

10330-2

Highland Bank

2211 Highland Avenue South

Box 55388

Birmingham, AL 35255-5388

Phone: 205-938-8080 • Fax: 205-938-8167

STATE OF ALABAMA)

SHELBY COUNTY)

Mortgage Securing Guaranty

This indenture is made and entered into this 12 day of FEBRUARY, 1998 by and between PETER F KERN AND WIFE, SARA T KERN, (hereinafter called the "Mortgagors," whether one or more) and Highland Bank, a state banking association (hereinafter called the "Mortgagee")

Whereas, BUILDING MATERIALS WHOLESALE, INC., (hereinafter called the "Borrower") is or shall be justly indebted to the Mortgagee in the principal sum of 150,696.55 dollars (\$150,696.55) as evidenced by that certain promissory note dated 2/12/ 1998, which bears interest as provided therein, which is payable in accordance with its terms and which has a final maturity date of 11/12/98 and

Whereas, PETER F KERN (hereinafter called the "Guarantor," whether one or more) has agreed to enter into and has entered into that certain Guaranty Agreement (hereinafter called the "Guaranty Agreement") dated 2/12 1998, wherein the Guarantor has unconditionally guaranteed (jointly and severally, if more than one) the prompt payment in full of all indebtedness, liabilities and obligations, now existing or hereafter arising, of the Borrower to the Mortgagee covered by the Guaranty Agreement, and

Whereas, the Mortgagors have jointly and severally agreed to execute and deliver this mortgage to secure the true and faithful performance of all of the Guarantor's liabilities and obligations under the Guaranty Agreement

Now, Therefore, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Mortgagors and to secure (a) the prompt payment and true and faithful performance of all of the Guarantor's liabilities and obligations under the Guaranty Agreement, including without limitation the prompt payment of all indebtedness, liabilities and obligations now or hereafter owed by the Borrower to the Mortgagee covered by the Guaranty Agreement, and any and all extensions and renewals thereof, or of any part thereof, and all interest payable thereon and on any and all such extensions and renewals (hereinafter all of the Guarantor's liabilities and obligations under the Guaranty Agreement being collectively called the "Obligations") and (b) the compliance with all the stipulations and conditions herein contained, the Mortgagors do hereby grant, bargain, sell and convey unto the Mortgagee, the following described real estate, situated in SHELBY County, Alabama (said real estate being hereinafter called "Real Estate")

LOT 10 ACCORDING TO THE SURVEY OF GREYSTONE, 9TH SECTOR, AS RECORDED IN MAP BOOK 21, PAGE 143, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

Inst # 1998-06370

02/25/1998-06370
01:32 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
002 SNA 237.05

Together with all the rights, privileges, tenements, appurtenances and fixtures appertaining to the Real Estate, all of which shall be deemed Real Estate and conveyed by this mortgage To have and to hold the Real Estate unto the Mortgagee, its successors and assigns forever. The Mortgagors covenant with the Mortgagee that the Mortgagee shall have and lawfully exercise in fee simple of the Real Estate and have a good right to sell and convey the Real Estate as aforesaid, that the Real Estate is free of all encumbrances, unless otherwise set forth hereon and that the Mortgagors will warrant and forever defend the title to the Real Estate unto the Mortgagee, against the claims of all persons.

This mortgage is junior and subordinate to the mortgage or mortgages (hereinafter called individually a "Senior Mortgage" and jointly the "Senior Mortgages"). If any described hereinafter, it is specifically agreed that if default should be made in the payment of principal, interest or any other sums payable under the terms and provisions of any Senior Mortgage, the Mortgagee shall have the right (but not the obligation), without notice to anyone, to make good such default by paying whatever amounts may be due under the terms of any Senior Mortgage so as to put the same in good standing, and any and all payments so made, together with interest thereon, shall be added to the Obligations secured by this mortgage, and the same with interest thereon at the rate of interest (the "Added Debt Interest Rate") equal to the rate of interest charged by the Mortgagee on the portion of the Obligations bearing the highest interest rate (or such lesser rate of interest as shall be the maximum rate of interest permitted by applicable law), shall be immediately due and payable, and in the event such amounts are not paid in full when due, at the option of the Mortgagee, this mortgage shall be subject to immediate foreclosure in all respects as provided by law and by the provisions hereof.

