

STATE OF ALABAMA)

SHELBY COUNTY)

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

This Mortgage, Security Agreement and Assignment of Rents and Leases (the "Mortgage") is made and entered into this 8th day of August, 1995, by and between **ALABASTER INDUSTRIES, INC.**, a Delaware corporation ("Borrower"), whose address for notice purposes is P. O. Box 429, 501 Industrial Drive, Alabaster, Alabama 35007, and **VISTA 2000, INC.**, whose address for notice purposes is P. O. 11660 Alpharetta Highway, Suite 300, Roswell, Georgia 30076 (the "Lender").

RECITALS

A. Borrower is justly indebted to Lender in the principal sum of \$4,800,000, as evidenced by a promissory note dated July 31, 1995, which note bears interest as provided therein (the "Note").

B. To secure the Note, and to induce Lender to make the loan evidenced by the Note on the strength of the security provided by this Mortgage, Borrower has agreed to execute and deliver this Mortgage to Lender.

NOW, THEREFORE, in consideration of the premises, to induce Lender to make the loan evidenced by the Note, and to secure the Obligations, as hereinafter defined, Borrower hereby agrees with Lender as follows:

1. Obligations Secured. This Mortgage is given to secure and shall secure the following (hereinafter collectively referred to as the "Obligations"):

A. The payment of all amounts now or hereafter becoming due and payable under the Note, including all principal and the interest thereon and all other fees, charges and costs (including reasonable attorney's fees) payable in connection therewith.

B. The payment of any and all other fees, charges and other sums now or hereafter becoming due and payable by Borrower to Lender under the terms of this Mortgage, that certain Security Agreement dated July 31, 1995, executed by Borrower in favor of Lender (the "Security Agreement"), and any other document or instrument now or hereafter evidencing or securing the Note.

C. The payment of any and all sums now or hereafter becoming due and payable by Borrower to Lender under the terms of this Mortgage, including advances

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SHELBY COUNTY JUDGE OF PROBATE
028 NCD 3376.00

Inst # 1995-21645

made by Lender to or for the benefit of Borrower, as contemplated by any covenant or provision contained in this Mortgage.

D. Any and all renewals, extensions, modifications and amendments of any or all of the obligations described in the foregoing clauses A through C, both inclusive, of this paragraph 1, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

E. The compliance with and the complete and full performance of all stipulations, covenants, duties, agreements, representations, warranties, obligations and conditions contained in the Note, the Security Agreement, this Mortgage and any other document or instrument now or hereafter evidencing or securing the Note.

Notwithstanding anything to the contrary contained herein or in any other loan document:

(i) The aggregate maximum principal amount of the Obligations secured by this Mortgage shall not exceed \$2,200,000 (the "Maximum Principal Amount"), but such limitation shall only apply to the principal indebtedness secured by this Mortgage and shall not limit the amount of interest, fees, expenses, indemnified amounts or other indebtedness (except principal indebtedness) secured hereby.

(ii) The Maximum Principal Amount of the Obligations secured by this Mortgage shall be deemed to be the first principal indebtedness to be advanced and the last principal indebtedness to be repaid.

(iii) The security afforded by this Mortgage for the Obligations shall not be reduced by any payments or other sums applied to the reduction of the Obligations so long as the total amount of the outstanding principal Obligations exceed the Maximum Principal Amount, and thereafter shall be reduced only to the extent that any payments and other sums are actually applied by Lender to reduce the outstanding principal of the Obligations to an amount not less than the Maximum Principal Amount.

2. Granting Clauses. As Security for the Obligations, Borrower does hereby grant, bargain, sell, mortgage, assign and convey unto Lender, its successors and assigns, the following described property and interests in property, and does grant to Lender a security interest in said property and interests in property:

A. The real estate located in Shelby County, Alabama and more particularly described on Exhibit A attached hereto and hereby made a part hereof, and all and singular the reversions and remainders in and to said land and the tenants, hereditaments, easements, rights-of-way or use, rights (including mineral and

mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land now or hereafter belonging or in any way appertaining thereto (the "Fee Property").

