

STATE OF ALABAMA
COUNTY OF SHELBY

MORTGAGE AND SECURITY AGREEMENT

Dated as of: September 29 1996

in the amount of

\$600,000

ALABASTER INDUSTRIES, INC.

having an office at:

501 Industrial Road
Alabaster, Alabama 35007

the Mortgagor,

TO

CENTURY BUSINESS CREDIT CORPORATION

having an office at:

119 West 40th Street
New York, New York 10018

the Mortgagee

After recording, please return by mail to:

HAHN & HESSEN LLP
350 Fifth Avenue
New York, New York 10118-0075

Attention: Miriam L. Cohen, Esq.

This instrument was prepared by:

Miriam L. Cohen, Esq.
Hahn & Hessen LLP
350 Fifth Avenue
New York, New York 10118-0075

Inst # 1996-31583

Inst # 1996-31583

MTA

09/24/1996-31583
03:31 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
971.00

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 20th day of September, 1996 by ALABASTER INDUSTRIES, INC., a Delaware corporation having an office at 501 Industrial Road, Alabaster, Alabama 35007 (the "Mortgagor"), in favor of CENTURY BUSINESS CREDIT CORPORATION, a New York corporation, having an office at 119 West 40th Street, New York, New York 10018 (the "Mortgagee").

B A C K G R O U N D

Mortgagor and Mortgagee are parties to a Loan and Security Agreement dated as of even date herewith ("Loan Agreement") pursuant to which the Mortgagee has agreed, subject to the terms and conditions set forth therein, to make, and the Mortgagor has agreed to accept, certain financial accommodations, including a demand loan in the amount of \$600,000 (the "Demand Loan") to be advanced pursuant to the terms of Loan Agreement and evidenced by a certain Demand Promissory Note dated of even date herewith (the "Demand Promissory Note"). The Demand Promissory Note is sometimes referred to herein as the "Note". The Demand Promissory Note shall mature on the maturity date set forth in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises and to secure the payment of not more than the maximum principal sum of SIX HUNDRED THOUSAND AND NO/100 (\$600,000) DOLLARS lawful money of the United States, or any portion of the Demand Loan outstanding from time to time, and any and all sums, amounts and expenses paid by the Mortgagee according to the terms hereof, the Loan Agreement and the Note, as the Loan Agreement and the Note may be hereunder modified, amended, extended, renewed or substituted for, together with all interest on the said indebtedness, obligations, liabilities, sums, amounts and expenses and any and all other obligations and liabilities now due and owing or which may hereafter be or become due and owing by the Mortgagor to the Mortgagee, provided, however, that the maximum aggregate principal sum secured by this Mortgage at execution or which under any contingency may be secured hereby at any time in the future shall not exceed the principal sum stated above (all of the aforesaid are hereinafter collectively, the "Indebtedness"), the Mortgagor, hereby mortgages, grants, bargains, sells, warrants, conveys, alienates, remises, releases, assigns, sets over and confirms to the Mortgagee, its successors and assigns, and grants to the Mortgagee, its successors and assigns, a security interest in:

I. All of the right, title and interest of the Mortgagor in and to that certain lot, piece or parcel of land (the "Real Property") more particularly described as on Schedule A annexed hereto and made a part hereof; and

II. All of the right, title and interest of the Mortgagor in and to the buildings and improvements (hereinafter, collectively, together with all building

equipment, the "Improvements") now or hereafter located on the Real Property and all of its right, title and interest, if any, in and to the streets and roads abutting the Real Property to the center lines thereof, and strips and gores within or adjoining the Real Property, the air space and right to use said air space above the Real Property, all rights of ingress and egress by motor vehicles to parking facilities on or within the Real Property, all easements now or hereafter affecting the Real Property or the Improvements, all royalties and all rights appertaining to the use and enjoyment of the Real Property or the Improvements, including, without limitation, alley, drainage, crop, timber, agricultural, horticultural, mineral, water, oil and gas rights; and

III. All of the right, title and interest of the Mortgagor in and to all fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, now or hereafter attached to, or contained in, the Real Property and/or the Improvements or placed on any part thereof, though not attached thereto, constituting a part of or used in any way in connection with the use, enjoyment, renting, occupancy or operation of the Real Property and/or the Improvements, except those owned by lessees other than a lessee of all or substantially all of the Real Property and/or the Improvements, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerator and/or compacting and elevator plants, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures, and the trade name, good will and books and records relating to the business operated on the Real Property and/or the Improvements. Without limiting the foregoing, the Mortgagor hereby grants to the Mortgagee a security interest in all of its present and future "equipment" and "general intangibles" (as said quoted terms are defined in the Uniform Commercial Code of the State wherein the Real Property and/or the Improvements are located) and the Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by the Mortgagor to the Mortgagee, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code. To the extent permitted under applicable law, this Mortgage shall also be deemed to be a "security agreement" (as defined in the aforesaid Uniform Commercial Code). If the lien of this Mortgage is subject to a security interest covering any such personal property, then all of the right, title and interest of the Mortgagor in and to any and all such property is hereby assigned to the Mortgagee, together with the benefits of all deposits and payments now or hereafter made thereon by the Mortgagor; and

IV. All of the right, title and interest of the Mortgagor in and to all leases, lettings and licenses of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby, or any part thereof, now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash and securities deposited thereunder, the right to receive and collect the rents, issues and profits payable thereunder and the right to

enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements thereof; and

V. All right, title and interest of the Mortgagor in and to all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by the Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby, or any part thereof, into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby by any governmental or other lawful authority for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby or any easement therein, including, but not limited to, awards for any change of grade of streets; and

VI. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of and all additions and appurtenances to the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby, hereafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor on the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby, and all conversions of the security constituted thereby which, immediately upon such acquisition, release, construction, assembling, placement or conversion as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein (the Real Property and the Improvements, together with the fixtures and other property, rights, privileges and interests encumbered or conveyed hereby hereinafter, collectively, the "Premises").

