

THIS DOCUMENT PREPARED BY
THE BELOW NAMED ATTORNEY
AND AFTER RECORDING, RETURN TO:

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Inst # 1999-51878

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SHELBY COUNTY JUDGE OF PROBATE
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MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument") is made and entered into as of the 23rd day of December, 1999, by **THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF VINCENT**, a public corporation organized under the laws of the State of Alabama (the "Vincent IDB"), and **SHELBY STEEL, LLC**, an Alabama limited liability company ("Borrower"; and Borrower and the Vincent IDB are sometimes hereinafter referred to together as "Mortgagor"), with its principal office and place of business at Two Office Park Circle, Suite 1, Birmingham, Alabama 35223, for the benefit of **NATIONAL CANADA FINANCE CORP.** ("Lender"), having an office at 200 Galleria Parkway, Suite 800, Atlanta, Georgia 30339.

WITNESSETH: That;

WHEREAS, Borrower and Lender have executed and delivered that certain Credit Agreement of even date herewith (as the same may be amended, modified, supplemented, extended, renewed or replaced from time to time, the "Credit Agreement");

WHEREAS, pursuant to the Credit Agreement, Lender has agreed to make the Loans (as defined in the Credit Agreement) to Borrower in the aggregate principle amount of Ten Million and No/100s Dollars (\$10,000,000.00);

WHEREAS, the Loans are evidenced by the Notes (as defined in the Credit Agreement) of even date herewith executed by Borrower to the order of Lender in the aggregate principal amount of Ten Million and No/100s Dollars (\$10,000,000.00) and having a maturity date of December 23, 2004;

WHEREAS, Borrower possesses a leasehold estate in the Premises (as defined below) as lessee under the Lease Agreement (as defined below), and the Vincent IDB is the lessor under the Lease Agreement and holds fee title to the Premises;

WHEREAS, in connection with the Lender allowing Borrower to incur the Obligations, (as defined in the Credit Agreement), Borrower and the Vincent IDB have agreed to execute this

Instrument securing Borrower's obligations and covenants under the Credit Agreement and the other Loan Documents (as hereinafter defined); and

WHEREAS, capitalized terms used herein and not otherwise defined shall be used as defined in the Credit Agreement;

1.1 NOW, THEREFORE, AND IN CONSIDERATION of the sum of \$10.00 cash in hand paid and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the Obligations and other obligations of Borrower heretofore and hereinafter set forth (including, without limitation, any and all advances described in **Paragraph 3.7**, below), the Mortgagor DOES BY THESE PRESENTS GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, MORTGAGE, HYPOTHECATE, PLEDGE, GRANT A SECURITY INTEREST IN, SET OVER, WARRANT AND CONVEY to Lender, its successors and assigns, forever, WITH POWER OF SALE, the following described premises: (a) all right, title and interest of the Vincent IDB in all those certain tracts, pieces or parcels of land located in the County of Shelby, State of Alabama (and any easements or other rights or interests in land) more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Land"); (b) all right, title and interest of the Vincent IDB in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on, under or above the Land (the "Improvements"; together with the Land collectively, the "Premises"); (c) the leasehold estate of Borrower and all right, title, interest, purchase options, privileges created in and by virtue of that certain Lease Agreement dated November 1, 1976, by and between the Vincent IDB and Southeastern Porcelain & Construction Company, Inc., as assigned to Borrower (the "Lease Agreement") covering the Premises; (d) all right, title and interest of Mortgagor (or either of them) in all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by either Mortgagor; (e) all right, title and interest of Mortgagor (or either of them) in all furnishings, furniture, fixtures, machinery, apparatus, equipment, fittings, appliances, building supplies and materials, vehicles, chattels, goods, consumer goods, farm products, inventory, warranties, chattel paper, documents, accounts, general intangibles, trade names, trademarks, service marks, logos (including any names or symbols by which the Premises is known) and goodwill related thereto, and all other articles of personal property of every kind and nature whatsoever, tangible or intangible, now, heretofore or hereafter arising out of or related to the ownership of and leasehold estate in the Premises, or acquired with proceeds of any loan secured by this Instrument, or located in, on or about the Premises, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Premises (said real and personal property referred to in **Paragraphs 1.1 (d) and (e)**, together with the Premises, being hereinafter referred to as the "Project"); it being mutually agreed that all of the aforesaid property owned by Mortgagor (or either of them) and placed on the Premises shall, so far as permitted by law, be deemed to be fixtures; a part of the realty, and security for Borrower's obligations to Lender pursuant to the Credit Agreement; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Instrument and shall be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration

may not be effective and that any of said articles may constitute goods (as said term is used in the Alabama Uniform Commercial Code ("UCC"), this instrument shall constitute a security agreement creating a security interest in such goods, as collateral, in favor of Lender as a secured party by Mortgagor as debtor, all in accordance with the UCC as more particularly set forth in **Paragraph 2.6** hereof; (f) all right, title and interest of Mortgagor (or either of them) in any and all leases, rental agreements and arrangements of any sort now or hereafter affecting the Project or any portion thereof and providing for or resulting in the payment of money to either Mortgagor for the use of the Project or any portion thereof, whether the user enjoys the Project or any portion thereof as tenant for years, invitee, licensee, tenant at sufferance or otherwise, and irrespective of whether such leases, rental agreements and arrangements be oral or written, including any and all extensions, renewals and modifications thereof (the "Leases") and guaranties of the performance or obligations of any tenants or lessees thereunder (the "Tenants"), together with all income, rents, issues, profits and revenues from the Leases (including all tenant security deposits and all other tenant deposits, whether held by either Mortgagor or in a trust account, and all other deposits and escrow funds relating to any Leases) (the "Rents"), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same; provided, however, that although this Instrument contains (and it is hereby agreed that this Instrument contains) a present, current, unconditional and absolute assignment of all of said Rents, Mortgagor and Lender have agreed that so long as there shall exist no "Default" (as hereinafter defined) or event, which with the giving of notice or passage of time, would constitute a "Default" hereunder, Mortgagor shall have a revocable license to collect routine rental payments and revenues which do not relate to periods more than one month after collection, it being agreed that Lender shall be entitled at all times to possession of all other Rents (including deposits), and it being further agreed that upon the occurrence of a "Default" or event, which with the giving of notice or passage of time, would constitute a "Default" hereunder such license shall be automatically revoked without the necessity of further action by Lender; (g) all right, title and interest of Mortgagor (or either of them) in, to and under all franchise agreements, management contracts, service contracts, utility contracts, leases of equipment, documents and agreements relating to the construction of any Improvements (including any and all construction contracts, architectural contracts, engineering contracts, designs, plans, specifications, drawings, surveys, tests, reports, bonds and governmental approvals) and all other contracts, licenses and permits now or hereafter affecting the Project or any part thereof and all guaranties and warranties with respect to any of the foregoing (the "Contracts"); (h) all right, title and interest of Mortgagor (or either of them) in any insurance policies or binders now or hereafter relating to the Project, including any unearned premiums thereon; (i) all right, title and interest of Mortgagor (or either of them) in any and all awards, payments, proceeds and the right to receive the same, either before or after any foreclosure hereunder, as a result of any temporary or permanent injury or damage to, taking of or decrease in the value of the Project by reason of casualty, condemnation or otherwise; (j) all right, title and interest of Mortgagor (or either of them) in all utility, escrow and all other deposits (and all letters of credit, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash) now or hereafter relating to the Project or the purchase, construction or operation thereof; (k) all right, title and interest of Borrower in all cash funds, deposit accounts, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash, now or hereafter created under or held by Lender pursuant to any of the Loan Documents, including any account into which any portion of the Obligations may be disbursed by Lender; (l) all right, title and interest of Borrower in all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to

cash) or other property or rights thereto relating to such claims or causes of action; and (m) all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing; and all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, farm products, consumer goods, general intangibles (as such terms are defined in the UCC) and other property of any nature constituting proceeds acquired with proceeds of any of the Premises described hereinabove; all of which foregoing items are hereby declared and shall be deemed to be a portion of the security for the Obligations and obligations herein described, a portion of the above described collateral being located upon the Land. For purposes of this Instrument, the term "Loan Documents" shall mean this Instrument, the Credit Agreement, the Notes and any other documents now or hereafter evidencing, securing or otherwise relating to said Obligations or the Premises, as the same may be amended, modified or supplemented from time to time.