- B. 1. That certain lease dated as of October 1, 1979, between Farris Land Company, Inc., as lessor, and Borrower, as lessee, as amended (the "Lease"), and Borrower's leasehold estate and interest under the Lease in and to all those certain lot(s), piece(s) or parcel(s) of land described in the Lease and located in Shelby County, Alabama and more particularly described in Exhibit B attached hereto and hereby made a part hereof, and all and singular the revisions and remainders in and to said land and the tenements, hereditaments, easements, rights-of-way or use, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto (the "Leasehold Property").
2. All other rights, title and privileges under the Lease in and to the Leasehold Property, or any part thereof, including any reversions and remainders in and to Borrower's interest in the Leasehold Property.
3. Any and all right, title and interest of Borrower in and to (i) all modifications, extensions, renewals, supplements and restatements of the Lease, (ii) all credits and deposits made thereunder, (iii) all options and rights to renew or extend the same, including, but limited to, the options contained in the Lease, (iv) all options and rights to purchase or of first refusal with respect to, the Leasehold Property, or any part thereof, including, but not limited to, the options and rights contained in the Lease; and (v) all other, further or additional title, estate, options, privileges, interests or rights that Borrower may now or hereafter acquire in and to the Leasehold Property and the Lease.
- C. All buildings, structures, facilities and other improvements now or hereafter located on the Fee Property or the Leasehold Property (the Fee Property and the Leasehold Property are hereinafter sometimes referred to, collectively, as the "Land"), and all building material, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by Borrower or in which Borrower has or shall acquire an interest (all of the foregoing hereinafter called the "Improvements," and together with the Land called the "Real Property").

- D. All materials, equipment, fixtures, tools, apparatus, fittings, chattels and other articles of personal property, both tangible and intangible, (including appurtenances, additions and accessions thereto and replacements, substitutions, betterments and renewals thereof) of every kind or character now owned or hereafter acquired by Borrower for the purpose of, or used or useful in connection with, the Real Property, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Real Property (all of the foregoing and all other personal property covered by this Mortgage hereinafter called the "Personal Property").
- E. 1. All leases, subleases, lettings and licenses, and all other agreements for use or occupancy of all or any portion of the Real Property or the Personal Property with respect to which Borrower is the lessor, licensor or sublessor, including, but not limited, to any of the same now existing (the "Existing Tenant Leases"), any and all extensions and renewals of said leases, licenses and agreements and any and all further leases, licenses or agreements, now existing or hereafter made or entered into (all such leases, subleases, licenses, agreements and tenancies heretofore mentioned, including, but not limited to, the Existing Tenant Leases, being hereinafter referred to, collectively, as the "Tenant Leases").
2. Any and all guaranties of the lessee's, license's, occupant's or sublessee's (collectively, the "Tenants") performance under any of the Tenant Leases.
3. The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Borrower may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Tenant Leases, the Real Property or the Personal Property, or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any Tenant upon the exercise of any cancellation privilege provided for in any of the Tenant Leases, and all proceeds payable under any

policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property or Personal Property, together with any and all rights and claims of any kind that Borrower may have against any such Tenant under the Tenant Leases, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred, Borrower shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof).

4. Any award, dividend or other payment made hereafter to Borrower in any court procedure involving any of the Tenants under the Tenant Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by Tenants in lieu of rent. Borrower hereby appoints Lender as Borrower's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment.

- F. All proceeds (including insurance proceeds) of any of the foregoing, or any part thereof.
- G. Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to Lender, or in which Lender is granted a security interest, as and for additional security hereunder by Borrower, or by anyone on behalf of, or with the written consent of, Borrower.

All of the property and interests in property described in the foregoing granting clauses A through G, both inclusive, of this paragraph 2 are herein sometimes collectively called the "Property".

SUBJECT, HOWEVER, to the easements, rights-of-way and other exceptions described on Exhibit C attached hereto, and hereby made a part hereof (the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto Lender, its successors and assigns, forever.

3. Warranties of Title. Borrower covenants with Lender that: (i) (x) Borrower is lawfully seized in fee simple of the Fee Property, (y) Borrower is the tenant with respect to the leasehold estate in the Leasehold Property under the Lease and (z) Borrower is the lawful owner of, and has good title to, the Personal Property and the other Property, and has a good right to sell, mortgage, grant a security interest in, assign and convey the Property as aforesaid; (ii) the Property is free of all mortgages, liens, security interests, pledges, assignments and

encumbrances, other than the Permitted Exceptions; (iii) Borrower has and will have full power and lawful authority to encumber and convey the Property as provided herein; (iv) this Mortgage is and will remain a valid and enforceable first priority lien on, and security interest in, the Property; and (v) Borrower will forever warrant and defend the title to the Property unto Lender against the lawful claims of all persons, whomsoever.

4. Maintenance of Lien Priority. Borrower shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. Borrower shall execute, acknowledge and deliver such additional instruments as Lender may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by Borrower.

5. Representations and Warranties Related to Rents and Tenant Leases. Borrower represents and warrants that:

(a) Borrower has good title to the Rents and Tenant Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein.

(b) Borrower has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Tenant Leases on Borrower's part to be kept, observed and performed.

(c) Borrower has not previously sold, assigned, transferred, mortgaged or pledged the Tenant Leases or the Rents, whether now due or hereafter to become due.

(d) No rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(e) Borrower has not received any funds or deposits from any Tenant in excess of one month's rent for which credit has not already been made on account of accrued rents.