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns until the Indebtedness is paid in full.

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

ARTICLE I

Representations and Warranties of the Mortgagor

The Mortgagor represents and warrants to the Mortgagee as follows:

Section 1.1. Title to the Premises. (i) The right, title and interest of the Mortgagor constitutes good, marketable and insurable title to the Premises, subject only to those exceptions to title in respect of the Real Property and the Improvements set forth in the marked title insurance binder redated as of the date hereof and insuring the interest of the Mortgagee in, to and under this Mortgage; (ii) the Mortgagor has full power and lawful authority to encumber the Premises in the manner and form set forth hereunder; (iii) the Mortgagor owns all fixtures and articles of personal property now or hereafter comprising part of the Premises, subject to the rights of space tenants in and to any such fixtures, personal property or installations, including any substitutions or replacements thereof free and clear of all liens and claims other than the matters set forth in this Section; (iv) this Mortgage is and will remain a valid and enforceable first lien on the Premises; and (v) the Mortgagor will preserve such title, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whatsoever.

Section 1.2. Mortgage Authorized. The execution and delivery of this Mortgage and the Note have been duly authorized by the directors of the Mortgagor and there is no provision in the certificate of incorporation or by-laws of the Mortgagor, requiring further consent for such action by any other entity or person. The Mortgagor is duly organized, validly existing and is in good standing under the laws of the state of its formation, and has (i) all necessary licenses, authorizations, registrations, permits and/or approvals (the absence of which will not have a material effect on the conduct of the Mortgagor's business at the Premises taken as a whole) and (ii) full power and authority to own its properties and carry on its business as presently conducted and the execution and delivery by it of, and performance of its obligations under this Mortgage and the Note will not result in the Mortgagor being in default under any provision of its certificate of incorporation or by-laws or of any mortgage, lease, credit or other agreement to which it is a party or which affects it or the Premises, or any part thereof.

Section 1.3. Flood Insurance Status. The Premises are not located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as same may have been amended to date.

Section 1.4. Operation of the Premises. Except for those items the absence of which shall not have a material effect upon the conduct of the Mortgagor's business at the Premises taken as a whole, (i) the Mortgagor has all necessary certificates, licenses, authorizations, registrations, permits and/or approvals necessary for the operation of the Premises or any part thereof, and all required environmental permits, all of which as of the date of the signing hereof are in full force and effect and not, to the knowledge of the Mortgagor, subject to any revocation, amendment, release, suspension, forfeiture or the like, (ii) the present use and/or occupancy of the Premises and/or Improvements does not conflict with or violate any such certificate, license, authorization, registration, permit and/or

approval, or any applicable law, ordinance, statute, rule, order, requirement or regulation and (iii) the Mortgagor has delivered to the Mortgagee, prior to the signing hereof, duplicate originals or appropriately certified copies of all such certificates, licenses, authorizations, registrations, permits and/or approvals.

ARTICLE II

Covenants of the Mortgagor

Section 2.1. Payment of the Indebtedness. The Mortgagor will punctually pay the Indebtedness in same day funds as provided herein and in the Note, all in the coin and currency of the United States of America which is legal tender for the payment of public and private debts.

Section 2.2. Maintenance of the Improvements.

(i) The Mortgagor shall maintain the Improvements in good repair, shall comply with the requirements of any governmental authority claiming jurisdiction over the Premises within the lesser of thirty (30) days after an order (an "Order") containing such requirement has been issued by any such authority (unless such requirement cannot be complied with within such thirty (30) day period, in which event Mortgagor shall have such longer period as necessary to cause compliance provided, however, that Mortgagor shall promptly commence and diligently prosecute to completion such compliance and provided, further, that such period shall not exceed the time required pursuant to the terms of such Order) or the time required pursuant to the terms of such Order and shall permit the Mortgagee to enter upon the Improvements and inspect the Improvements at all reasonable hours and without prior notice. The Mortgagor shall not, without the prior written consent of the Mortgagee, threaten, commit, permit or suffer to occur any waste or except as may be expressly permitted under the terms of the Loan Agreement, the material alteration, demolition or removal of the Improvements or any part thereof; provided, however, that fixtures and articles of personal property owned by Mortgagor and used in the operation or maintenance of the Premises may be removed from the Improvements if the Mortgagor concurrently therewith replaces same with equivalent items which do not reduce the value of the Premises or the Improvements, free of any lien, charge or claim superior to the lien and/or security interest created hereby.