1.2 TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender and its successors and assigns, forever.

1.3 EXCEPT AS OTHERWISE specifically provided herein, this Instrument is expressly made, executed and delivered pursuant to and subject to and shall be construed in accordance with the applicable provisions of the Alabama Statutes ("Code"), as amended and now enacted. All obligations and duties imposed upon Mortgagor by such Code provisions and all rights and remedies conferred upon Lender thereby and hereby are expressly affirmed. All of the terms, covenants, agreements and conditions hereinafter contained, to the extent the same may differ from or supplement the Code provisions, shall not be construed in any way as excluding the Code provisions or depriving Lender of any of its rights, privileges or remedies thereunder.

1.4 SHOULD THE OBLIGATIONS BE PAID, and should Mortgagor perform all covenants herein contained in a timely manner, then this Instrument shall be canceled terminated and voided pursuant to the laws of the State of Alabama.

COVENANTS AND AGREEMENTS

2.1 Compliance with Credit Agreement and Instrument; Warranty of Title. Borrower shall comply with all provisions of the Credit Agreement applicable to it, this Instrument and of every other instrument to which it is a party securing the Credit Agreement, and will promptly pay to Lender all sums required to be paid by Borrower thereunder and pursuant to the provisions of this Instrument. The Vincent IDB is indefeasibly seized of the Premises in fee simple (unless otherwise described in *Exhibit B* hereto, the "Permitted Exceptions") and the Vincent IDB has lawful authority to convey, manage, and encumber the same as provided by the Instrument, and does hereby so warrant, subject to the Permitted Exceptions. Borrower covenants that Borrower is the lawful owner of the leasehold estate in the Premises pursuant to the Lease Agreement and has good right to convey the same, that the same are unencumbered except for the Permitted Exceptions, and Borrower does warrant and will forever defend the title and quiet possession thereto against the claims of all persons whomsoever, subject to the Permitted Exceptions. Should title in fee simple to the Premises be

acquired by Borrower at any time during the life of this Instrument, the lien hereof, and secured hereby, shall immediately attach fully to such fee simple title as from the date of this Instrument.

2.2 Payment of Taxes and Liens. Borrower shall pay all the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature now on the Premises or that hereafter may be imposed, levied or assessed upon this Instrument or the Premises or upon the Obligations, in accordance with the provisions of the Credit Agreement.

2.3 Insurance and Condemnation.

2.3.1 Insurance. Borrower shall keep the Premises and the improvements now existing or hereafter erected on the Premises insured against loss by fire, other hazards and contingencies, in accordance with the provisions hereof and those set forth in the Credit Agreement.

2.3.2 Condemnation. Mortgagor shall notify Lender immediately upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any action for the taking through condemnation (which term when used in this Instrument shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof) of the Premises or any part thereof.

2.3.3 Lender shall be entitled to all compensation, awards and other payments arising from any casualty, condemnation or damage to the Premises or any portion thereof and to give receipts and acquittances therefor, and is hereby authorized, at its option, to adjust or compromise any casualty, condemnation or damage claim or cause of action, to commence, appear in and prosecute, in its own or in Mortgagor's name, any action or proceeding relating to any casualty, condemnation or damage claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith. Each insurance company, condemning authority or other party is hereby authorized and directed to make payment for all such claims and causes of action to Mortgagor and Lender jointly, unless a Default exists hereunder, in which event each insurance company, condemning authority or other party is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Mortgagor and Lender jointly. In the event any insurance company, condemning authority or other party fails to so disburse directly and solely to Lender while a Default exists hereunder, but disburses instead either solely to Mortgagor or to Mortgagor and Lender jointly, Mortgagor agrees immediately to endorse and transfer such payments to Lender. Upon the failure of Mortgagor to endorse and transfer such payments as aforesaid, Lender may execute such endorsements or transfers for and in the name of Mortgagor and Mortgagor hereby irrevocably appoints Lender as Mortgagor's agent and attorney-in-fact so to do. Lender shall not be responsible for any failure to collect any insurance proceeds, any condemnation award or any other payment relating to the Premises, regardless of the cause of such failure. After deducting from any condemnation, insurance or other proceeds received by Lender and/or Mortgagor all expenses of Lender incurred in the collection and administration of such sums, including attorney's fees, Lender may apply the net proceeds or any part thereof, at its option, to any one or more of the following: (i) the payment of the Obligations, whether or not due and in whatever order Lender elects, (ii) the repair, replacement or restoration of the Premises or any part thereof, and (iii) any other purposes for which Lender is entitled to advance funds under this Instrument, all without affecting the security interest created by this Instrument; and any balance of such moneys not applied

by Lender as aforesaid shall be paid to Mortgagor or the person or entity lawfully entitled thereto. In the event of the foreclosure of this Instrument or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Obligations, all right, title and interest of Mortgagor in and to all insurance policies then in force (including any premiums paid in advance), all insurance proceeds, all condemnation proceeds and awards and all claims and judgments for damage to the Premises or any portion thereof shall pass to the purchaser or Lender, and said purchaser or Lender shall have the right to receive all awards, proceeds or payments relating thereto to the extent of any unpaid Obligations following such sale, with legal interest thereon, whether or not a deficiency judgment on this Instrument or under the Credit Agreement shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award, proceeds or payments.

2.3.4 Notwithstanding anything herein to the contrary, in the event Lender is in receipt of any such condemnation or insurance proceeds and a Default has not occurred, Lender shall apply any sums received by it under this Section 2.3 first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that less than sixty percent (60%) of the Improvements located on the Land have been taken or destroyed, then if:

(1) no default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder or under any of the other Loan Documents, and

(2) the Project can, in Lender's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within six (6) months after the receipt of insurance proceeds or condemnation awards by either Mortgagor or Lender and at least six (6) months prior to the maturity date of the Notes, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Project as described in subsection (a)(2) above, and

(4) there are sufficient sums available (through insurance proceeds, condemnation awards, and contributions by Borrower, the full amount of which shall at Lender's option have been deposited with Lender) for such restoration or repair (including, without limitation, for any costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Notes during such restoration or repair and for tax and insurance and all other expenses of owning and operating the Project during such period of restoration or repair, and

(5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Project and debt service on the indebtedness secured hereby in full with a coverage ratio acceptable to Lender, and

(6) Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report in form and substance satisfactory to Lender appraising the value of the Premises as so restored or repaired to be not less than the indebtedness secured hereby, plus an amount necessary to result in a coverage ratio acceptable to Lender, and

(7) Borrower so elects by written notice delivered to Lender within the earlier of five (5) days after settlement of the aforesaid insurance or condemnation claim or six (6) months after the occurrence of the casualty or taking,

then, Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Lender in its discretion, with any remainder being applied by Lender for payment of the indebtedness secured hereby in whatever order Lender directs in its absolute discretion.