(f) To the best of Borrower's knowledge, the lessees under the Existing Tenant Leases are not in default under any of the terms thereof.

6. The Lease. (i) The Lease is a valid and subsisting lease of the Leasehold Property for the term therein set forth, and the Lease is in full force and effect and unmodified; (ii) all rents (including minimum rents, additional rents, percentage rents, common area maintenance charges and other charges) reserved in the Lease have been paid to the extent payable prior to the date hereof; and (iii) there is no existing default under the provisions of the Lease or in the observance of any of the terms, covenants, conditions or warranties thereof to be observed or performed by Borrower.

7. Covenants To Pay Liens and Maintain Insurance. For the purpose of further securing the payment of the Obligations, Borrower covenants and agrees to: (a) 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, Lender, at its option, may pay the same; and (b) keep the Property continuously insured, in such manner and with such companies as may be satisfactory to Lender, against loss by flood (if the Property is located in a flood-prone area), fire, windstorm, vandalism and malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to Lender) to Lender, as its interests may appear. Each such policy or policies shall provide that the insurance provided thereby, as to the interest of Lender, shall not be invalidated by any act or neglect of Borrower, nor by the commencement by or against Borrower of bankruptcy, insolvency, receivership or other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. All such insurance shall be replacement cost coverage rather than actual cash value coverage and shall be in an amount at least equal to the full insurable value of the Personal Property and Improvements unless Lender agrees in writing that such insurance may be in a lesser amount. Borrower agrees that Borrower will not take any action or fail to take any action, which would result in the invalidation of any insurance policy required hereunder. Borrower shall give Lender immediate written notice of any loss or damage to the Property caused by any casualty. Borrower shall cause duplicate originals of any and all such insurance policies and all replacements therefor to be deposited with Lender. At least thirty (30) days prior to the date the premiums on each such policy or policies shall become due and payable, Borrower shall furnish to Lender evidence of the payment of such premiums. The original insurance policy and all replacements therefor must provide that they may not be canceled and shall not lapse without the insurer's giving at least thirty (30) days' prior written notice of such cancellation or lapse, in whole or in part, to Lender. If Borrower fails to keep the Property insured as above specified, Lender may at its option and sole discretion, insure the Property for its insurable value against loss by fire, wind and other hazards as specified above for the sole benefit of Lender and may procure such insurance at Borrower's expense.

8. Assignment of Insurance Policies, etc. Borrower hereby assigns and pledges to Lender, as further security for the payment of the Obligations, each and every policy of hazard insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof), together with all right, title and interest of Borrower in and to each and every such policy, including, but not limited to, all Borrower's right, title and interest in and to any premiums paid on each such policy, including all rights to return premiums. If Borrower fails to keep the Property insured as specified above then, at the election of Lender and without notice to any person, Lender may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as Lender may wish) against such risks of loss and for its own benefit. The proceeds from such insurance (less the costs of collecting the same), if collected, shall be credited against the Obligations, or, at the election of Lender, such proceeds may be used to purchase additional Personal Property to replace Personal Property which has been damaged or destroyed and to repair or reconstruct the Improvements.

All amounts spent by Lender for insurance or for the payment of Liens or for environmental testing or remediation shall become a debt due by Borrower to Lender and at once payable, without demand upon, or notice to, Borrower, and shall be secured by this Mortgage, and shall bear interest at the rate of interest set forth in the Note or such lesser rate of interest as shall then be the maximum amount permitted by law, from the date of payment by Lender until paid by Borrower. Lender is hereby authorized, but not required, on behalf of Borrower, to collect for, adjust or compromise any losses under any insurance policy or policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Obligations, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Obligations or apply such proceeds to the restoration of the Property, or to release the same to Borrower, but no such application, holding in reserve or release shall cure or waive any default by Borrower. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by Lender and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property. If the Property or 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, then Borrower shall obtain such insurance as is required by such governmental authority in amounts required by Lender.

9. Assignment of Condemnation Proceeds, etc. As further security for the Obligations and the full and complete performance of each and every obligation, covenant, agreement and duty of Borrower contained herein, and to the extent of the full amount of the Obligations secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by Lender in the collection of any award or payment, Borrower hereby assigns to Lender any and all awards or payments, including all interest thereon, together with the right

to receive the same, that may be made to Borrower with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property. All such damages, condemnation proceeds and consideration shall be paid directly to Lender, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by Lender in obtaining such sums, Lender may, at its option, apply the balance on the Obligations in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Obligations, or apply such balance to the restoration of the Property, or release the balance to Borrower. No such application, holding in reserve or release shall cure or waive any default of Borrower.

