

STATE OF ALABAMA )

SHELBY COUNTY )

Inst # 2002-11076

03/07/2002-11076  
12:30 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE  
016 CH

THIS IS A FUTURE ADVANCE MORTGAGE

**REAL PROPERTY MORTGAGE**  
(Shelby County, Alabama)

THIS REAL PROPERTY MORTGAGE ("**Mortgage**"), made as of March 6<sup>th</sup>, 2002 is made and executed by ELASTIC CORPORATION OF AMERICA, INC., a Delaware corporation ("**ECA**" or "**Mortgagor**"), having its principal offices at 445 Highway 70 West, Columbiana, Alabama 35051, in favor of AMSOUTH BANK (in its individual capacity, "**ASB**") having an office at 1900 5th Avenue North, Birmingham, Alabama 35203, as agent (ASB in its capacity as agent being hereinafter referred to as "**Agent**") for Lenders (as "**Lenders**" is defined in the Loan and Security Agreement referred to below).

**RECITALS**

I. Pursuant to the terms of a certain Loan and Security Agreement of even date herewith (said Loan and Security Agreement, together with all amendments, supplements, modifications and replacements thereof, being hereinafter referred to as the "**Loan Agreement**") by and between Worldtex, Inc., Regal Manufacturing Company, Inc., and ECA, and such other borrowers as may from time to time become signatory to the Loan Agreement as borrowers (collectively, "**Borrowers**"), ASB, as a Lender and as Agent for all Lenders, and AmSouth Capital Corp., as Administrative Agent ("**Administrative Agent**"), and Lenders, Lenders have agreed to make loans to Borrowers and extend other financial accommodations to Borrowers in an aggregate principal amount of \$38,000,000 (collectively, the "**Loans**"). The Loans consist of (i) revolving loans in a maximum principal amount of \$25,000,000 (the "**Revolving Loans**"), and (ii) term loans in the aggregate principal amount of \$13,000,000 (the "**Term Loans**"), which term loans are evidenced by one or more notes in the aggregate principal amount of \$13,000,000 (said notes, together with all amendments, supplements, modifications and full or partial replacements thereof, being hereinafter referred to as the "**Notes**"). In addition, in the Loan Agreement, Borrowers have agreed to reimburse ASB for all amounts drawn under a certain letter of credit in the amount of \$8,550,000, as said letter of credit may be amended, modified, renewed or replaced from time to time, which reimbursement obligations may be satisfied with the proceeds of the Loans; provided, however, the aggregate principal amount of the Loans and such reimbursement obligations (whether satisfied by the proceeds of the Loans or otherwise), shall not exceed \$38,000,000. The terms and provisions of the Notes and the Loan Agreement are hereby incorporated by reference in this Mortgage. The rate or rates of interest payable under the Loan Agreement may vary from time to time.

II. This is a FUTURE ADVANCE MORTGAGE. The indebtedness secured hereby consists of (a) a revolving line of credit to be made available by Agent and/or Lenders to Mortgagor, pursuant to which advances may be made, prepaid and reborrowed from time to time, and (b) all other indebtedness, obligations and liabilities of Mortgagor to Agent and/or Lenders due or to become due and now existing or hereafter incurred, contracted or arising.

### GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Notes and the Loan Agreement and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Notes, the Loan Agreement and any other documents and instruments now or hereafter executed by Mortgagor or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Notes, the Loan Agreement and any and all renewals, extensions, amendments and replacements of this Mortgage, the Notes, the Loan Agreement and any such other documents and instruments (the Notes, the Loan Agreement, this Mortgage, such other documents and instruments now or hereafter executed and delivered in connection with the Loans, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "**Loan Instruments**") (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "**Borrowers' Liabilities**"), Mortgagor does hereby grant, bargain, sell, assign and convey unto Agent and grant to Agent a security interest in the following described property subject to the terms and conditions herein:

(A) The land located in Shelby County, Alabama, legally described in attached **Exhibit A ("Land")**;

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all machinery, appliances, equipment, furniture and all other personal property of every kind or nature owned by Mortgagor and which constitute fixtures with respect to the Land, together with all extensions, additions, improvements, substitutions and replacements of the foregoing ("**Improvements**");

(C) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("**Appurtenances**");

(D)(i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent



domain, of the Land, Improvements or Appurtenances or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any part thereof; and, except as otherwise provided herein or in the Loan Agreement, Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein or in the Loan Agreement, to apply the same toward the payment of the indebtedness and other sums secured hereby; and

(iii) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances;

(E) All rents, issues, profits, income and other benefits now or hereafter owned by Mortgagor arising from or in respect of the Land, Improvements or Appurtenances (the "**Rents**"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the revocable license given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(F) Any and all leases, licenses and other occupancy agreements granted by Mortgagor now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "**Leases**"), subject, however, to the revocable license given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(G) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(H) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses is hereinafter referred to as the "**Mortgaged Property.**"

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

## **ARTICLE ONE COVENANTS OF MORTGAGOR**

Mortgagor covenants and agrees with Agent as follows:

1.1. **Performance under Loan Agreement, Notes, Mortgage and Other Loan Instruments.** Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof, of the Loan Agreement and of the Notes.