(b) In all other cases, namely, in the event that sixty percent (60%) or more of the Improvements located on the Land have been taken or destroyed or Borrower does not elect to restore or repair the Project pursuant to clause (a) above, or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Lender may elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to accelerate the maturity date of the Notes and declare any and all indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the indebtedness secured hereby in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower.

(c) Any reduction in the indebtedness secured hereby resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied first to the final payment due under the Notes and thereafter to installments due under the Notes in the inverse order of their due date. If Borrower elects or Lender directs Borrower to restore or repair the Premises after the occurrence of a casualty or partial taking of the Premises as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Premises as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of

Borrower (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

2.4 Leases and Contracts. Mortgagor shall (a) fulfill, perform and observe each and every condition and covenant of Mortgagor as landlord or lessor contained in each of the Leases and each and every condition and covenant of Mortgagor or owner of the Premises contained in the Contracts; (b) give prompt notice to Lender of any claim of default or notice of any event or condition which, with notice or passage of time or both, would constitute a default under any of the Leases or the Contracts, whether given by or to Mortgagor, together with a complete copy of any notice expressing such claim; (c) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under the Contracts and the Leases; (d) appear in and defend any action against any one or more of Mortgagor, Lender, and the Premises arising out of, or in any manner connected with, any of the Leases or the Contracts, or the obligations or liabilities of any party thereto or any guarantor thereof; (e) furnish to Lender upon demand rent rolls and tenant data, and if requested by Lender, copies of all Leases and Contracts; and (f) set rent rates based upon reasonable market rate. Mortgagor shall not, without the prior written consent of Lender, (i) materially change the terms of the standard form of Lease, preapproved by Lender; (ii) permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the accrual thereof; (iii) assign its interest in, to or under any Contracts or Leases or the rents, issues and profits from the Leases or from the Premises to any person or entity other than Lender; or (iv) enter into any new Leases. Mortgagor shall take no action which will cause or permit the estate of any Tenant under any of the Leases to merge with the interest of Mortgagor in the Premises or any portion thereof other than the Borrower's acquisition of the fee simple interest in the Premises in accordance with the Lease Agreement. Mortgagor shall and does hereby authorize and direct each and every present and future Tenant of all or any part of the Premises to pay all rent (and any other sums due the landlord under the Lease) to Lender and to perform all other obligations of that Tenant for the direct benefit of Lender, as if Lender were the landlord under the Lease with that Tenant, immediately upon receipt of a demand by Lender to make such payment or perform such obligations, it being acknowledged that no such demand by Lender shall constitute or be deemed to constitute any assumption by Lender of any obligations of the landlord under such Lease. No Tenant shall have any responsibility to ascertain whether such demand is permitted hereunder or whether a Default shall have occurred. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such Tenant by reason of such payment of rent or other sums or performance of obligations to or for Lender; and any such payment or performance to or for Lender shall discharge the obligations of the Tenant to make such payment or performance to or for Mortgagor. Mortgagor shall and does hereby authorize and direct each and every present and future party to any Contract (a "Contract Party") to make all payments to Lender and to perform all obligations of that Contract Party for the direct benefit of Lender, as if Lender were the Mortgagor or owner of the Premises under the Contract with that Contract Party, immediately upon receipt of a demand by Lender to make such payments or perform such obligations, it being acknowledged that no such demand by Lender shall constitute or be deemed to constitute any assumption by Lender of any obligations of the Mortgagor or owner of the Premises

under such Contract. No Contract Party shall have any responsibility to ascertain whether such demand is permitted hereunder or whether a Default shall have occurred. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such Contract Party by reason of such payment or performance of obligations to or for Lender; and any such payment or performance to or for Lender shall discharge the obligations of the Contract Party to make such payment or performance to or for Mortgagor.

2.5 Operation, Care and Inspection of Premises.

2.5.1 Borrower shall operate the Premises at all times as a steel fabrication facility, and otherwise for such purposes as may be approved by Lender in writing. Mortgagor shall maintain the Premises in good condition and repair for a first class project, shall not commit or suffer any waste to the Premises or do or suffer to be done anything which would increase the risk of casualty to the Premises or any part thereof or which would result in the cancellation of any insurance policy carried with respect to the Premises.

2.5.2 Mortgagor has complied and shall continue to comply promptly with all applicable laws, rules, ordinances, regulations, judgments, governmental determinations, building codes, restrictive covenants, zoning ordinances and easements affecting the Premises or any part thereof under all applicable federal, state or local laws, rules, regulations, codes, ordinances, as the same may be amended from time to time (the "Requirements"), and shall cause the Premises to comply at all times and in all respects with all Requirements, and shall at all times operate the Premises, and perform any construction of any portion thereof, in all respects in accordance with all Requirements. Mortgagor represents and warrants to Lender that to its knowledge the Premises currently complies with the Americans with Disabilities Act of 1990 (the "ADA") to the extent the ADA applies thereto, and the Mortgagor will maintain the Premises and perform all alterations, modifications and additions to the Premises in compliance with the ADA, as the same may be amended from time to time.

2.5.3 Notwithstanding the foregoing provision of **Paragraph 2.5.2**, Mortgagor may in good faith, by appropriate proceedings and upon prior written notice to Lender, contest the validity or applicability of any such Requirement(s), so long as (a) there is no Default hereunder, (b) Mortgagor keeps Lender fully informed, (c) such contest is diligently pursued, (d) Lender determines, in its subjective opinion, that such contest suspends the obligation to comply with such Requirement(s) and that noncompliance with such Requirement(s) will not result in the closure, sale, loss, forfeiture or diminution of the Premises or any part thereof or any interest therein, (e) prior to the earlier of the commencement of such contest or the final date of required compliance, Borrower has provided Lender with additional security satisfactory to Lender plus a reasonable additional sum to cover possible interest, costs and penalties, and (f) failure to comply during the pendency of such contest will not result in any lien, charge, fine or other liability against Mortgagor, the Premises, or any part thereof or any interest therein; provided, however, that Mortgagor shall promptly comply or cause the Premises to be in compliance with the contested Requirement(s) as adjudged by a court of competent jurisdiction to be performed, and pay all interest, costs and penalties therefor, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the Requirement(s) shall be performed prior to the date any writ or order is issued under which the Premises, or any part thereof or any interest therein, may be closed, sold, lost or forfeited. Mortgagor shall not use or occupy, or allow the use or occupancy of, the Premises in any

manner which violates any Lease of or any other agreement applicable to the Premises or any applicable Requirements, or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

2.5.4 Mortgagor has delivered to Lender all permits and approvals issued with respect to the Premises and required under the Requirements, and Mortgagor shall deliver to Lender any and all additional permits, approvals or disapprovals issued with respect to the Premises within ten (10) days of Mortgagor's receipt thereof.

2.5.5 Mortgagor shall promptly repair, restore or replace, to the extent and in a manner reasonably satisfactory to Lender, any part of the Premises which may be damaged by fire or other casualty or which may be affected by any condemnation proceeding, provided that Lender thereafter makes available to Mortgagor (pursuant to a procedure satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or replacement; provided, however, that the insufficiency of or delay in receipt by Mortgagor of any such net proceeds from any insurer shall in no way relieve Mortgagor of its obligation to promptly restore, repair or replace.

2.5.6 Lender and any persons authorized by Lender shall have the right at all reasonable times to inspect the Premises, any improvements existing or being constructed thereon and all materials used or to be used in such improvements; provided, however, that nothing contained herein shall be deemed to impose upon Lender any obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections. In addition, so long as the Tenants are not unreasonably disturbed, Lender, and any persons authorized by Lender, shall have the right at all reasonable times to make such engineering studies or environmental studies as Lender may reasonably require, the cost of which shall be paid by Borrower upon demand. Provided a Phase I environmental report is delivered in advance of closing, Lender shall request that additional studies be performed only if Lender has reasonable belief that a change in the condition of the Premises has occurred.