10. Covenant Against Waste. Borrower agrees to take good care of the Property and not to commit or permit any waste thereon, and at all times to maintain and preserve such Property in as good condition as it now is, reasonable wear and tear excepted. Borrower (a) shall not remove, demolish or alter the design or structural character of any buildings now or hereafter erected on the Real Property without the express prior written consent of Lender, (b) shall comply with all laws and regulations of any governmental authority with reference to the Property and the manner and use of the same and (c) shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Borrower agrees not to remove any of the fixtures or personal property included in the Property without the express prior written consent of Lender unless the same is immediately replaced with like property of at least equal value and utility.

Lender and other persons authorized by Lender shall have access to and the right, but not the obligation, to enter and inspect the Property at all reasonable times and upon reasonable notice to Borrower, including monthly inspections if deemed necessary by Lender. In the event Lender finds that Borrower is not maintaining the Property as required herein, Lender (a) may declare the Obligations to be at once due and payable under the terms of this Mortgage or (b) may, but shall not be obligated to, notify Borrower in writing of the needed repairs and Borrower shall have ten (10) business days to make satisfactory arrangements to bring the Property back to good condition. If Borrower notifies Lender in writing of such needed repairs and, after such time, satisfactory arrangements have not been made by Borrower to bring the Property back to good condition as determined in the sole discretion of Lender, Lender shall have the right, but not the obligation, (a) to make the repairs required at the expense of Borrower, or (b) to declare the Obligations to be at once due and payable under the terms of this Mortgage.

11. Hazardous Substances.

(a) No Hazardous Materials (as hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Property except as described in Exhibit D attached hereto and hereby made a part hereof. As used herein, the term "Hazardous Materials" includes without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, pollutants or other contaminants, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Clean Water Act, as amended (33 U.S.C. § 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos and any other toxic or hazardous materials, as amended, or in any other federal, state, or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) Except as described in Exhibit D, no underground storage tanks, whether in use or not in use, are located in, on or under any part of the Property;

(c) All of the Property complies and will comply in all respects with applicable environmental laws, rules, regulations and court or administrative orders;

(d) There are no pending response actions, civil or criminal litigation, claims, or enforcement procedures, or threats of response actions, civil or criminal litigation, claims, or enforcement proceedings by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Property;

(e) Borrower, at Borrower's expense, promptly upon the written request of Lender from time to time, shall provide Lender with an environmental audit report, or an update of such report, all in scope, form, and content satisfactory to Lender;

(f) In the event of any release, spill, or disposal of Hazardous Materials on the Property, whether or not the same originates or emanates from the Property or any such contiguous real estate, and/or if Borrower shall fail to comply with any environmental law ordinance, rule, or regulation, Lender may, at its election, but without the obligation so to do, give such notices as may be required by law and/or cause any remediation or response that may be necessary to be performed at the Property and/or take any and all other actions as Lender shall deem necessary or advisable in order to remedy said spill or disposal of Hazardous Materials and return the Property to a condition free of Hazardous Materials or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the default rate (as specified in the Note) from the date of payment by Lender, shall be immediately due and payable by Borrower to Lender and until paid shall be added to and become a part of the indebtedness secured hereby; and

(g) Borrower hereby agrees to indemnify and hold Lender harmless from all loss, cost, damage, claim, fine, penalty, and expense (including but not limited to, reasonable attorneys' fees and costs of investigation and litigation) incurred by Lender on account of (i) the violation of any representation, warranty or covenant set forth in this paragraph 11, (ii) Borrower's failure to perform any obligations of this paragraph 11, (iii) Borrower's or the Property's failure to comply fully with all environmental laws, ordinances, rules, and regulations, or with all occupational health and safety laws, rules, and regulations, or (iv) any other matter related to environmental conditions on, under, or affecting the Property. This indemnification shall survive payment of the indebtedness secured by this Mortgage, the exercise of any right or remedy hereunder or under any other loan document securing or evidencing said indebtedness, any subsequent sale or transfer of the Property, and all similar or related events or occurrences. Borrower shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, ordinance, rule, or regulation covered by this paragraph 11 or of any notice or other claim relating to the environmental condition of the Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein inaccurate or misleading in any respect.

12. Covenants Related to Rents and Tenant Leases. Borrower covenants and agrees that Borrower shall:

(a) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Tenant Leases to be kept, observed and performed by Borrower, and shall give prompt notice to Lender in the event Borrower fails to observe, perform and discharge the same;

(b) enforce or secure in the name of Lender the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Tenant Leases;

(c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Tenant Leases or the obligations, duties or liabilities of Borrower and any Tenant thereunder, and, upon request by Lender to do so in the name and on behalf of Lender but at the expense of Borrower, and to pay all costs and expenses of Lender, including reasonable attorneys' fees, in any action or proceeding in which Lender may appear;