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

For the purpose of further securing the Obligations, the Mortgagors agree to: (1) pay all taxes, assessments, and other non-consensual liens taking priority over this mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same; (2) keep the Real Estate protected by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable to the Mortgagee, as its interest may appear, subject, however, to the rights and interests of the holder or holders of any Senior Mortgages, if any. Such insurance shall be in an amount at least equal to (a) the amount of the Obligations, plus the aggregate amount of the indebtedness secured by any Senior Mortgages covering the Real Estate or (b) the full insurable value of the improvements located on the Real Estate, whichever shall be less. The insurance policy must provide that it may not be canceled without the insurer's giving at least ten days' prior written notice of such cancellation to the Mortgagee. The Mortgagors hereby assign, and pledge to the Mortgagee, as further security for the Obligations, each and every policy of hazard insurance now or hereafter in effect that insures said improvements, or any part thereof, together with all the right, title and interest of the Mortgagors in and to each and every such policy, including but not limited to: all of the Mortgagors' right, title and interest in and to any premiums paid on such hazard insurance, including all rights to returned premiums, subject, however, to the rights and interests of the holders of any Senior Mortgage. If the Mortgagors fail to keep the Real Estate insured as specified above, then, at the election of the Mortgagee, this mortgage may be foreclosed as hereinafter provided, and the Mortgagee may, but shall not be obligated to, insure the Real Estate for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss, and its own benefit, the proceeds from such insurance (less the cost of collecting the same) if collected, to be credited against the Obligations secured by the lien of this mortgage, and at the election of the Mortgagee, such proceeds may be used in repairing or reconstructing the improvements located on the Real Estate. All amounts spent by the Mortgagee for insurance or for the payment of Liens shall become a debt due by the Mortgagors and at once payable, without demand upon or notice to the Mortgagors, and shall be secured by the lien of this mortgage, and shall bear interest from date of payment by the Mortgagee until paid at the Added Debt Interest Rate.

As further security for the payment and performance of the Obligations by the Guarantor, the Mortgagors hereby assign and pledge to the Mortgagee, subject to the rights of the holder or holders of any Senior Mortgage, the following described property, rights, claims, rents, profits, issues and revenues:

1. all rents, profits, issues, and revenues of the Real Estate from time to time accruing, whether under leases or tenancies now existing or hereafter created, accruing to the Mortgagors, until the Mortgagee notifies the Mortgagors to the contrary, the right to receive and retain such rents, profits, issues and revenues;
2. all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Real Estate, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Real Estate, or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets, and all payments made for the voluntary sale of the Real Estate, or any part thereof, in lieu of the exercise of the power of eminent domain. The Mortgagee is hereby authorized on behalf of, and in the name of, the Mortgagors to execute and deliver valid acquittances for a discharge from any such judgments or awards. The Mortgagee may apply all such sums so received, or any part thereof, after the payment of all the Mortgagee's expenses, including court costs and attorneys' fees, to the extent provided for herein, on the Obligations secured by the lien of this mortgage, in such manner as the Mortgagee elects, or at the Mortgagee's option, the entire amount or any part thereof so received may be released or may be used to rebuild, repair or restore any or all of the improvements located on the Real Estate.