2.5.7 Except as otherwise provided in the Credit Agreement, notwithstanding anything to the contrary herein, no part of the Premises now or hereafter pledged as security under this Instrument shall be removed, demolished or materially altered without the prior written consent of Lender.

2.6 Security Agreement. This Instrument is hereby made and declared to be a security agreement in favor of Lender encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the UCC. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Instrument shall be as prescribed herein or in the Credit Agreement, or as prescribed by general law, or as prescribed by the UCC, all at Lender's election in the discretion of Lender. Upon request or demand by Lender, Mortgagor shall at its expense assemble all personal property which is a part of the Premises, and with respect to which such request or demand is made, and make the same available to Lender at a convenient place upon the Land (or within Improvements upon the Land, as may be appropriate for the protection of such personal property) acceptable to

Lender. Any notice of sale, disposition or other action by Lender with respect to personal property which is a part of the Premises sent to Mortgagor in accordance with the provisions hereof relating to communications at least ten (10) days prior to such action shall constitute adequate and reasonable notice to Mortgagor of such action. Mortgagor agrees that all property used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Instrument, is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby and that the filing of any financing statement or statements in the records normally having to do with personal property shall not in any way affect such agreement; provided, however, that Lender may determine in its discretion that certain items of such property constitute personal property and are subject to remedies available with respect to personal property. The mention in any financing statement or statements of rights in and to (a) the proceeds of any insurance policy, or (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) any payment for damage to or losses associated with the Premises, or (d) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to a Lease or otherwise, shall not in any way limit any of the rights of Lender as determined by this Instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect thereto, that notice of Lender's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the UCC records. Except with respect to rental payments to the extent specifically provided herein to the contrary, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash or other property which are now or hereafter a part of the Premises, and Mortgagor shall promptly deliver the same to Lender without notice from Lender. Mortgagor hereby irrevocably agrees that Lender may, at the option of Lender, give notice from time to time to any one or more persons or entities who may have or owe or be expected thereafter to have or owe to Mortgagor any payment or other property of any nature which is or may become a part of the Premises, of the security interest of Lender therein or of the right, if any, of Lender to possession thereof; and, where Lender has such a right of possession, Lender may demand of such persons or entities delivery of any such payment or other property directly to Lender. If Lender shall at its option so request, Mortgagor will join in any such notices with Lender. As to those items of the property described in this Instrument that are, or are to become fixtures (within the meaning of the UCC) related to the Premises, it is intended as to those items that THIS INSTRUMENT SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Premises is situated. The names of the "Debtor" and the "Secured Party" (which are Mortgagor and Lender, respectively), the address of the "Secured Party" from which information concerning the security interest may be obtained, and the address of "Debtor", are as set forth in **Paragraph 4.9** hereof; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Mortgagor agrees to furnish Lender with notice of any change in the name, identity, corporate structure, residence, principal place of business or mailing address of Mortgagor within ten (10) days of the effective date of any such change. The provisions contained herein with respect to the security interests or security agreement rights of Lender are severable interests. Lender shall have the right to exercise any and all of its rights hereunder pursuant to the provisions of the UCC, with such rights being construed in accordance with such UCC and without waiving or relinquishing any rights which it may have as a Lender, or Lender hereunder, it being intended that this Instrument may be utilized separately as

a security agreement (alone), mortgage (alone), or mortgage and security agreement (combined). With respect to any personal property included in the granting clauses of this Instrument, which personal property may be deemed to be not affixed to the Project or may not constitute a "fixture" (within the meaning of the UCC) (which property is hereinafter referred to as "Personal Property") and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to Lender, and the Collateral and all of Mortgagor's right, title, and interest therein are hereby assigned to Lender, all to secure payment of the Obligations hereby secured. All of the terms, provisions, conditions, and agreements contained in this Instrument pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises.

2.7 After-Acquired Property. The security title and interest of this Instrument and the security title and interest created hereby will automatically attach, without further act, to all after-acquired Property attached to or used in the operation of the Premises or any part thereof.

2.8 Expenses and Payments.

2.8.1 Lender's Right to Make Certain Payments. In the event Mortgagor fails to pay or discharge the taxes, assessments, levies, liabilities, obligations and encumbrances in accordance with the Credit Agreement, or fails to keep the Premises insured or to deliver the policies, premiums paid, in accordance with the Credit Agreement, or fails to repair the Premises as herein agreed, Lender may, at its option, pay or discharge the taxes, assessments, levies, liabilities, obligations and encumbrances or any part thereof, procure and pay for such insurance or make and pay for such repairs. Lender shall have no obligation on its part to determine the validity or necessity of any payment thereof and any such payment by Lender shall not constitute a waiver of or affect any option, lien, equity or right of Lender under or by virtue of this Instrument. Nothing herein contained shall be construed as requiring Lender to advance or expend monies for any of the purposes mentioned in this Paragraph.

2.8.2 Payment of Expenses. Borrower shall pay all reasonable costs, charges and expenses, including, but not limited to, reasonable attorney's fees, disbursements and cost of abstract of title, incurred or paid at any time by Lender due to the failure on the part of Mortgagor promptly and fully to perform, comply with and abide by each and every stipulation, agreement, condition and covenant of the Credit Agreement and this Instrument. Such costs, charges and expenses, shall be immediately due and payable, whether or not there be notice, demand, attempt to collect or suit pending. All such costs, charges and expenses so incurred or paid together with such interest, shall be secured by the lien and interest of this Instrument and any other instrument securing the Credit Agreement.

2.9 Reports. Borrower shall keep and maintain or shall cause to be kept and maintained, at Mortgagor's cost and expense and in accordance with sound accounting practices and principles consistently applied, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Premises and all items of cost in

connection with the construction of any Improvements which are now or hereafter a portion of the Premises, and Lender and any persons authorized by Lender shall have the right at all reasonable times with notice to inspect such books, records and accounts and to make copies thereof.

2.10 No Conveyance. Mortgagor shall not sell, convey, transfer, lease, assign or further encumber any interest in or any part of the Premises except to the extent permitted under the provisions of the Credit Agreement. Mortgagor shall not execute or consent to any instrument or matter which might affect the title to the Premises or Mortgagor's status of compliance under one or more of the Requirements or acquire any portion of the personal property covered by this Instrument subject to any charge or lien other than the Permitted Exceptions, without the prior written consent of Lender, which consent shall be given or withheld by Lender at its discretion; and there shall be no encumbrance, pledge, conveyance, transfer or assignment of any legal or beneficial interest whatsoever in Mortgagor except as permitted under the provisions of the Credit Agreement.

2.11 No Secondary Financing. So long as any Obligations shall remain unpaid and outstanding, there shall be no secondary financing, subordinate debt instrument or other encumbrance of the Premises. Accordingly, other than the Permitted Exceptions, Mortgagor shall not encumber, pledge, convey, transfer or assign, nor shall Mortgagor suffer any encumbrance, pledge, conveyance, transfer or assignment of, any or all of its interest in the Premises without the prior written consent of Lender in each instance, which consent shall be given or withheld by Lender in its sole discretion.

2.12 The following provisions of this Paragraph shall not limit the applicability of any other provision of this Instrument but shall be in addition thereto:

2.12.1 Subject to the terms and provisions of the Credit Agreement, Mortgagor (being the debtor as that term is used in the UCC) is and will be the true and lawful owner of the Collateral, subject to no liens, charges, or encumbrances other than: the lien hereof, other liens and encumbrances benefitting Lender and no other party, and the Permitted Exceptions.