(d) not receive or collect any Rents from any present or future lessee of the Property, or any part thereof, for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(e) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Tenant of the Property of and from any obligations, covenants, conditions and agreements by said Tenant to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Tenant Lease;

(f) not cancel, terminate or consent to any surrender of any Tenant Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of Lender;

(g) not renew or otherwise extend the term of the Existing Tenant Leases; provided, however, that nothing herein contained shall prevent Borrower, upon expiration of the now-current term (or other expiration or termination) of the Existing Tenant Leases, from leasing the property covered thereby to the Tenant thereunder by a lease or leases expressly subject and fully subordinate to the lien, assignment and security interest of this Mortgage; and

(h) promptly upon the execution by Borrower of any Tenant Lease, (i) furnish Lender with the name and address of the lessee thereunder, the term of such Tenant Lease and a description of the premises covered thereby and, upon request of Lender, a copy of such Tenant Lease, and (ii) execute all such further assignments of such Tenant Lease and the Rents therefrom as Lender may require.

13. Covenant Against Sale, Lease or Transfer, etc. Notwithstanding any other provision to this Mortgage, the Security Agreement or the Note, if the Property, or any part

thereof, or any interest therein, is sold, leased, conveyed or transferred, without Lender's prior written consent, or if the Property, or any part thereof, or any interest therein, becomes subject to any additional lien, mortgage or other encumbrance, either voluntarily or involuntarily, without Lender's prior written consent, Lender may, at its sole option: (a) declare the Obligations immediately due and payable in full, or (b) require the payment, after the date of such sale, lease, conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such option to accelerate the Obligations, whether such rights be exercised by Lender to obtain a higher rate of interest on the Obligations or to protect the security of this Mortgage.

14. Performance of Lease. Borrower shall (i) at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the terms, covenants and conditions contained in the Lease by the lessee therein to be kept and performed and in all respects conform to and comply with the terms and conditions of the Lease; (ii) not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would impair or tend to impair the security of this Mortgage or would be grounds for declaring a forfeiture or termination of the Lease; (iii) at least six (6) months prior to the last day upon which Borrower, as lessee, may validly exercise any option to renew or extend the term of the Lease, (A) exercise such option in such manner as will cause the term of said Lease to be effectively renewed or extended for the period provided by such option, and (B) give immediate written notice thereof to Lender; it being expressly agreed that, in the event of the failure of Borrower so to do, Lender shall have, and is hereby granted, the irrevocable right to exercise any such option either in its own name and behalf or in the name and behalf of a designee or nominee of Lender or in the name and behalf of Borrower, as Lender shall in its sole discretion determine; provided, however, that if Borrower shall prepay in full the Obligations in accordance with the provisions of the Note at least six (6) months prior to the last day on which Borrower, as such lessee, may validly exercise any option to renew or extend the term of the Lease, Borrower will not be obliged to exercise any such option of renewal or extension, nor will Lender have any right to exercise any such option.

15. No Modification, etc. of Lease. Borrower shall not modify, extend or in any way alter the terms of the Lease or cancel or surrender the Lease, or waive, excuse, condone or in any way release or discharge the lessor(s) thereunder of or from the obligations, covenants, conditions and agreements to be done and performed by said lessor(s); and Borrower does hereby expressly release, relinquish and surrender unto Lender all its right, power and authority to cancel, surrender, terminate, release, amend, modify or alter in any way the terms and provisions of the Lease, and any attempt on the part of Borrower to exercise any such right without the express prior written consent of Lender shall constitute a default under the terms hereof.

16. Notice of Default in Lease, etc. Borrower shall (a) give immediate notice to Lender of any default under the Lease; (b) furnish to Lender immediately any and all information which it may request concerning the performance by Borrower of the covenants of the Lease; (c) permit Lender or its representatives at all reasonable times to make investigation or examination concerning the performance by Borrower of the covenants of the Lease or of this Mortgage; and (d) promptly deposit with Lender an original executed copy of the Lease and each amendment thereto and any and all documentary evidence requested by Lender showing compliance by Borrower with the provisions of the Lease and an exact copy of any notice, communication, plan, specification or other instrument or document received or given by it in any way relating to or affecting the Lease that may concern or affect the estate of the lessor(s) or lessee in or under the Lease or in the Leasehold Property.

17. Defeasance. This Mortgage is made upon the condition that if Borrower pays the Obligations, as defined in this Mortgage, and reimburses Lender for any amounts Lender has paid in respect of Liens, insurance premiums, Hazardous Substances, or otherwise under this Mortgage, and interest thereon, and fulfills all of its other obligations under this Mortgage, this conveyance shall be null and void.