(ii) Nothing in this Section 2.2 shall require the compliance by the Mortgagor with any Order so long as (a) the failure so to do shall not be a default or event of default under any other mortgage or security agreement affecting the Premises, any part thereof or interest therein, (b) the failure so to do shall not result in the voiding, rescission or invalidation of the certificate of occupancy or any other license, certificate, permit or registration in respect of the Premises, (c) the failure so to do shall not prevent, hinder or interfere with the lawful use and occupancy of the entirety of the Improvements for their present use and occupancy, (d) the failure so

to do shall not void or invalidate any insurance maintained by the Mortgagor in respect of the Premises, or result in an increase of any premium therefor or a decrease in any coverage provided thereby, and (e) the Mortgagor in good faith and at its own expense shall contest the Order or the validity thereof by appropriate legal proceedings, which proceedings must operate to prevent (1) the occurrence of any of the events described in the preceding clauses (a) through (d) of this paragraph (ii) and (2) the collection or other realization on any sums due or payable as a consequence of the Order, the sale of any lien arising in respect of the Order, and/or the sale or forfeiture of the Premises, any part thereof or interest therein, or the sale of any lien connected therewith; provided that during such contest the Mortgagor shall, at the option of the Mortgagee and only to the extent required under the Loan Agreement, provide security satisfactory to the Mortgagee assuring the discharge of the Mortgagor's obligations hereunder and of any interest, charge, fine, penalty, fee or expense arising from or incurred as a result of such contest; and provided further if at any time compliance with any obligation imposed upon the Mortgagor by the Order shall become necessary to prevent (1) the occurrence of any of the events described in clauses (a) through (d) of this paragraph (ii) or (2) the delivery of a deed conveying the Premises or any portion thereof or interest therein because of noncompliance, or the sale of a lien in connection therewith, or (3) the imposition of any penalty, fine, charge, fee, cost or expense on the Mortgagee, then the Mortgagor shall comply with the Order in sufficient time to prevent the occurrence of any such events, the delivery of such deed or the sale of such lien, or the imposition of such penalty, fine, charge, fee, cost or expense on the Mortgagee.

Section 2.3. Maintenance of Existence. The Mortgagor will, so long as it is owner of the Premises (or any part thereof or interest therein), do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and, subject to the provisions of paragraph (ii) of Section 2.2, will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor, or to the Premises or any part thereof.

Section 2.4. Taxes and Other Charges.

(i) The Mortgagor shall pay and discharge by the last day payable without penalty or premium all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Premises or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, use or possession thereof. The Mortgagor shall exhibit to the Mortgagee within ten (10) days after request and after the same are required to be paid pursuant to the foregoing sentence, validated receipts or other evidence satisfactory to the Mortgagee showing the payment of such taxes, assessments, water rates, sewer rents, levies, fees and other charges which may be or become a lien on the Premises. Should the Mortgagor default in the payment of any of the foregoing taxes, assessments, water rates, sewer rents, levies, fees

or other charges, the Mortgagee may, but shall not be obligated to, pay the same or any part thereof and the Mortgagor shall, on demand, reimburse the Mortgagee for all amounts so paid and such amounts shall bear interest at the Default Rate (as defined in Section 2.8 of this Mortgage) until reimbursed.

(ii) Nothing in this Section 2.4 shall require the payment or discharge of any obligation imposed upon the Mortgagor by subsection (i) of this Section 2.4 so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon, the sale of the lien thereof and the sale or forfeiture of the Premises or any part thereof, to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, establish reserves reasonably satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (i) of this Section 2.4 shall become necessary to prevent the delivery of a tax deed conveying the Premises or any portion thereof or the sale of the tax lien therefor because of non-payment, or the imposition of any penalty or cost on the Mortgagee, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or the sale of such lien, or the imposition of such penalty or cost on the Mortgagee.

(iii) The Mortgagor shall pay when due all (a) premiums for fire, hazard and other insurance required to be maintained by the Mortgagor on the Premises pursuant to the terms of the Loan Agreement, (b) title insurance premiums relating to the insurance to be maintained on the Premises in connection with the Mortgage, and (c) any and all other costs, expenses and charges expressly required to be paid hereunder, and subject to the provisions hereof, to be paid for the maintenance and/or protection of, or on account of, any other collateral delivered, assigned, pledged, mortgaged, transferred or hypothecated to the Mortgagee as security for the Indebtedness or in connection with the execution and delivery of this Mortgage.

Section 2.5. Mechanics' and Other Liens.

(i) The Mortgagor shall pay, bond or discharge of record, from time to time, forthwith, all liens (and all claims and demands of mechanics, materialmen, laborers or others, which, if unpaid, might result in or permit the creation of a lien) on or affecting the Premises or any part thereof, or on or affecting the revenues, rents, issues, income or profits arising therefrom and, in general, the Mortgagor forthwith shall do, at the cost of the Mortgagor and without expense to the Mortgagee, everything necessary to fully preserve the lien of this Mortgage. In the event that the Mortgagor fails in a timely manner to make payment in full of, bond or discharge, such liens the Mortgagee may, but shall not

be obligated to, make payment, bond or discharge such liens, upon notice to the Mortgagor if practicable in order fully to preserve the lien of this Mortgage and the collateral value of the Premises, and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums so expended and such sums shall bear interest at the Default Rate (as defined in Section 2.8 of this Mortgage) until reimbursed.

(ii) Nothing in this Section 2.5 shall require the payment or discharge of any obligation imposed upon the Mortgagor by subsection (i) of this Section 2.5 so long as the Mortgagor shall bond or discharge any lien on the Premises arising from such obligation or in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon, the sale of the lien thereof and the sale or forfeiture of the Premises or any part thereof, to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (i) of this Section 2.5 shall become necessary (a) to prevent the sale or forfeiture of the Premises or any portion thereof because of non-payment, or (b) to protect the lien of this Mortgage, then the Mortgagor shall pay the same in sufficient time to prevent the sale or forfeiture of the Premises or to protect the lien of this Mortgage, as the case may be.