2.12.2 The Collateral is to be used by Borrower solely for business purposes.

2.12.3 Extent to the extent permitted by the Credit Agreement, the Collateral will be kept at the Premises and will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the UCC). The Collateral may be affixed to the Premises, but will not be affixed to any other real estate.

2.12.4 Extent to the extent permitted by the Credit Agreement, the only persons having any security interest in the Collateral are Mortgagor, Lender, and holders of interests pursuant to the Permitted Exceptions.

2.12.5 Except as approved by Lender or as contemplated in the Credit Agreement, no financing statement (other than financing statements showing Lender as the sole secured party) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto. Mortgagor, at its own cost and expense, upon demand, will furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts and things as Lender

may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Obligations hereby secured, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Lender, the Permitted Exceptions, and liens and encumbrances (if any) expressly permitted by the Credit Agreement or Loan Disbursing Agreement. Mortgagor will pay the cost of filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Lender to be necessary or desirable.

2.12.6 Mortgagor has no right, title or interest in, to or under any leases, tenancies, agreements or licenses, written or oral as "landlord," "lessor" or "licensor," for the use or occupancy of all or any portion of the Premises. Should Mortgagor enter into such relationship, pursuant to the terms of **Paragraph 2.4** hereof, Mortgagor agrees to enter into an assignment of leases and rents in form and substance acceptable to Lender.

DEFAULT AND REMEDIES

3.1 Defaults.

3.1.1 An "Event of Default" as defined in the Credit Agreement shall constitute an Default hereunder including, without limitation, a default in the performance or observance of any agreement or covenant or breach of any material representation or warranty contained in this Instrument, subject to the notice and cure provisions set forth in the Credit Agreement, if any.

3.1.2 If a Default shall have occurred, Lender may, at Lender's option, by notice to Borrower declare the Obligations to be immediately due and payable, whereupon the same shall become immediately due and payable, and without presentment, protest, demand or other notice of any kind, all of which are hereby expressly waived by Mortgagor. No omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

3.2 **Rights of Lender Upon Default.** If a Default shall have occurred, then the entire Obligations or any part thereof shall, at the option of Lender and without notice or demand, which is hereby expressly waived immediately become due and payable without notice or demand, TIME BEING OF THE ESSENCE, and Lender shall have, in addition to all remedies afforded Lender pursuant to the Credit Agreement, the remedies of a secured party under the UCC, at Lender's option and without notice or demand, which is hereby expressly waived, may do any one or more of the following (and, if more than one, either concurrently or independently, and in such order as Lender may determine in its discretion), all without regard to the adequacy or value of the security for the Obligations:

3.2.1 Enter upon and take immediate and exclusive possession of the Premises and any or all of the collateral without judicial process; at Lender's option, operate the Premises; at Lender's option, exclude Mortgagor and its agents and employees wholly therefrom; at Lender's option, employ a managing agent of the Premises; and at Lender's option, exercise any one or more of the rights and powers of Mortgagor to the same extent as Mortgagor could, either in its own name, or in the name of Mortgagor; and receive the rents, incomes, issues and profits of the Premises.

Lender shall have no obligation to discharge any duties of a landlord to any Tenant or to incur any liability as a result of any exercise by Lender of any rights hereunder; and Lender shall not be liable for any failure to collect rents, issues, profits or revenues, nor liable to account for any rents, issues, profits or revenues unless actually received by Lender.

3.2.2 Apply for and obtain, as a matter of strict right, without notice and without regard to the solvency of any party bound for its payment, the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the incomes, rents, issues, profits and revenues thereof.

3.2.3 Pay, perform or observe any term, covenant or condition of this Instrument, the Credit Agreement and any of the other Loan Documents and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Lender with interest thereon at the Default Rate provided in the Credit Agreement. The necessity for any such actions and the amounts to be paid shall be determined by Lender in its reasonable discretion. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Mortgagor hereby acknowledges and agrees that the remedies set forth in this **Paragraph 3.2.3** shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith (subject to those provisions set forth in **Paragraph 2.8** above, relating to the limitation on Mortgagor's liability for certain costs incurred by Lender upon Lender's takeover of the Premises) shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor with interest thereon at the Default Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Mortgagor of a voluntary case or the filing against Mortgagor of an involuntary case pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Mortgagor, Lender, the Obligations or any of the Loan Documents.

3.2.4 This Mortgage being subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, the Lender shall be authorized, at its option, whether or not possession of the Project, after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in Shelby County, Alabama, to sell the Project (or such part or parts thereof as the Lender may from time to time elect to sell) in front of the courthouse door of such county, at public outcry, to the highest bidder for cash. The Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Instruments and may purchase the collateral, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale any part or all of the Project, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. If the Lender, in the exercise of the power of sale herein given, elects to sell the Project in parts or parcels, sales thereof

may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Project not previously sold shall have been sold or all the Obligations shall have been paid in full. The Mortgagor hereby waives any equitable rights otherwise available to either of them with respect to marshalling of assets hereunder.

3.2.5 (a) The Lender shall have and may exercise with respect to any or all of the Collateral all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner, to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Lender shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Lender, at its option and in its sole discretion, to repair, restore or otherwise prepare the Collateral for sale or lease or other use or disposition. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the Lender with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of the Lender existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of **Paragraph 4.9** below, at least ten (10) days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

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

3.2.6 The Mortgagor hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Project sold at foreclosure good and sufficient deeds of conveyance, assignments of leasehold rights or bills of sale thereto.

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

(1) to terminate the license granted to the Mortgagor in **Paragraph 1.1(f)** hereof to collect the Rents, and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Obligations in such order and amounts as the Lender may choose (or hold the same in a reserve as security for the Obligations);

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

(3) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor (or either of them) under this Instrument.

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

3.2.8 The Lender shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Instrument, but without declaring all of the Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Instrument shall remain in full force and effect as though no sale had been made under the provisions of this **Paragraph 3.2.8**. Several sales may be made under the provisions of this Section without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Project for any matured part of the Obligations

without exhausting any power of foreclosure and the power to sell the Project for any other part of the Obligations, whether matured at the time or subsequently maturing.

3.2.9 The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted provided for (a) any appraisalment before sale or any portion of the Project (commonly known as appraisalment laws) or (b) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

3.2.10 Upon a Default, the Lender may, at its sole option, terminate the Lease Agreement where the Project is leased by the Borrower, it being agreed by Mortgagor that the Lease Agreement is subject and subordinate in all respects to this Instrument and to all amendments hereto hereafter made.

3.2.11 Proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (a) to enforce payment of the Obligations or the performance of any term, covenant, condition or agreement of this Instrument, the Credit Agreement or any of the other Loan Documents or any other right or (b) to pursue any other remedy available to Lender.

3.2.12 Lender may apply any moneys and proceeds received by Lender as a result of the exercise by Lender of any right conferred under this **Paragraph 3.2** in such order as Lender in its discretion may elect against (a) all costs and expenses, including reasonable attorneys' fees actually incurred, incurred in connection with the operation of the Premises, the performance of Mortgagor's obligations under the Leases and the collection of the rents thereunder; (b) all costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Obligations, including those incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Obligations; (c) at Lender's option, and without waiving or curing any default thereunder, any or all accrued interest and charges on the Obligations; (d) at Lender's option, and without waiving or curing any default thereunder, any and all unpaid principal on the Obligations; (e) any other amounts owing on the Obligations; (iv) any other amounts owing under the Loan Documents; and (f) accrued interest and charges on any or all of the foregoing. The remainder, if any, shall be paid to Mortgagor or any person or entity lawfully entitled thereto.

3.3 Cumulative Remedies. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in the Credit Agreement or any of the Loan Documents or in law or equity or by statute, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the Obligations shall have been paid in full.