18. Events of Default. Borrower shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) Borrower shall fail to pay to Lender when due the principal or interest on the Note or any other Obligations secured hereby; or (b) if Borrower fails to comply with any of the provisions of this Mortgage, the Security Agreement or the Note; or (c) if any statement, representation or warranty contained in this Mortgage, the Note or the Security Agreement, or any report, certificate or other instrument delivered to Lender shall be untrue or misleading in any material respect; or (d) if Borrower sells, conveys, transfers, mortgages or further encumbers all or part of the Property; or (e) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and Borrower fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to Lender within ten (10) days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the County in which the Real Property is located or such suit is filed in court; or (f) if any other event of default occurs under the Note or the Security Agreement; (g) if Borrower or any co-maker, endorser, surety, or guarantor of the Note or any of the other Obligations (hereinafter collectively called the "Obligors" and singularly an "Obligor") fails to pay such Obligor's debts generally as they become due, admits in writing any such Obligor's inability to pay such Obligor's debts as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or otherwise) is filed by or against any Obligor and such petition is not dismissed within 90 days of its filing, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition

with, or makes an assignment for the benefit of, creditors; or (h) the interest of Lender in any of the Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon; or (i) any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Obligations or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Obligations, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this Mortgage, and Borrower does not pay or is prohibited from paying such tax; or (j) any stipulation contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction; or (k) a final judgment for the payment of money in excess of an aggregate of \$50,000 shall be rendered against any Obligor, and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed by appeal or otherwise; or (l) a default or event of default, or an event which upon notice or lapse of time or both would constitute an event of default under any prior mortgage, lien or encumbrance on the Property or any part thereof, shall occur and be continuing; or (m) Borrower shall fail to pay or perform any of Borrower's obligations under the Lease, or any default or event of default (or any event, which upon the giving of notice or the lapse of time or both, would become a default or event of default under the Lease) shall occur under the Lease.

19. Rights and Remedies of Lender Upon Default.

(a) Acceleration of Obligations. Upon the occurrence of an Event of Default or at any time thereafter, Lender may at its option and without further demand or notice to Borrower, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower, and Lender may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Security Agreement, the Note, and applicable law. Borrower also waives any and all rights Borrower may have to a hearing before any judicial authority prior to the exercise by Lender of any of its rights under this Mortgage, the Security Agreement, the Note, and applicable law.

(b) Operation of Property by Lender. Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on Lender, Lender (or any person, firm or corporation designated by Lender) may, but will not be obligated to, enter upon and take possession of any or all of the Property, exclude Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that Borrower could do so, without any liability to Borrower resulting therefrom; and Lender may collect, receive and retain all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Borrower with respect to the Property.

(c) Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default or at any time thereafter, Lender, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue Borrower for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Lender shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Borrower or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) Foreclosure Sale. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one (21) days' notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county where the Property or any part thereof is located, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations secured hereby shall have been paid in full.

(e) Personal Property and Fixtures. Upon the occurrence of an Event of Default or at any time thereafter, Lender shall have and may exercise with respect to the Personal Property and fixtures included in the Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral 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 Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. Lender shall have, among other rights, the right to take possession of the Collateral 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 to take any action deemed appropriate or desirable by Lender; at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At Lender's request, Borrower shall assemble the Collateral and make the Collateral available to Lender at any place designated by Lender. To the extent permitted by law, Borrower expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Lender with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of Lender existing after default. To the extent that such notice is required and cannot be waived, Borrower agrees that if such notice is given to Borrower in accordance with the provisions of paragraph 33 below, 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 giving said notice.

Borrower agrees that Lender may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. Borrower hereby grants Lender the right, at its option after the occurrence of an Event of Default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Obligations in such order and amounts and manner as Lender may elect. Borrower covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Lender and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) Rents and Tenant Leases. Upon the occurrence of an Event of Default or at any time thereafter:

(i) Lender, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Tenant Leases:

a) to terminate the license granted to Borrower in granting clause E(3) hereof to collect the Rents, and, without taking possession, in Lender's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorneys' fees, to apply the net proceeds thereof to the Obligations in such order and amounts as Lender may choose (or hold the same in a reserve as security for the Obligations);

b) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of Borrower, make, modify, enforce, cancel or accept surrender of any Tenant Lease, remove and evict any Tenant, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses Lender shall deem proper to protect the security hereof, as fully and to the same extent as Borrower could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorneys' fees) and payment of the Obligations in such order and amounts as Lender may choose (or hold the same in reserve as security for the Obligations);

c) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of Borrower under this Mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) Application of Proceeds. All payments received by Lender as proceeds of the Property, or any part thereof, as well as any and all amounts realized by Lender in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by Lender as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Obligations that are then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) to a cash collateral reserve fund to be held by Lender in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (iv) the remainder, if any, shall be paid to Borrower or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(h) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, Lender shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(i) Waiver of Appraisal Laws. Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

(j) Prerequisites of Sales. In case of any sale of the Property as authorized by this paragraph 19, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the 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 facts so stated or recited are true.