1.2. **General Covenants and Representations.** Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except those set forth on Schedule B of the loan policy of title insurance accepted by Agent insuring the lien of this Mortgage (such liens, security interests, charges and encumbrances being hereinafter referred to as the "**Permitted Encumbrances**"); and (b) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property, subject only to the Permitted Encumbrances until Borrowers' Liabilities have been paid in full and all obligations of Agent and Lenders under the Loan Agreement have been terminated.

1.3. **Compliance with Laws and Other Restrictions.** Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply, to the extent required by the Loan Agreement with, and will continue to comply, to the extent required by the Loan Agreement, with all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations.

1.4. **Taxes and Other Charges.**

1.4.1. **Taxes and Assessments.** Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrowers' Liabilities; provided, however, that Mortgagor may in good faith contest taxes in accordance with the provisions of the Loan Agreement.

1.4.2. **Intentionally deleted.**

1.5. **Mechanic's and Other Liens.** Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property; provided, however, that Mortgagor may in good faith, by appropriate proceedings, contest liens in accordance with the provisions of the Loan Agreement.



**1.6. Insurance and Condemnation.**

**1.6.1. Insurance Policies.** Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of Agent, until Borrowers' Liabilities are paid in full, such policies of insurance as are required by the Loan Agreement.

**1.6.2. Adjustment of Loss; Application of Proceeds.** Except as otherwise may be provided by the Loan Agreement, Agent is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering the Mortgaged Property and to collect and receive the proceeds from any such policy or policies. The entire amount of such proceeds, awards or compensation shall be applied as provided in the Loan Agreement.

**1.6.3. Condemnation Awards.** Except as provided in the Loan Agreement, Agent shall be entitled to collect all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Except as provided in the Loan Agreement, Agent is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith the entire amount of any such compensation, awards, damages, or proceeds shall be applied as provided in the Loan Agreement. In the event that Mortgagor acquires any real estate to replace all or any portion of the Mortgaged Property which became subject to any such action or proceeding, Mortgagor shall execute and deliver to Agent a mortgage of such replacement property, which mortgage shall be in substantially the same form as this Mortgage, and Mortgagor shall deliver to Agent a survey and a title insurance policy and such other items in connection with such replacement property as Agent reasonably may require, all in form and substance reasonably satisfactory to Agent.

**1.6.4. Obligation to Repair.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Section 1.6.3, Mortgagor shall, to the extent required by the Loan Agreement, promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are made available to Mortgagor or are sufficient to pay the cost of such restoration or repair.

**1.7. Agent May Pay; Default Rate.** Upon Mortgagor's failure to pay any amount required to be paid by Mortgagor under any provision of this Mortgage, Agent may pay the same to the extent permitted by the Loan Agreement and the same shall be repaid by Mortgagor as required by the Loan Agreement.

1.8. **Care of the Mortgaged Property.** As provided in the Loan Agreement, Mortgagor shall preserve and maintain the Mortgaged Property in good operating condition, ordinary wear and tear excepted. Mortgagor shall not, without the prior written consent of Agent, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof. Except to the extent permitted by the Loan Agreement, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be altered in any material manner without the prior written consent of Agent.

1.9. **Transfer or Encumbrance of the Mortgaged Property.** Except as permitted by the Loan Agreement, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of the Mortgaged Property, any part thereof, or any interest therein, without the prior written consent of Agent having been obtained.

1.10. **Further Assurances.** At any time and from time to time, upon Agent's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Agent, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Agent, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Agent may consider reasonably necessary in order to effectuate or perfect, or to continue and preserve the obligations under, this Mortgage.

1.11. **Assignment of Rents.** The assignment of rents, income and other benefits contained in Section (E) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Agent shall be entitled, at its option, upon the occurrence and during the continuance of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Agent takes possession of such property. Such assignment and grant shall continue in effect until Borrowers' Liabilities are paid in full and all obligations of Agent and Lenders under the Loan Agreement have been terminated, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Agent pursuant to such grant, whether or not foreclosure proceedings have been instituted. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Mortgagor shall have a revocable license to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days prior to the due date thereof.

1.12. **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.



1.13. **Leases Affecting Mortgaged Property.** Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. The assignment contained in Sections (E) and (F) of the Granting Clauses shall not be deemed to impose upon Agent any of the obligations or duties of the landlord or Mortgagor provided in any lease.

1.14. **Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice.