3.4 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Instrument by receiver, entry or otherwise or in the event Lender commences judicial proceedings to foreclose this Instrument, and such proceedings shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case (a) Mortgagor and Lender shall be restored to their former positions and rights, (b) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (c) each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall and shall be deemed to be a continuing Default, (d) neither the Credit Agreement, this Instrument nor the other Loan Documents shall be affected by such withdrawal, discontinuance or abandonment, and (e) Mortgagor shall pay all expenses incurred by the Lender, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any); and Mortgagor hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

3.5 No Waiver. No delay or omission by Lender to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein, and every right, power and remedy given by this Instrument to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender to or of any Default shall be deemed or construed to be a consent or waiver to or of any other Default. No delay, indulgence, departure, act or omission by Lender or any holder of the Obligations shall release, discharge, modify, change or otherwise affect the original liability under the Credit Agreement or any other obligation of Mortgagor or any subsequent purchaser of the Premises or any part thereof, or any maker, surety or guarantor or any indemnitor, or preclude Lender from exercising any right, privilege or power granted herein or alter the security title, security interest or lien hereof. Lender may at any time, without notice to or further consent from Mortgagor, surrender or substitute any Premises or other security of any kind or nature whatsoever securing the Obligations or release any guarantor or any indemnitor, and no such action will release Mortgagor's obligations hereunder or alter the effect hereof.

3.6 Cross-Default. A Default by Mortgagor hereunder shall constitute an Event of Default under the Credit Agreement and each of the other Loan Documents and an Event of Default by Borrower under the Credit Agreement or any of the other Loan Documents shall constitute a Default hereunder.

3.7 Advances. This Instrument shall secure payment of the Obligations whether the entire amount shall have been advanced to Borrower at the date hereof or at a later date, and whether or not principal amounts repaid by Borrower and applied against the principal amount due on the Obligations secured hereby are subsequently again loaned to Borrower for purposes of renovations and improvements to the Premises, all of which shall be deemed to be obligatory advances hereunder. This Instrument also shall secure any and all future advances made hereunder, including additional sums which hereafter may be loaned and evidenced by a note secured by this Instrument, and all costs, taxes, assessments, insurance, expenses, and attorneys' fees which Lender may make, pay or incur under any provision of this Instrument for the protection of Lender or any of the rights

of Lender in connection with the Premises, costs of foreclosure proceedings commenced and subsequently abandoned, or any dispute or litigation in which Lender or the holder of the Obligations may become involved by reason of or arising out of this Instrument, all of which sums shall be secured by this Instrument, including the extent to which the aggregate of such sums may exceed the principal amount stated herein, with interest thereon at the default rate specified in the Credit Agreement. This Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance with respect to all sums so secured. Any agreement, extension, renewal, or modification of the Credit Agreement made by Borrower and Lender pursuant to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

GENERAL CONDITIONS

4.1 Successors and Assigns. This Instrument shall inure to the benefit of and be binding upon Mortgagor and Lender and their respective heirs, executors, legal representatives, successors and assigns (but in the case of assignees of Mortgagor, only if and to the extent that such assignment is in compliance with the terms hereof and Lender has consented in writing to Mortgagor's assignment of its rights or obligations hereunder to such assignees). Whenever a reference is made in this Instrument to "Mortgagor" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Mortgagor or Lender, whether by voluntary action of the parties or by operation of law, as the case may be.

4.2 Lender's Rights of Assignment. This Instrument is assignable by Lender, and any assignment by Lender shall operate to vest in the assignee all rights and powers conferred upon and granted to Lender hereunder; and, in the event of any such assignment of the entire interest of Lender in the Loan Documents, including, without limitation, all rights, obligations and interests in all accounts held by Lender pursuant thereto, Lender shall be relieved of all obligations and liabilities under the Loan Documents; neither the Loan Documents nor the proceeds of the loan contemplated by the Loan Documents may be assigned by Borrower without the prior consent of Lender, which may be given or withheld at the discretion of Lender.

4.3 Terminology. All personal pronouns used in this Instrument, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles, sections, paragraphs, and subsections are for convenience only and neither limit nor amplify the provisions of this Instrument. If more than one person or entity constitutes, collectively, Borrower or Mortgagor, all of the provisions of this Instrument and the Loan Documents referring to Borrower or Mortgagor shall be construed to refer to each such person or entity individually as well as collectively; provided that any time the collective term Mortgagor is used in a context which can reasonably only refer to Borrower, then such use of the term Mortgagor shall refer solely to Borrower and not also to the Vincent IDB; and, if Borrower or Mortgagor is a partnership, all of the provisions of the Loan Documents referring to Borrower or Mortgagor, as the case may be, shall be construed to apply to each of the general partners of Borrower or Mortgagor, as the case may be, and of any and all further tiers of general partners in the structures of Borrower or Mortgagor, as the case may be.

4.4 Severability. If any provision of this Instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Instrument and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.5 Applicable Law. This Instrument shall be interpreted, construed and enforced according to the laws of the State of Alabama.

4.6 No Oral Modifications. Neither this Instrument nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

4.7 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor hereunder.

4.8 Further Assurance. At any time and from time to time, upon request by Lender, Mortgagor will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of Mortgagor under this Instrument. Upon any failure by Mortgagor so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor so to do. The foregoing appointment is coupled with an interest and is irrevocable by death or otherwise.

4.9 Communications. All notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under the Loan Documents shall be given in accordance with the provisions of the Credit Agreement to the addresses set forth below:

If to Borrower:

Shelby Steel, LLC
Two Office Park Circle
Suite 1
Birmingham, Alabama 35223
Attn: Hewes Hull, Esq.
Fax No.: (205) 870-5146

with copies to:

Sirote & Permutt, P.C.
2311 Highland Avenue
Birmingham, Alabama 35205
Attn: Steven A. Brickman, Esq.
Fax No.: (205) 930-5267

If to the Vincent IDB:

The Industrial Development Board of the Town of
Vincent
P.O. Box 557
Columbiana, Alabama 35051
Attn: Hewitt L. Conwill
Fax No.: (205) 669-6701

If to Lender:

National Canada Finance Corp.
200 Galleria Parkway, Suite 800
Atlanta, Georgia 30339
Attn: J. Michael Smith
Fax No.: (770) 980-9531

with copies to:

Paul, Hastings, Janofsky & Walker LLP
600 Peachtree Street, NE, Suite 2400
Atlanta, Georgia 30308
Attn: Kathleen O. Currey, Esq.
Fax No. (404) 815-2424

4.10 Modifications, Etc. Mortgagor hereby consents and agrees that Lender may at any time and from time to time, without notice to or further consent from Mortgagor, either with or without consideration, surrender any Premises or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the Obligations; substitute for any collateral so held by it, other collateral of like kind, or of any kind; agree to modification of the terms of the Credit Agreement or the other Loan Documents; extend or renew the Credit Agreement or any of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Credit Agreement or the other Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Obligations, this Instrument, or any other Loan Documents; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Obligations or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Instrument in any way or afford Borrower any recourse against Lender. The provisions of this Instrument shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

4.11 Survival of Certain Agreements. Notwithstanding the repayment of the Obligations and the cancellation or transfer of the Loan Documents, or any foreclosure of, or sale under power contained in, this Instrument, or the acquisition by Lender of title to the Premises in lieu of foreclosure, or any other realization upon collateral securing the Obligations, all agreements of Borrower contained herein or in any of the other Loan Documents to pay the costs and expenses of Lender in connection with the loan contemplated by the Loan Documents and all agreements of Borrower contained herein or in any of the other Loan Documents to indemnify and/or hold harmless Lender shall continue in full force and effect so long as there exists any possibility of expense or liability on the part of Lender.