Section 2.6. Condemnation Awards. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit such participation. All awards and compensation payable to the Mortgagor as a result of any condemnation or other taking or purchase in lieu thereof, of the Premises or any part thereof, are hereby assigned to and shall be paid to the Mortgagee. The Mortgagor hereby authorizes the Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor and, in the Mortgagee's sole discretion, to apply the same toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Improvements, provided, however, unless an Event of Default under the Loan Agreement or this Mortgage shall have occurred and be continuing, the Mortgagor shall be allowed to use such awards and compensation to restore the Improvements so long as the aggregate amount of such awards and compensation does not exceed \$250,000 in any Fiscal Year (as defined in the Loan Agreement). In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, same shall be applied by the Mortgagee in any manner it shall designate, including, but not limited to, the application of such

award or compensation to the then unpaid installments of the principal balance of the Indebtedness in the inverse order of their maturity so that the regular payments under the Note shall not be reduced or altered in any manner. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for herein or in the Note.

Notwithstanding the voiding of the original sale(s) or leasing(s) of all or any portion of the Premises, the Mortgagor shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Note and in this Mortgage and the Indebtedness shall not be reduced until any payment therefor shall have been actually received and applied by the Mortgagee to the discharge of the Indebtedness. The Mortgagee may apply any such payment to the discharge of the Indebtedness whether or not then due and payable in such priority and proportions as the Mortgagee in its discretion shall deem to be proper. If the Premises are sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said payment, or a portion thereof sufficient to pay the Indebtedness, whichever is less. The Mortgagor, after obtaining the prior written consent of the Mortgagee, shall file and prosecute its claim or claims for any such payment in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee, and hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receipt for any such payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such payment to the Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever,

Section 2.7. Costs of Defending and Upholding the Lien. If any action or proceeding is commenced to which action or proceeding the Mortgagee is made a party or in which it becomes necessary to defend or uphold the lien of this Mortgage, the Mortgagor shall, on demand, reimburse the Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and disbursements and reasonable appellate attorneys' fees and disbursements) incurred by the Mortgagee in any such action or proceeding and such expenses shall bear interest at the Default Rate (as defined in Section 2.8 of this Mortgage) until reimbursed. In any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 2.8. Additional Advances and Disbursements. The Mortgagor shall pay by the last day payable without premium or penalty all payments and charges on all liens, encumbrances, ground and other leases and security interests which affect or may affect or attach or may attach to the Premises, or any part thereof, and in default thereof, the Mortgagee shall have the right, but shall not be obligated, to pay, without notice to the Mortgagor, such payments and charges and the Mortgagor shall, on demand, reimburse the Mortgagee for amounts so paid. In addition, upon default of the Mortgagor in the performance of any other terms, covenants, conditions or obligations by it to be performed hereunder or under any such lien, encumbrance, lease or security interest, the Mortgagee shall have the right, but shall not be obligated, to cure such default in the name and on behalf of the Mortgagor. All sums advanced and reasonable expenses incurred at any time by the Mortgagee pursuant to this Section 2.8 or as otherwise provided under the terms and provisions of this Mortgage or under applicable law shall bear interest from the date that such sum is advanced or expenses incurred, to and including the date of reimbursement, computed at a fluctuating interest rate per annum at all times equal to the Default Rate as such term is defined in the Loan Agreement (the "Default Rate"). All interest payable hereunder shall be computed on the basis of a 360-day year over the actual number of days elapsed. Any such amounts advanced or incurred by the Mortgagee, together with the interest thereon, shall be payable on demand, shall, until paid, be secured by this Mortgage as a lien on the Premises and shall be part of the Indebtedness.

Section 2.9. Costs of Enforcement. The Mortgagor agrees to bear and pay all expenses (including, without limitation, reasonable attorneys' fees and disbursements and reasonable appellate attorneys' fees and disbursements for legal services of every kind) of or incidental to the enforcement of any provision hereof, or the enforcement, compromise or settlement of this Mortgage, the Note or the Indebtedness, and for the curing thereof, or for defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, the Mortgagor, to the full extent that it lawfully may: (i) hereby waives trial by jury; and (ii) will not (a) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Premises or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor (b) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (c) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and expressly waives all benefit or advantage of any such law or laws; (iii) hereby

expressly waives all benefit or advantage of any such law or laws; and (iv) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Premises (or any part thereof) marshalled upon any foreclosure hereof.

Section 2.10. Filing Charges, Recording Fees, Taxes, etc. The Mortgagor shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon the Mortgagee by reason of its ownership of the Note or this Mortgage or any mortgage supplemental hereto, any security instrument with respect to any interest of the Mortgagor in and to any fixture or personal property at the Premises or any instrument of further assurance, other than income, franchise, succession, inheritance, business and similar taxes, and shall pay all other taxes, if any, required to be paid on the debt evidenced by the Note. In the event the Mortgagor fails to make such payment within ten (10) days after written notice thereof to the Mortgagor, then the Mortgagee shall have the right, but shall not be obligated, to pay the amount due, and the Mortgagor shall, on demand, reimburse the Mortgagee for said amount, together with interest thereon computed at the Default Rate.