(k) Foreclosure Deeds. Borrower hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

20. Collection Costs. Borrower agrees to pay all costs, including reasonable attorneys' fees, incurred by Lender in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Property unless this Mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by Lender shall be a part of the Obligations and shall be secured by this Mortgage.

21. No Obligations with Respect to Tenant Leases. Lender shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Tenant Leases, the Improvements, the Personal Property, the Real Property or any of the other Property (unless expressly assumed by Lender under a separate agreement in writing), and this Mortgage shall not be deemed to confer on Lender any duties or obligations that would make Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct. Borrower agrees to defend, indemnify and save harmless Lender from and against any and all claims, causes of action and judgments relating to Borrower's performance of its duties, responsibilities and obligations under any Tenant Leases and with respect to the Property.

22. Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

23. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to Lender shall inure to the benefit of Lender's successors and assigns.

24. Waiver and Election. The exercise by Lender 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, security interest and assignment granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the 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 Lender 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 are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage, nor consent to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of Lender, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to, or demand on, Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

25. Landlord-Tenant Relationship. Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Borrower.

26. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of Lender to effectuate the provisions hereof.

27. Application of Payments. If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on, and applied to, the full payment of that portion of the Obligations which are not secured or not fully secured by said lien, assignment or security interest created hereby.

28. Not Homestead. Borrower hereby certifies that the Property does not constitute a homestead (as defined by ALA. CODE § 6-10-2 (1993 Repl.)).

29. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Borrower" and "Lender" shall include their respective successors and assigns. Plural

or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

30. Advances by Lender. If Borrower shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the Property in repair and free of Hazardous Substances, the performance of Borrower's obligations under any Tenant Lease, the Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Obligations and shall be secured hereby. The making of any such advances shall not be construed as a waiver by Lender of any Event of Default resulting from Borrower's failure to pay the amounts paid.

31. Release or Extension by Lender. Lender, without notice to Borrower and without in any way affecting the rights of Lender hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the Note, the Security Agreement, this Mortgage or any other instrument evidencing or securing the Obligations.

32. Partial Payments. Acceptance by Lender of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of Borrower 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 Obligations have been paid, Lender 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.

33. Addresses for Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing or by telex, telegram or cable and mailed or sent or delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other parties hereto.

34. Right of Lender to Cure Lease, etc. Upon the occurrence of any default or event of default under the Lease (or any event which, upon the giving of notice or the lapse of time, or both, would constitute such a default or event of default), Lender shall have the right, but

shall be under no obligation, to pay any amount, to perform any other act or to take such actions as may be appropriate to cure or prevent such default or event of default under the Lease, to the end that Borrower's rights in, to and under the Lease shall be kept unimpaired and free from default. Subject to the rights of tenants, in any such event, Lender and any person designated by Lender shall have, and is hereby granted, the right to enter upon the Leasehold Property at any time and from time to time for the purpose of paying any such amount, performing any such act or taking any such action, and all moneys expended by Lender in connection therewith (including reasonable attorneys' fees and disbursements), together with interest thereon at the rate of interest set forth in the Note, or such lesser rate as shall be the maximum amount permitted by law, shall be payable by Borrower to Lender forthwith upon demand by Lender, and shall constitute part of the Obligations; and Lender shall have, in addition to any other right or remedy of Lender, the same rights and remedies in the event of non-payment of any such sums by Borrower as in the case of a default by Borrower in the payment of any installment of principal or interest due and payable under the Note. In the event of any failure by Borrower to pay, observe or perform any covenant on the part of Borrower to be paid, observed and performed under the Lease, the payment or performance by Lender on behalf of Borrower of said Lease covenant shall not remove or waive, as between Borrower and Lender, the corresponding default under the terms hereof, and any such failure aforesaid shall be subject to all of the rights and remedies of Lender hereunder available on account of any Event of Default.

35. No Merger. Unless Lender shall otherwise expressly consent in writing, fee title to the Leasehold Property and Borrower's leasehold estate under the Lease shall not merge but shall always remain separate and distinct, notwithstanding that both of said estates may at any time be held by Borrower or by any third party by purchase or otherwise.

36. Titles. All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

37. Expenses. Borrower shall pay all costs and expenses incurred by Lender in connection with preparing and recording this Mortgage and enforcing Lender's rights hereunder, including reasonable attorneys' fees.

38. Amendments. No amendment, modification or cancellation of this Mortgage shall be valid unless in writing and signed by the party against whom enforcement is sought.

39. Governing Law. This Mortgage shall be governed and construed under the laws of the state of Alabama.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed in its name and on its behalf and its corporate seal to be affixed, all by its duly authorized officers, on the day and year first above written.

ALABASTER INDUSTRIES, INC.