4.12 No Obligation to Third Parties. The Loan Documents are made solely for the benefit of Lender. No tenant nor any party involved with the construction of any improvements on any part of the Premises nor any other party whatsoever shall have standing to bring any action against Lender as the result of the Loan Documents, or to assume that Lender will exercise any remedies provided herein, and no party other than Lender shall be deemed to be a Lender of any provision of the Loan Documents, any and all of which may be freely waived in whole or in part by Lender in its discretion at any time. Nothing contained in the Loan Documents shall be deemed to impose upon Lender any liability for the performance of any obligation of Borrower under any of the Leases or Contracts, except as expressly provided in any subordination, nondisturbance and attornment agreement hereafter executed by Lender and a Tenant and except those arising from and after Lender takes possession of the Premises after a Default. Nothing contained in this *Paragraph 4.12* is intended to deprive Borrower of the benefit of any covenant by Lender in favor of Borrower contained in the Loan Documents.

4.13 Miscellaneous. The Loan Documents contain the entire agreement between Borrower and Lender relating to the loan transaction contemplated thereby and supersede entirely any and all prior written or oral agreements with respect thereto; and Borrower and Lender hereto acknowledge and agree that there are no contemporaneous oral agreements with respect to the subject matter hereof. Nothing contained in the Loan Documents shall be construed to create an agency, partnership or joint venture between Borrower and Lender. When anything is described or referred to in the Loan Documents in general terms and one or more examples or components of what has been described or referred to generally is associated with that description (whether or not following the word "including"), the examples or components shall be deemed illustrative only and shall not be construed as limiting the generality of the description or reference in any way. Wherever in the Loan Documents the approval or consent of Lender is required or permitted, or wherever a requirement of Lender or the standard of acceptability or satisfaction of Lender must be determined, such approval, consent or determination of Lender shall not be unreasonably exercised; provided, however, that wherever it is indicated that such approval, consent or determination is to be given or made at the option or in the discretion or judgment of Lender, then Lender may grant or withhold such approval or consent or make such determination without restriction in its sole and absolute discretion. All exhibits referred to in the Loan Documents are by such reference incorporated into the Loan Documents as if fully set forth therein.

4.14 Indemnity. Borrower shall pay, indemnify, defend, and hold harmless Lender pursuant to the provisions of the Credit Agreement.

4.15 Greater Estate. In the event that Borrower is the owner of a leasehold estate with respect to any portion of the Premises and Borrower obtains a fee estate in such portion of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of Borrower, be and become subject to the security title and lien hereof.

4.16 Commercial Loan Purpose.

4.16.1 The interest of Lender under this Instrument and the liability and obligation of Borrower for the payment of the Obligations and secured by this Instrument arise from a "commercial transaction", and to the extent permitted by law, Borrower waives any and all rights that Borrower may have to notice, except as expressly provided in this Instrument, prior to seizure by Lender of any interest in personal Premises of Borrower which constitutes part of the Premises, whether such seizure is by writ of possession or otherwise.

4.16.2 Borrower represents and warrants to Lender that neither the Premises nor any part thereof is used as a dwelling place by Borrower at the time this Instrument is entered into, and to the extent permitted by law, Borrower waives any and all rights that Borrower may have to notice, except as expressly provided in this Instrument, prior to Lender's exercise of the power of sale contained in this Instrument.

4.17 Subrogation. To the extent that proceeds of the advances under this Instrument are used to pay any outstanding lien, charge or prior encumbrance against the Premises, such proceeds or advances shall be deemed to be advanced by the Lender at the Borrower's request, and the Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

4.18 Waiver Of Appraisement, Valuation, Stay, Extension and Redemption Laws. The Mortgagor agrees to the full extent permitted by law, that in case of a Default by the Mortgagor under this Instrument, neither the Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Instrument, or the absolute sale of the Premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the Premises or any portion thereof marshaled upon any foreclosure of the lien and interest hereof.

4.19 Defeasance. If (i) the Borrower shall pay in full and discharge all the Obligations; and (ii) the Mortgagor shall then have kept and performed each and every obligation, covenant, duty, condition and agreement herein or in the Credit Agreement (or both) imposed on or agreed to by either of them; and (iii) the Commitments shall have been terminated; then this Instrument and the grants and conveyances contained herein shall become null and void, and the

Premises shall revert to the Mortgagor, and the entire estate, right, title and interest of the Lender shall thereupon cease; and the Lender shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instruments acknowledging satisfaction of this instrument and terminating all financing statements filed in connection herewith; otherwise, this Instrument shall remain in full force and effect. Notwithstanding anything to the contrary contained in this *Paragraph 4.19* or elsewhere in this Instrument, it is expressly understood and agreed that, although there may be from time to time occasions when no Obligations shall be outstanding, this Instrument and the lien thereof and security interests created thereby shall nevertheless remain in full force and effect, and none of the estate, right, title and interest of the Lender passing by this Instrument shall divest nor shall the Collateral revert to the Mortgagor, so long as any one or more or all of the following circumstances exist:

- (1) any Obligations are outstanding; or
- (2) the Commitments or either of them remain open.

4.20 WAIVER OF JURY TRIAL. MORTGAGOR AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTER-CLAIM WHETHER IN CONTRACT OR TORT, AT LAW OR EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS INSTRUMENT, THE CREDIT AGREEMENT OR THE LOAN DOCUMENTS. NO OFFICER OR OTHER REPRESENTATIVE OF LENDER HAS ANY AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

4.21 Limited Liability of the Vincent IDB. No provision hereof shall be construed to impose a charge against the general credit of the Vincent IDB or any personal or pecuniary liability upon the Vincent IDB. Further, no officials or employees of the Vincent IDB shall have any personal or pecuniary liability whatsoever hereunder or any liability for the breach by the Vincent IDB of any of the agreements on its part herein contained.

Nothing in this Section 4.21 shall be construed to release the Vincent IDB from the performance of any of the agreements on its part herein set forth. In the event that the Vincent IDB shall fail to perform any such agreement on its part, the Lender may institute such action against the Vincent IDB as the Lender may deem necessary to compel performance or may pursue such other remedies for non-performance as may be available to the Lender so long as such action shall not violate the agreements of the Lender set forth in the preceding paragraph.

4.22 Leasehold Rider. The terms and provisions of the Leasehold Rider attached hereto are expressly incorporated into this Instrument and made a part hereof.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower and the Vincent IDB together as Mortgagor have caused this Instrument to be executed and delivered under seal by its duly authorized officers, as of the day and year first above written.