Section 2.11. Restrictive Covenants and Leasing Requirements. Except as may be expressly permitted under the terms of the Loan Agreement, without the prior written consent of the Mortgagee, the Mortgagor shall not: (i) execute or permit to exist any lease or occupancy of all or substantially all of the Premises except for the actual use and occupancy of the tenant thereof; (ii) modify, renew or amend any lease or occupancy agreement affecting the Premises; (iii) grant rent concessions, or discount any rents, or collect any rents for a period of more than one month in advance; (iv) execute any conditional bill of sale, chattel mortgage or other security instruments covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Premises or the appurtenances thereto, or covering articles of personal property placed in the Premises to be used in the operation or maintenance of the Premises or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Mortgagor, free from encumbrances on delivery to the Premises; (v) further assign the leases and rents affecting the Premises; (vi) sell, transfer, alienate, grant, convey or assign any interest in the Premises or any part thereof; (vii) further mortgage, encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Premises or any part thereof, or interest therein; or (viii) if the Premises are now or should at any time in the future be subject to the terms of any rent control or rent stabilization statute, ordinance, rule or regulation, fail to comply and/or cause the Premises to comply with the terms and requirements of such statute, ordinance, rule or regulation, so and in such fashion as to insure that the Premises

shall be subject to the terms and provisions, and receive the benefits, of said statute, ordinance, rule or regulation.

Section 2.12. Assignment of Rents. The Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Indebtedness, its interest in the rents, issues and profits of the Premises, together with its interest in all leases and other documents evidencing such rents, issues and profits now or hereafter in effect and its interest in any and all deposits held as security under said leases, and shall, upon demand, deliver to the Mortgagee an executed counterpart of each lease or other document to which it is a party and which affects the Premises. Nothing contained in the foregoing sentence shall be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease or in any law of the State in which the Premises are located in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that the Mortgagee shall be accountable for any money actually received pursuant to such assignment. The Mortgagor hereby further grants to the Mortgagee the right (i) to enter upon and take possession of the Premises for the purpose of collecting the said rents, issues and profits, (ii) to dispossess by the usual summary proceedings (or any other proceedings of the Mortgagee's selection) any tenant defaulting in the payment thereof to the Mortgagee, (iii) to let the Premises, or any part thereof, and (iv) to apply said rents, issues and profits, after payment of all necessary charges and expenses on account of said Indebtedness. Such assignment and grant shall continue in effect until the Indebtedness is paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of the Mortgagor to the entry upon and taking possession of the Premises by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default, the Mortgagor shall have a revocable license to receive said rents, issues and profits and otherwise manage the Premises. The Mortgagor agrees to hold said rents, issues and profits in trust and to use the same first, in payment of the cost of the improvement, second, in payment of the Indebtedness to the extent the same is then due and owing, and third, in such manner as the Mortgagee may elect. Such license of the Mortgagor to collect and receive said rents, issues and profits may be revoked by the Mortgagee upon the occurrence of an Event of Default by giving not less than five (5) days' written notice of such revocation, served personally upon or sent by registered mail to the record owner of the Premises. The Mortgagor hereby appoints the Mortgagee as its attorney-in-fact, coupled with an interest, to receive and collect all rent, additional rent and other sums due under the terms of each lease to which the Mortgagor is a party and to direct any such tenant, by written notice or otherwise, to forward such rent, additional rent or other sums by mail or in person to the Mortgagee.

Section 2.13. Indemnity. The Mortgagor agrees that it shall indemnify, defend and hold harmless the Mortgagee from and against all loss, liability, obligation, claim, damage, penalty, cause or action, cost and expense, including without limitation any assessments, levies, impositions, judgments, reasonable attorneys' fees and disbursements, cost of appeal bonds and printing costs, imposed upon or incurred by or asserted against the Mortgagee by reason of (a) ownership of this Mortgage; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Premises; (c) any use, non-use or condition of the Premises; (d) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part for maintenance or otherwise; (f) the imposition of any mortgage, real estate or governmental tax incurred as a result of this Mortgage or the Note, other than income tax payable by, or other taxes personal to, the Mortgagee; or (g) any violation or alleged violation by the Mortgagor of any law. Any amounts payable under this Section 2.13 shall be due and payable on demand and until paid shall bear interest at the Default Rate. If any action is brought against the Mortgagee by reason of any of the foregoing occurrences, the Mortgagor will, upon the Mortgagee's request, defend and resist such action, suit or proceeding, at the Mortgagor's sole cost and expense by counsel approved by the Mortgagee.

ARTICLE III

Default and Remedies

Section 3.1. Events of Default. The following shall constitute "Events of Default" under this Mortgage: (a) the occurrence of any Event of Default under the Loan Agreement, the Note or any of the Other Loan Documents (as defined in Section 4.10 hereof); or (b) default by the Mortgagor in the payment of any amounts required to be paid hereunder; or (c) default by the Mortgagor in the due observance or performance of any of the terms, covenants or conditions contained herein; or (d) should any representation or warranty made herein prove to be untrue in any material respect at the time when made; or (e) except as may be expressly permitted under the terms and conditions of the Loan Agreement, the further assignment or encumbrance by the Mortgagor of the leases or rents of the Premises or any part thereof without in each instance the prior written consent of the Mortgagee; or (f) except as may be expressly permitted under the terms and conditions of the Loan Agreement, if the Mortgagor leases all or part of the Premises without in each instance the prior written consent of the Mortgagee; or (g) subject to the provisions of paragraph (i) of Section 2.4 hereof permitting the Mortgagor to contest the same, the failure by the Mortgagor to pay (or cause to be paid), before any fine, penalty, interest or cost may be added thereto, all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature

whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Premises or any part thereof or become payable during the term of the Note or this Mortgage; or (h) except as may be expressly permitted under the terms and conditions of the Loan Agreement, the further mortgage, pledge or encumbrance by the Mortgagor of the Premises or any part thereof or any interest therein without in each instance the prior written consent of the Mortgagee; or if any mortgage, pledge or encumbrance affecting the Premises or any part thereof or interest therein (whether prior or subordinate to the lien of this Mortgage) shall be amended, modified, refinanced, increased in amount, replaced or substituted for, provided, however, that nothing herein contained shall be deemed to permit the Mortgagor to create, grant or suffer to exist any such mortgage, pledge, or encumbrance; or (i) if a default occurs under any mortgage which is prior or subordinate to the lien of this Mortgage (beyond the applicable notice and grace period, if any) or the mortgagee under any such prior or subordinate mortgage commences a foreclosure or other enforcement action in connection with said mortgage; or (j) except as may be expressly permitted under the terms and conditions of the Loan Agreement, if the Premises, or any part thereof or interest therein, is sold, transferred, assigned, conveyed, granted or alienated without in each instance the prior written consent of the Mortgagee.

Section 3.2. Remedies

(i) Upon the occurrence of an Event of Default under Paragraph 18(k) of the Loan Agreement, the entire unpaid Indebtedness shall be immediately due and payable and the Mortgagee may exercise any of the rights and remedies described in this Section 3.2(i). Upon the occurrence of any other Event of Default the entire unpaid Indebtedness may at the option of Mortgagee become immediately due and payable and the Mortgagee may exercise any of the rights remedies ascribed in this Section 3.2(i). Upon the occurrence of any Event of Default, the Mortgagee may, in addition to any rights or remedies available to it hereunder, take such action as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Premises, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee: (1) declare the entire unpaid Indebtedness to be immediately due and payable; or (2) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess the Mortgagor and its agents and servants therefrom, and thereupon the Mortgagee may (a) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (b) complete any construction on the Premises in such manner and form as the Mortgagee deems advisable; (c) make alterations, additions, renewals, replacements and improvements to or on the Improvements and the balance of the Premises; (d) exercise all rights and powers of the Mortgagor with respect to the Premises, whether in the name of the

Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof; and (e) apply the receipts from the Premises to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Premises, as well as just and reasonable compensation for the services of the Mortgagee, its counsel, agents and employees; or (3) institute proceedings for the complete foreclosure of this Mortgage in which case the Premises may be sold for cash or credit in one or more parcels; or (4) with or without entry and, to the extent permitted, and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the lien of this Mortgage continuing unimpaired and without loss of priority so as to secure the balance of the Indebtedness not then due; or (5) institute an action, suit or proceeding in equity for the specific performance of any covenants, condition or agreement contained herein or in the Note; or (6) recover judgment on the Note or any guaranty either before, during or after or in lieu of any proceedings for the enforcement of this Mortgage; or (7) apply for the appointment of a trustee, receiver, liquidator or conservator of the Premises, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of the Mortgagor, any guarantor or of any person, firm or other entity liable for the payment of the Indebtedness to which appointment the Mortgagor does hereby consent; or (8) sell the Premises, or any part thereof, to the extent permitted and pursuant to the procedures provided by the laws of the State in which the Premises are located, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales, as an entity or in parcels, and at such time and place, upon such terms and after such notice thereof as may be required by applicable law or (9) pursue such other remedies as the Mortgagee may have under applicable law.

(ii) The purchase money proceeds or avails of any sale made under or by virtue of this Article III, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of any such sale, or the costs and expenses of entering upon, taking possession of, removal from, holding, operating and managing the Premises or any part thereof, as the case may be, including reasonable compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest as provided herein on all

advances made by the Mortgagee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Premises shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest with interest on the unpaid principal at the rate herein specified from and after the happening of any Event of Default from the due date of any such payment of principal until the same is paid.

Third: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage or of the Note.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

The Mortgagee and any receiver of the Premises or any part thereof shall be liable to account for only those rents, issues and profits actually received by it.

(iii) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such-adjourned sale or sales; and except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(iv) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Article III, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Premises and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article III, whether made under the power of sale herein

granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(v) In the event of any sale made under or by virtue of this Article III (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(vi) Upon any sale made under or by virtue of this Article III (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Mortgagee may bid for and acquire the Premises or any part thereof or interest therein and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

(vii) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Premises or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Premises or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

Section 3.3. Payment of Indebtedness After Default. Upon the occurrence of any Event of Default and the acceleration of the maturity hereof, if, at any time prior to foreclosure sale, the Mortgagor or any other person tenders payment of the amount necessary to satisfy the Indebtedness, the same shall constitute an evasion of the payment terms hereof and/or of the Note and shall be deemed to be a voluntary prepayment hereunder, in which case such payment must include the premium and/or fee required under the prepayment provision, if any, contained herein or in the Note. This provision shall be of no force or effect if at the time that such tender of payment is made, the Mortgagor has the right under this Mortgage or the Note to prepay the Indebtedness without penalty or premium.

Section 3.4. Possession of the Premises. Upon the occurrence of any Event of Default hereunder, it is agreed that the Mortgagor, if it is the occupant of the Premises or any part thereof, shall immediately surrender possession of the Premises so occupied to the Mortgagee, and if the Mortgagor is

permitted to remain in possession, the possession shall be as a tenant of the Mortgagee and, on demand, Mortgagor shall pay to the Mortgagee monthly, in advance, a reasonable rental for the space so occupied and in default thereof Mortgagor may be dispossessed by the usual summary proceedings. The covenants herein contained may be enforced by a receiver of the Premises or any part thereof. Nothing in this Section 3.4 shall be deemed to be a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Premises without the Mortgagee's prior written consent.

