assessments against the Collateral, including the cost of any required insurance, and upon Debtor's failure to do so, Secured Party at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Such payment shall become part of the indebtedness secured by this Agreement and shall be paid to Secured Party by Debtor immediately and without demand, with interest thereon at the rate stated in any notes executed pursuant to this Agreement.
- (k) This Agreement and all rights and liabilities hereunder or pursuant hereto shall inure to the benefit of the Secured Party, its successors and assigns, and shall be binding upon the Debtor, its successors and assigns.

Section 2. Places of Business; Inspection of Records; Insurance; Further Assurance.

- (a) Debtor will promptly notify Secured Party in writing fifteen (15) days in advance of any addition to, change in or discontinuance of its place of business as shown at the beginning of this Agreement.
- (b) Debtor will at all reasonable times allow Secured Party by or through any of its representatives, to examine and inspect the Collateral under reasonable procedures.
- (c) Debtor will, at all times, at the request of the Secured Party, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as Secured Party may require, to more completely vest in and assure to Secured Party its rights hereunder and in or to the Collateral and the proceeds thereof, and will pay the cost of any necessary filing.

Section 3. Financing Statements.

- (a) At the request of Secured Party, Debtor will join with Secured Party in executing one or more financing statements pursuant to the Uniform Commercial Code of Alabama in form satisfactory to

the Secured Party.

- (b) Without the prior written consent of Secured Party, Debtor will neither allow any financing statement covering any Collateral, proceeds thereof or proceeds of any of Debtor's assets to be on file in any public office, nor voluntarily or involuntarily subject the Collateral or its proceeds, or allow the Collateral or its proceeds to be subjected to any interest of any transferee, buyer, secured party, encumbrancer or other third person.
- (c) Without the prior written consent of Secured Party, Debtor will not acquire any inventory subject to any lien, encumbrance or security interest.

Section 4. Insurance. Debtor shall maintain at all times property damage, fire, theft and comprehensive insurance in the amount of at least the appraised value of the Collateral in companies satisfactory to the Secured Party, protecting Secured Party's interest as it may appear. Said insurance shall require a minimum of ten (10) days prior written notice to Secured Party before any cancellation thereof is effective. Secured Party shall have the right, but not the obligation, to pay any premiums on said insurance and collect the same from Debtor. Debtor shall provide Secured Party with a certificate evidencing such insurance.

Section 5. Events of Default; Acceleration. Any or all Obligations shall, at the option of Secured Party, and notwithstanding any time or credit allowed by any instrument evidencing a liability, become immediately due and payable ~~without notice or demand~~ upon the occurrence of any of the following events of default: ^{if such default is not cured within ten (10) days after notice to Debtor to cure the same}

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- (a) Default in the payment or performance of any Obligation, covenant or liability contained or referred to herein or in any note secured hereby;
- (b) Any ^{material} warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor which proves to have been false in any material respect when made or furnished;
- (c) Any event which results in the acceleration of the maturity of the indebtedness of Debtor to others under any indenture, agreement or undertaking;
- (d) Loss, theft, damage, destruction, sale or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon;

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- (e) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor or surety for Debtor, or entry of any judgment against them.

Section 6. Rights and Remedies on Default. ^{if such default is not cured within ten (10) days after} Upon the notice ^{to Debtor to cure the same,} occurrence of any such event of default, and any time thereafter, Secured Party shall have the rights and remedies of a secured party under the Uniform Commercial Code of Alabama in addition to the rights and remedies provided herein or in any other writings executed by Debtor. In the event of any default hereunder, Debtor is liable to Secured Party for expenses of retaking, holding, preparing for sale and selling the Collateral; reasonable attorney's fees and any other expenses of collection, plus interest thereon at the rate stated in any notes executed pursuant to this Agreement, and for any deficiency, and shall be entitled to any net surplus that may arise from the sale or other collecting from the Collateral hereunder. In the event of default, Secured Party may exercise its rights of enforcement under the Uniform Commercial Code of Alabama as now or hereafter in effect, and Secured Party is authorized to apply to the payment of the debt secured hereby any funds in the Secured Party belonging to Debtor and any sureties or guarantors hereof. Secured Party may at its sole option waive or remedy any default without waiving the default remedied and without waiving any other prior or subsequent default. In case of a default where the Secured Party has taken possession of the Collateral, and where the Secured Party is required to give notice as to when the Collateral will be sold, Secured Party hereby agrees to give Debtor five (5) days advance notice in writing of said sale or disposition of Collateral.