By: *Daniel A. Norris*
Its President

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Daniel A. Norris, whose name as President of Alabaster Industries, Inc., a Delaware 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 mortgage, 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 the 8TH day of August, 1995.

Debra L. Zayler
Notary Public

My Commission Expires:
NOTARY PUBLIC STATE OF ALABAMA AT LARGE,
MY COMMISSION EXPIRES: Feb. 2, 1999.
BONDED THRU NOTARY PUBLIC UNDERWRITERS,

This instrument prepared by:
Herbert Harold West, Jr.
CABANISS, JOHNSTON, GARDNER,
DUMAS & O'NEAL
2001 Park Place North, Suite 700
P. O. Box 830612
Birmingham, Alabama 35283-0612
(205) 252-8800

**EXHIBIT A
TO
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES**

Part of the NE 1/4 of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

From the Southwest corner of the NE 1/4 of the NE 1/4, run North 90 degrees 00 minutes East along the South line of said 1/4-1/4 Section for a distance of 29.39 feet to a Point "A"; thence turn an angle to the right of 65 degrees 04 minutes 35 seconds and run in a Southeasterly direction for a distance of 821.06 feet, more or less, to the centerline of an existing Buck Creek being the point of beginning; thence turn an angle to the right of 180 degrees 00 minutes and run in a Northwesterly direction for a distance of 821.06 feet, more or less, to the aforementioned Point "A"; thence continue in a Northwesterly direction along last described course for a distance of 658.59 feet to an existing iron pin being on the South right-of-way line of Industrial Road; thence turn an angle to the left (62 degrees 01 minutes to tangent) and run in a Northwesterly direction along the South line of said Industrial Road right-of-way line and along the arc of a curve (having a central angle of 3 degrees 20 minutes 35 seconds and a radius of 2,824.98 feet) for a distance of 164.83 feet to the end of said curve; thence continue in a Westerly direction along the South line of said Industrial Road right-of-way for a distance of 277.53 feet to an existing iron pin being on the Northeast line of an existing Alabama Power Company right-of-way; thence turn an angle to the left of 114 degrees 38 minutes 25 seconds and run in a Southeasterly direction along said Northeast line of said Alabama Power Company right-of-way for a measured distance of 1848.81 feet, more or less, to the center line of the meanderings of Buck Creek; thence turn an angle to the left and run in a generally Northeasterly direction along the centerline of the meanderings of Buck Creek for a distance of 480 feet, more or less, to the point of beginning. According to survey of Laurence D. Weygand, RLS#10373, dated February 6, 1992.

Situated in Shelby County, Alabama.

EXHIBIT B
TO
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES

That certain parcel of land lying adjacent and west of the Alabaster Industries, Inc. building, the same being a parcel of land 100 feet in width extending in a westerly direction from said building's south line if extended westerly and being 500 feet running in a northerly direction, together with a 30 feet entrance, the east line of which extends northerly from the northeast corner of the lot being leased to Industrial Road; subject to Alabama Power Company transmission line permit; situated in Shelby County, Alabama.

EXHIBIT C
TO
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES

1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.

2. The exceptions set forth in Schedule B-2 of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Commitment to Issue Title Insurance No. V-6034 prepared by Lawyers Title Insurance Corporation, having an effective date of January 24, 1992, at 8:00 a.m., to the extent only that such exceptions refer expressly to instruments recorded against, or otherwise specifically affect, the Property and not to any general, standard or similar exceptions that may appear in said policy.

**EXHIBIT D
TO
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES**

The Borrower underwent a Phase I Environment Site Assessment (the "Assessment") performed by ATEC Associates, Inc. on February 6, 1992, with respect to its operating facilities located in Alabaster, Alabama. The results of such audit, and the Borrower's comments in response to it, have been furnished to the Lender and are incorporated by reference herein, including without limitation the following:

1. As set forth in the Assessment, the Borrower maintains an inventory of Hazardous Materials, including without limitation paint cans and miscellaneous chemicals used in its manufacturing process, located at the Borrower's manufacturing facility, which Hazardous Materials the Borrower agrees to store and use in accordance with applicable Environmental Laws.
2. Certain floor tiles located in the Borrower's manufacturing plant contain asbestos which floor tiles the Borrower agrees to remove in accordance with applicable Environmental Laws if requested to do so by the Lender.
3. The Borrower maintains a hydraulic oil recycling system with has overflowed and the Borrower agrees to clean up or remediate this site if requested to do so by the Lender; provided, however, in any event the Borrower agrees to store each aboveground storage tank ("AST") on an impermeable pad and to have each AST properly bermed to prevent the migration of spills or leaks from each respective AST and permitted by ADEM.

Inst # 1995-21645

**08/09/1995-21645
11:31 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
028 NCD 3376.00**