Section 3.5. Interest After Default. If any payment due hereunder or under the Note is not paid when due, whether on any stated due date, any accelerated due date or any other date or at any other time specified under any of the terms hereof or thereof, then, and in such event, the Mortgagor shall pay interest on the entire outstanding and unpaid principal balance of Indebtedness from and after the date on which such payment first becomes due at the Default Rate and such interest shall be due and payable, on demand, at such rate until such Event of Default shall have been cured or, if such Event of Default shall not have been cured, until the entire amount due is paid to the Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. All unpaid and accrued interest shall be secured by this Mortgage as a part of the Indebtedness. Nothing in this Section 3.5 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Indebtedness.

Section 3.6. Mortgagor's Actions After Default. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the Indebtedness, or of any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (i) to the full extent that it lawfully may, waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding and (ii) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Premises and of all the earnings, revenues, rents, issues, profits and income thereof.

Section 3.7. Control by Mortgagee After Default. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Premises or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now and hereafter covered by this Mortgage.

ARTICLE IV

Miscellaneous

Section 4.1. Credits Waived. The Mortgagor will not claim nor demand nor be entitled to any credit or credits against the Indebtedness for so much of the taxes assessed against the Premises or any part thereof, as is equal to the tax rate applied to the amount due on this Mortgage or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Premises or any part thereof by reason of this Mortgage or the Indebtedness secured hereby.

Section 4.2. No Releases. The Mortgagor agrees, that in the event the Premises (or any part thereof or interest therein) are sold and the Mortgagee enters into any agreement with the then owner of the Premises extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, the Mortgagor shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by the Mortgagee.

Section 4.3. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent to any party hereto at its address above stated in accordance with the terms and conditions of the Loan Agreement.

Section 4.4. Binding Obligations. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of the Mortgagee, subsequent holders of this Mortgage, and the respective successors and assigns of the foregoing. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to the Mortgagor named herein, any subsequent owners of the Premises (or any part thereof or interest therein), and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

Section 4.5. Legal Construction. The creation of this Mortgage, the perfection of the lien or security interest in the Premises, and the rights and remedies of the Mortgagee with respect to the Premises, as provided herein and by the laws of the State in which the Premises is located, shall be governed by and construed in accordance with the internal laws of the State in which the Premises is located without regard to principles of conflict of law. Otherwise, to the extent permitted by applicable law, this Mortgage, the Note, the Loan Agreement and all other obligations of Mortgagor (including the liability of Mortgagor for any deficiency following a foreclosure of all or any part of the Premises) shall be governed by and construed in accordance with the internal laws of the State of

New York without regard to principles of conflicts of laws. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and the Mortgagee shall require the Mortgagor to pay, or the Mortgagee to accept, interest in an amount which would subject the Mortgagee to any penalty or forfeiture under applicable law. In the event that the payment of any charges, fees or other sums due hereunder or under the Note or any such other agreement which are or could be held to be in the nature of interest and which would subject the Mortgagee to any penalty or forfeiture under applicable law, then ipso facto the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law. Should the Mortgagee receive any payment which is or would be in excess of the highest rate authorized under law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be held by the Mortgagee as additional cash collateral for the indebtedness.

Section 4.6. Captions. The captions of the Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 4.7. Further Assurances. The Mortgagor shall do, execute, acknowledge and deliver, at the sole cost and expense of the Mortgagor, all and every such further acts, deeds, conveyances, mortgages, assignments, estoppel certificates, notices of assignment, transfers and assurances as the Mortgagee may require from time to time in order to better assure, convey, grant, assign, transfer and confirm unto the Mortgagee, the rights now or hereafter intended to be granted to the Mortgagee under this Mortgage, any other instrument executed in connection with this Mortgage or any other instrument under which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact to execute, acknowledge and deliver for and in the name of the Mortgagor any and all of the instruments mentioned in this Section 4.7 and this power, being coupled with an interest, shall be, irrevocable as long as any part of the indebtedness remains unpaid.

Section 4.8. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction or prohibited or unenforceable as to any person or entity or circumstance shall, as to such jurisdiction, person or entity or circumstance be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction or as to any other person or entity or circumstance.

Section 4.9. General Conditions.

(i) All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of any other applicable law.

(ii) This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(iii) No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Acceptance of any payment (other than a monetary payment in cure of a monetary default) after the occurrence of an Event of Default shall not be deemed a waiver of or a cure of such Event of Default and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or in the Note shall limit or diminish the obligation of the Mortgagor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(iv) No waiver by the Mortgagee will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals, levies, fees or any other charges affecting the Premises, shall not constitute a waiver of the Mortgagor's default in making such payments and shall not obligate the Mortgagee to make any further payments.

(v) The Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of the Mortgagor which the Mortgagee, in its reasonable discretion, feels may adversely affect the Premises or this Mortgage. The Mortgagee shall also have the right to institute any action or proceeding which the Mortgagee, in its discretion, feels should be brought to protect its interest in the Premises or its rights hereunder. All costs and expenses incurred by the Mortgagee in connection with such actions or proceedings, including, without limitation, reasonable attorneys' fees and expenses and appellate attorneys' fees and expenses, shall be paid by the Mortgagor on demand and shall be secured by this Mortgage.