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

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

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

Upon condition, however, that if the Guarantor's obligations with respect to new or additional indebtedness of the Borrower shall be terminated in accordance with the terms of the Guaranty Agreement, and if the Guarantor shall truly and faithfully comply with all the terms and provisions of the Guaranty Agreement, including without limitation, the prompt payment and true and faithful performance of the Obligations (which Obligations include all of the Guarantor's liabilities and obligations under the Guaranty Agreement, including without limitation, the prompt payment in full of all indebtedness, liabilities and obligations now or hereafter owed by the Borrower to the Mortgagee covered by the Guaranty Agreement, and any and all extensions and renewals thereof, or of any part thereof and all interest payable thereon and on any and all such renewals and extensions), and if the Guarantor shall have no further obligations or liabilities under the Guaranty Agreement, and if the Mortgagors pay and reimburse the Mortgagee for any amounts the Mortgagee has advanced in payment of liens or insurance premiums and to cure defaults under Senior Mortgages, and interest thereon, and fulfill all obligations under this mortgage, this conveyance shall be null and void. But if any warranty or representation made in this mortgage is breached or proves false in any material respect, or if default is made in the due performance of any covenant or agreement of the Mortgagors under this mortgage, or if default is made in the payment to the Mortgagee of any sum paid by the Mortgagee under the authority of any provision of this mortgage, or if the Guarantor (or either of them if more than one) shall fail to comply with any of the terms and provisions of the Guaranty Agreement (including without limitation, the prompt payment and true and faithful performance of the Obligations), or if the Mortgagors (or any of them if more than one), default in the payment of any indebtedness (other than the Obligations owed to the Mortgagee or any other person, or if a default occurs under any prior mortgage, or if the interest of the Mortgagee in the Real Estate, or any part thereof, becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon, or if any statement of lien is filed against the Real Estate, or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen, or if any law is passed imposing or authorizing the imposition of any specific tax upon this mortgage or the indebtedness secured by the lien of this mortgage, or any part thereof, or permitting or authorizing the deduction of any such tax from the principal or interest of such indebtedness, or by virtue of which any tax, lien or assessment upon the Real Estate shall be chargeable against the owner of this mortgage, or if any of the stipulations contained in this mortgage is declared null and void, or if any court of competent jurisdiction, or if a receiver, trustee, liquidator or other custodian is appointed for the Mortgagors, the Guarantor or the Borrower, or any of them (each of the same being hereinafter called an "Obligor"), or for all or a substantial part of an Obligor's assets, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement or wage earner's plan) is filed by or against any Obligor, or if any Obligor fails or admits in writing such Obligor's inability generally to pay such Obligor's debts as they come due or makes a general assignment for the benefit of creditors, or if any Obligor dies, if an individual, or is dissolved, if a corporation, partnership or other organization or association, then upon the happening of any one or more of said events, at the option of the Mortgagee, this mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized to take possession of the Real Estate, and after giving at least twenty-one days' notice of the time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Real Estate is located, to sell the Real Estate in front of the courthouse door of said county, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Real Estate and foreclosing this mortgage, including a reasonable attorneys' fee as provided herein; second, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, liens, amounts due on any prior mortgage or other encumbrance, with interest thereon; third, to the payment in full of the interest on and then the principal balance of the Obligations then due and payable; fourth, to a non-interest bearing reserve fund to be held by the Mortgagee in an amount equal to, and its security for, all of the Obligations that are not then due and payable; and fifth, the balance, if any, to be paid to the party or parties appearing of record to be the owner of the Real Estate at the time of the sale, after deducting the cost of ascertaining who is owner. The Mortgagors agree that the Mortgagee may bid at any sale had under the terms of this mortgage and may purchase the Real Estate if the highest bidder therefor. At the foreclosure sale the Real Estate may be offered for sale and sold as a whole, without first offering it in any other manner or it may be offered for sale and sold in any other manner the Mortgagee may elect.

The Mortgagors agree to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in (a) collecting or securing or attempting to collect or secure the Obligations, or any part thereof, or (b) defending or attempting to defend the priority of this mortgage against any lien or encumbrance on the Real Estate, unless this mortgage is herein expressly made subject to any such lien or encumbrance, and (c) foreclosing this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction, provided, however, if this mortgage is governed by Section 5-19-10, Code of Alabama 1975, attorneys' fees collectible from the Mortgagors shall be limited to 15% of the Obligations at the time of default and referral to an attorney not a salaried employee of the Mortgagee, and no attorney's fees shall be collected unless the original principal balance or original amount financed exceeds \$300. The full amount of such costs incurred by the Mortgagee shall be secured by this mortgage. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. In the event of a sale hereunder, the Mortgagee, or its assigns, or auctioneer, shall execute to the purchaser, for and in the name of the Mortgagors, a good and sufficient deed to the Real Estate.

Plural or singular words used herein to designate the undersigned, shall be construed to refer to the maker or makers of this mortgage, whether one or more natural persons, corporations, associations, partnerships or other entities. All covenants and agreements herein made by the undersigned shall bind the heirs, personal representatives, successors and assigns of the undersigned, and every option, right and privilege herein reserved or secured to the Mortgagee, shall inure to the benefit of the Mortgagee's successors and assigns.

IN WITNESS WHEREOF, the undersigned Mortgagors have executed this instrument on the date first written above.

[Signature]
Sara T. Kern

Inst # 1998-06370

02/25/1998-06370
01:32 PM CERTIFIED

ACKNOWLEDGMENT FOR INDIVIDUALS
COUNTY JUDGE OF PROBATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, in and for said County and in said State, hereby certify that, PETER F KERN AND WIFE, SARA T KERN, whose name(s) (is) are signed to the foregoing instrument, and who (is) are known to me, acknowledged before me on this day that, being informed of the contents of said instrument (he) (she) they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 12TH day of FEBRUARY, 1998.

[Signature]
My Commission Expires July 11, 1998

My Commission Expires
Notary Must Affix Seal