SHELBY STEEL, LLC, an Alabama limited liability company

By: H.T.H.
Print Name: Hewes T. Hall
Title: MANAGER

Witness
Attest: [Signature]
Print Name: Pete J. Hardin
Title: _____

[CORPORATE SEAL]

THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF VINCENT,
an Alabama corporation

By: [Signature]
Print Name: Calvin Smith
Title: Chairman

Attest: [Signature]
Print Name: Hewitt L. Conwill
Title: Secretary

[CORPORATE SEAL]

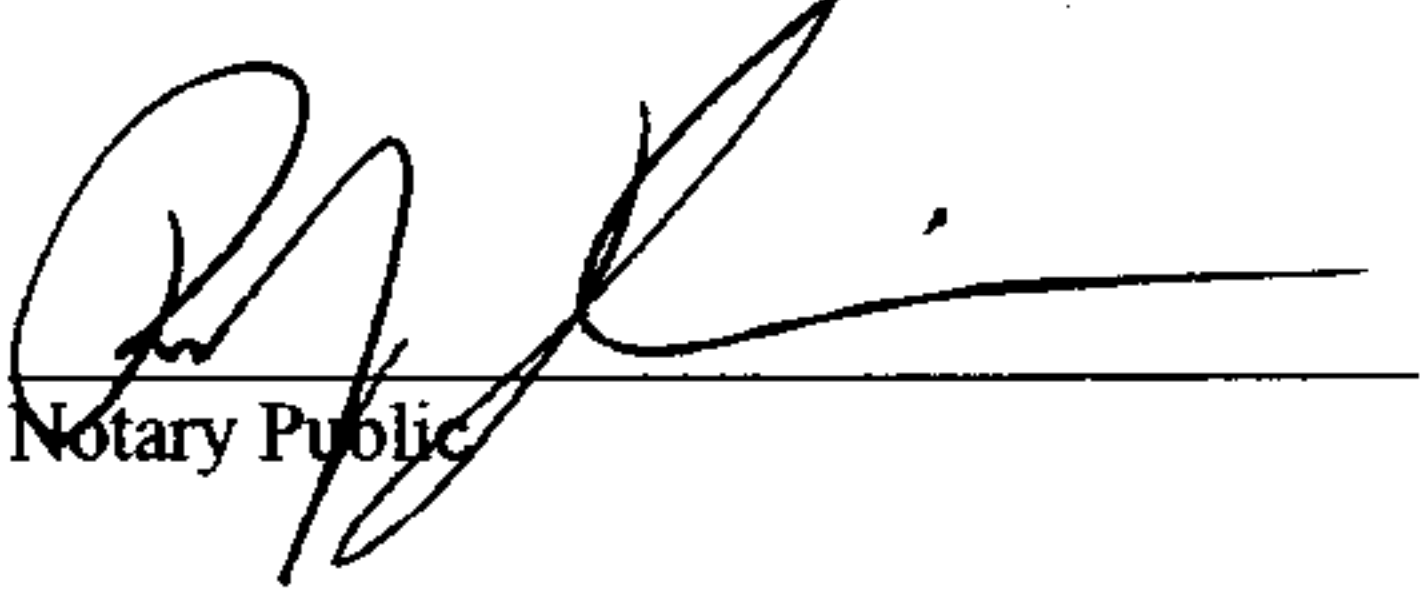
STATE OF ALABAMA

: SS :

COUNTY OF Jefferson

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Hewes T. Hall, whose name is Manager of Shelby Steel, LLC, an limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this the 21st day of December, 1999.


Notary Public

AFFIX SEAL

My commission expires: December 30, 2002

STATE OF ALABAMA

: SS :

COUNTY OF Shelby

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Calvin Smith, whose name is Chairman of The Industrial Development Board of the Town of Vincent, an Alabama public corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this the 20th day of December, 1999.


Notary Public

AFFIX SEAL

My commission expires: December 30, 2002

EXHIBIT A

Begin at the Southeast corner of the Southwest 1/4 of the Northeast 1/4, Section 23, Township 19 South, Range 2 East, thence run West along the South line of said quarter-quarter section a distance of 356.27 feet; thence turn an angle of 68 degrees, 39 minutes 10 seconds to the right and run a distance of 713.02 feet to the north line of the South 1/2 of the South 1/2 of said Northeast 1/4; thence turn an angle of 111 degrees 20 minutes 20 seconds to the right and run along the north line of said South 1/2, South 1/2, Northeast 1/4, a distance of 655.94 feet to the west right of way of the Central of Georgia Railroad; thence turn an angle of 68 degrees 40 minutes 30 seconds to the right and run along said right of way a distance of 712.94 feet to the South line of the Southeast 1/4 of the Northeast 1/4 of said section; thence turn an angle of 111 degrees 20 minutes to the right and run a distance of 299.67 feet to the point of beginning. All of said property being situated in the South 1/2 of the Southwest 1/4 of the Northeast 1/4 and the South 1/2 of the Southeast 1/4 of the Northeast 1/4 in Section 23, Township 19 South, Range 2 East Huntsville Meridian, in Shelby County, Alabama.

SCHEDULE B

1. Taxes for tax year 2000 and subsequent years, not yet due and payable;
2. Rights of way in favor of Alabama Power Company recorded in Real Volume 5, Page 363.
3. Right of way in favor of Alabama Power Company recorded in Volume 101, Page 571; Volume 111, Page 417; Volume 101, Page 572; Volume 112, Page 469, and as shown on survey of Laurence D. Weygand dated November 29, 1999.
4. Easement for ingress and egress recorded in Volume 298, Page 897 and as shown on survey of Laurence D. Weygand dated November 29, 1999.
5. Loss or damage resulting from failure to comply with the terms and conditions of that certain lease dated 11-1-76 and recorded in Book 302, Page 618.
6. Coal, oil, gas and mineral and mining rights and all rights incident thereto including release of damages are not insured herein.
7. Encroachment of one story frame residence, garden, wood pile and collapsing shed in northwest corner as shown on survey of Laurence D. Weygand dated November 29, 1999.

LEASEHOLD RIDER

This Instrument constitutes an encumbrance against the leasehold premises and leasehold estate of Borrower pursuant to the Lease Agreement described in *Paragraph 1.1 (c)* of this Instrument.. All references to the "Premises" in this Instrument shall include reference to the leasehold estate of Borrower under the Lease Agreement.

(a) With respect to the Lease Agreement, Borrower and the Vincent IDB hereby represent, covenant and warrant that:

(i) The Lease Agreement is in full force and effect and unmodified, except as set forth herein or as disclosed to Lender in writing.

(ii) Except as disclosed to Lender in writing, all rents (including additional rents and other charges) reserved in the Lease Agreement and all services or other consideration to be provided or paid under the Lease Agreement have been paid or provided to the extent they were payable or required prior to the date hereof.

(iii) There is no existing default under the provisions of the Lease Agreement or in the performance of any of the terms, covenants, conditions, or warranties thereof on the part of Borrower or the Vincent IDB except as has been previously disclosed to Lender in writing.

(iv) Borrower has not sublet the leasehold premises or assigned the Lease Agreement.

(b) Borrower and the Vincent IDB shall at all times comply in all material respects with the covenants and conditions contained in the Lease Agreement.

(c) If both the landlord's and tenant's estates under the Lease Agreement or any portion thereof shall at any time become vested in one owner, this Instrument and the lien and interest created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien and interest created by this Instrument pursuant to the provisions hereof, any leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant. Borrower further covenants and agrees that, in case it shall acquire the fee title, or any other estate, title or interest in the leasehold premises covered by the Lease Agreement, including, without limitation, pursuant to the purchase option or right of first refusal, if any, set forth in the Lease Agreement, this

Instrument shall attach to or cover and be a lien and interest upon such other estate so acquired, and such other estate so acquired by Borrower shall be considered as granted, bargained, sold, transferred, assigned or conveyed to Lender and the lien and interest hereof spread to cover such estate with the same force and effect as though specifically herein granted, bargained, sold, transferred, assigned or conveyed.

(d) An additional Default hereunder shall be the occurrence of a breach or default by Borrower or the Vincent IDB under the Lease Agreement. Borrower hereby authorizes Lender to take such actions as Lender reasonably deems necessary and to expend such sums as the Lender deems appropriate in order to cure any breach or default by Borrower under the Lease Agreement. Any sums so expended shall be: (i) secured hereby; (ii) immediately due and payable; and (iii) bear interest rate provided for in an Event of Default under the Credit Agreement. Borrower hereby authorizes Lender to rely upon the statements and certifications of the Vincent IDB in the Lessor Certificate.

Inst # 1999-51878

**12/23/1999-51878
03:58 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
032 NWS 87.00**