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Section 7. General.

- (a) Secured Party shall not be deemed to have waived any of Secured Party's rights hereunder or under any other agreement, or writings signed by Debtor, unless such waiver be in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such rights or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.
- (b) All Secured Party's rights and remedies, whether evidenced hereby or by any other writings, shall be cumulative and may be exercised singularly or concurrently.

(j) This Agreement is intended to take effect when signed by Debtor and Montgomery and delivered to Secured Party.

(k) If anything in this Agreement is held to be illegal, then only that portion is void and not the entire Agreement.

IN WITNESS WHEREOF, THE GARDEN SHOP, INC., has caused this Agreement to be executed by its duly authorized officer on the 23rd day of May, 1991.

DEBTOR:

THE GARDEN SHOP, INC.

By: *D. Boatman* (SEAL)
Its Owner

By: *Steve Atkema* (SEAL)
Its President

SECURED PARTY:

FIRST ALABAMA BANK, SHELBY COUNTY

By: *Gregg Maerker*
Its: *Branch Manager, Inverness*

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STATE OF ALABAMA)
Shelby COUNTY)

I the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that C. Beaty Hanna and Steve A. Hanna whose names as Owner and President of The Garden Shop, Inc., an Alabama corporation, is signed to the foregoing Security Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this 23rd day of May, 1991.

My Commission Expires:
4-17-93

Charles L. Hay
Notary Public

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STATE OF ALABAMA)
Shelby COUNTY)

I, the undersigned, Notary Public, in and for said County in said State, hereby certify that Brian Maerker whose name as Brian Maerker of First Alabama Bank, Shelby County, an Alabama Banking 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 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 23rd day of May, 1991.

Charles L. Hay
Notary Public

THIS INSTRUMENT PREPARED BY:

M. BETH O'NEILL
LANGE, SIMPSON, ROBINSON & SOMERVILLE
1700 FIRST ALABAMA BANK BLDG.
BIRMINGHAM, ALABAMA 35203

EXHIBIT "A"

A parcel of land situated in the SW 1/4 of the NE 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the SE corner of the SW 1/4 of the NE 1/4 of Section 5, Township 19 South, Range 1 West, and run in a Westerly direction along the South line of said SW 1/4 of the NE 1/4 for a distance of 570.73 feet to a point; thence 90 degrees 02 minutes 14 seconds to the right in a Northerly direction a distance of 225.98 feet to a point; thence 90 degrees 00 minutes to the left in a Westerly direction a distance of 60.15 feet to a point; thence 83 degrees 32 minutes 25 seconds to the right in a Northerly direction a distance of 205.67 feet to the point of beginning ; thence 83 degrees 14 minutes 45 seconds to the left in a Westerly direction a distance of 199.06 feet to a point on the Easterly right of way line of Highway 280; thence 83 degrees 34 minutes 53 seconds to the right in a Northerly direction and along the Easterly right of way line of Highway 280 a distance of 501.97 feet to a point; thence 95 degrees 53 minutes to the right in an Easterly direction a distance of 287.29 feet to the point of curve (P.C.) of a curve to the right having a radius of 189.87 feet and a central angle of 90 degrees 34 minutes 50 seconds; thence along the arc of said curve to the right and in a Southeasterly direction a distance of 300.16 feet to the point of tangent (P.T.) of said curve; thence in the tangent of said curve in a Southerly direction a distance of 311.50 feet to a point; thence 89 degrees 57 minutes 17 seconds to the right in a Westerly direction a distance of 223.49 feet to the point of beginning.

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| Deed Tax | 1.00 |
| Misc Tax | 1.00 |
| Recording Fee | 23.50 |
| Notary Fee | 5.00 |
| County Fee | 1.00 |
| Total | 32.50 |

According to the survey of Joseph D. Schoel, RLS #4405 dated November 4, 1987.

SUBJECT TO:

1. Taxes for 1991 and subsequent years.
2. Transmission line permit to Alabama Power Company recorded in Deed Book 111, Page 405, and Deed Book 138 Page 539, in the Office of the Judge of Probate of Shelby County, Alabama.
3. Minerals and mining rights excepted and other rights incidental thereto, as reserved in Deed Book 337, Page 771, in said Probate Office.
4. Restrictive covenants as recorded in Real Record 088, Page 366, in said Probate Office.

SHelby County, Alabama
I CERTIFY THIS INSTRUMENT WAS FILED
MAY 30 PM 1:24
JUDGE OF PROBATE