(vi) In the event of the passage after the date of this Mortgage of any law of any governmental authority having jurisdiction hereof or the Premises, deducting from the value of land for the purpose of taxation, affecting any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, the Mortgagor shall promptly pay to the Mortgagee, on demand, all taxes, costs and charges for which the Mortgagee is or may be liable as a result thereof; provided that if said payment shall be prohibited by law, render the Note usurious or subject the Mortgagee to any penalty or forfeiture, then and in such event the Indebtedness shall, at the option of the Mortgagee, be immediately due and payable.

(vii) The Mortgagor hereby appoints the Mortgagee as its attorney-in-fact in connection with the personal property and fixtures covered by this Mortgage, where permitted by law, to file on its behalf any financing statements or other statements in connection therewith with the appropriate public office signed by the Mortgagee, as secured party. This power, being coupled with an interest, shall be irrevocable so long as any part of the Indebtedness remains unpaid.

Section 4.10. Multisite Real Estate Transaction. Mortgagor acknowledges that this Mortgage is one of a number of other mortgages, deeds of trust, assignments of leases and rents and other security documents (hereinafter collectively the "Other Loan Documents") which secure the Indebtedness in whole or in part. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Mortgagee of any security for or guarantors upon any of the Indebtedness or by any failure, neglect or omission on the part of Mortgagee to realize upon or protect any of the Indebtedness or any collateral security therefor including the Other Loan Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or any disposition of any of the Indebtedness or of any of the collateral security therefor, including the Other Loan Documents or any guarantee thereof. Mortgagee may, at its discretion, foreclose, exercise any power of sale or exercise any other remedy available to it under any or all of the Other Loan Documents without first exercising or enforcing any of its rights and remedies hereunder, or may foreclose, exercise any power of sale, or exercise any other right available under this Mortgage without first exercising or enforcing any of its rights and remedies under any or all of the Other Loan Document. Such exercise of Mortgagee's rights and remedies under any or all of the Other Loan Documents shall not in any manner impair the Indebtedness or lien of the Mortgage, and any exercise of the rights or remedies of Mortgagee hereunder shall not impair the lien of any of the Other Loan Documents or any of Mortgagee's rights and remedies

thereunder. Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Loan Documents separately or concurrently and in any order that Mortgagee may deem appropriate.

Section 4.11. Receipt of Copy. The Mortgagor acknowledges that it has received a true copy of this Mortgage, provided without charge.

Section 4.12. Notice of Sale. Supplementing the provisions of Section 3.2 hereof, notice of any sale of any part of the Premises situated in the State of Alabama shall state the time, place and terms of such sale (which time shall be between the hours of 11:00 A.M. and 4:00 P.M. on the day of the sale and which place shall be before the front or main door of the courthouse of Shelby County, Alabama), together with a description of the property to be sold, and shall be sufficiently given if published once a week for three successive weeks preceding the date of sale in a newspaper published in Shelby County, Alabama. Such sale shall occur at such courthouse door during such hours on the day designated for sale. Such sale may from time to time be adjourned by announcing at the time and place appointed therefore an adjournment to a future time and place specified, and the giving of any notice of the new time and place of sale as may be required by law.

Section 4.13. Loan Agreement Paramount. If and to the extent that any of the provisions of this Mortgage conflict or are otherwise inconsistent with any provisions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

Section 4.14. Defeasance. If the Mortgagor shall well and timely pay the Indebtedness in full and perform all of its obligations under the Note and this Mortgage, then this conveyance shall become null and void.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the date first above written.

ATTEST:

ALABASTER INDUSTRIES, INC.



By: 

Name: Daniel A. Norris

Title: President

ACKNOWLEDGEMENT

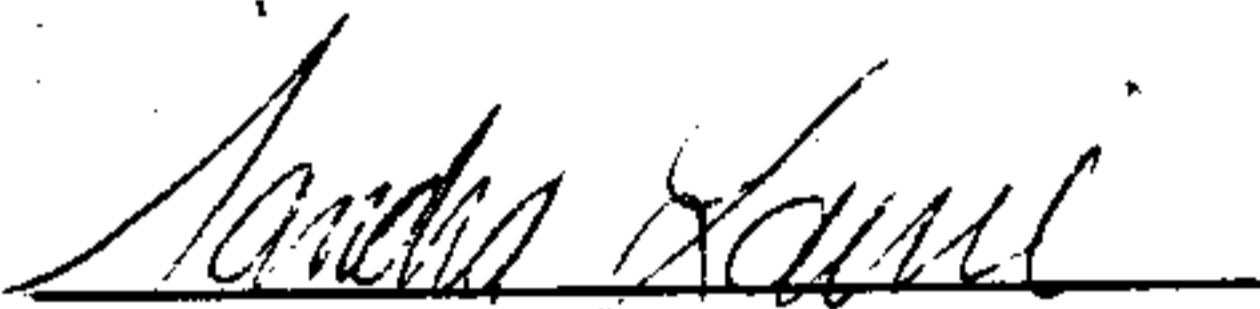
STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

I, Sandra Laine, a notary public in and for said county in said state, hereby certify that Daniela A. Norris whose name as President of ALABASTER INDUSTRIES, INC., a corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this date, that being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 13th day of September, 1996.



(Notarial Seal)

SANDRA LAINE
NOTARY PUBLIC, State of New York
No. 01LA5056708
Qualified in Nassau County
Commission Expires March 11, 1998

Schedule A

(Alabama Legal Description)

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 distance of 821.06 feet, more or less, to the aforementioned Point "A"; thence continue in a Northwesterly along last described course for 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.

Inst # 1996-31583

09/24/1996-31583
03:31 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

SEP 19 1996
JESSIE L. JESSIE
212 594 0467