1.15. **Execution of Leases.** Except as permitted by the Loan Agreement, Mortgagor shall not permit any leases to be made of the Mortgaged Property, or to be modified, terminated, extended or renewed, without the prior written consent of Agent.

1.16. **Expenses.** In the event of foreclosure hereof, Agent shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of expenses to be incurred after entry of the decree of foreclosure.

1.17. **Environmental Indemnity.** Mortgagor shall be solely responsible for, and shall indemnify and hold harmless Agent, Administrative Agent and Lenders, and the directors, officers, employees, agents, successors and assigns of each of them, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loans or otherwise and regardless of by whom caused, whether by Mortgagor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Mortgagor or any predecessor in title or any such adjacent land owner or any third person) of any Contaminant (as defined in the Loan Agreement) or any hazardous waste (as defined in 40 CFR Part 261 or any equivalent Environmental Law (as defined in the Loan Agreement)) on, under or about the Mortgaged Property; including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, damages, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of any Contaminant or such hazardous waste and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including attorneys' fees, incurred at, before or after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses. The obligations of Mortgagor under this subsection shall survive any of the foreclosure of this Mortgage, the repayment of Borrowers' Liabilities, or other satisfaction of the indebtedness secured by this Mortgage, whether by deed in lieu of foreclosure or otherwise.

## **ARTICLE TWO DEFEASANCE AND DEFAULTS**

2.1. **Defeasance.** This Mortgage is made upon the condition that if (i) with the exception of contingent indemnification obligations for which no claim has been

asserted, all of Borrowers' Liabilities (as defined in the Granting Clauses, including but not limited to, all future advances and other future indebtednesses, obligations and liabilities included therein) are paid in full, and (ii) Mortgagor reimburses Agent and Lenders for any amounts they have paid in respect of liens, impositions, prior mortgages, insurance premiums, repairing or maintaining the Mortgaged Property, performing the Mortgagor's obligations under any lease related to the Land or Improvements, performing Mortgagor's obligations with respect to environmental matters, and any other advancements hereunder, and interest thereof, and (iii) Mortgagor fulfills all of the Mortgagor's other obligations under this Mortgage, and (iv) all obligations of Agent and Lenders to make further loans or advances under the Loan Agreement have been terminated, and (v) any other conditions set forth in Section 4.10 are fulfilled, this conveyance shall be null and void and promptly thereafter Agent shall deliver an effective satisfaction of this Mortgage in recordable form.

**2.2. Event of Default.** The term "**Event of Default**," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The failure by Mortgagor to keep, perform, or observe any covenant, condition or agreement on the part of Mortgagor in this Mortgage and such failure is not remedied within any applicable cure or grace period provided in the Loan Agreement.

(b) The occurrence of an "Event of Default" under and as defined in the Loan Agreement.

### **ARTICLE THREE REMEDIES**

**3.1. Acceleration of Maturity.** If an Event of Default shall have occurred and is continuing, Agent may declare Borrowers' Liabilities to be immediately due and payable, and upon such declaration Borrowers' Liabilities shall immediately become and be due and payable without further demand or notice.

**3.2. Possession and Operation of Mortgaged Property.** If an Event of Default exists, in addition to all other rights herein conferred on Agent, Agent (or any person designated by Agent) may, but will not be obligated to, (a) enter upon the Mortgaged Property and take possession of any or all of the Mortgaged Property without being guilty of trespass or conversion, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; (b) collect, receive and receipt for all proceeds accruing from the operation and management of the Mortgaged Property; (c) make repairs and purchase needed additional property; (d) insure or reinsure the Mortgaged Property; (e) maintain and restore the Mortgaged Property; (f) prepare the Mortgaged Property for resale, lease or other disposition; (g) have furnished to the Mortgaged Property utilities and other materials and services used on or in connection with the Mortgaged Property; and (h) exercise every power, right and privilege of Mortgagor with respect to the Mortgaged Property.



3.3. **Judicial Proceedings; Right to Receiver.** If an Event of Default exists, Agent, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on the Mortgaged Property, to sue Mortgagor for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Agent shall be entitled, as a matter of right (upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the extent required by law), to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues, profits and revenues of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

3.4. **Power of Sale.** If an Event of Default exists, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Agent shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as Agent may from time to time elect to sell) under the power of sale which is hereby given to Agent, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Mortgaged Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Agent may bid at any sale held under this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Agent, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all Borrowers' Liabilities shall have been paid in full, all obligations of Agent to disburse the Loans have been terminated and this Mortgage shall have been terminated as provided herein.

3.5. **Personal Mortgaged Property and Fixtures.** If an Event of Default exists, Agent shall have, with respect to all personal property and fixtures included in the Mortgaged Property, all rights and remedies of a secured party under the Alabama Uniform

Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the Mortgaged Property or its value and without the necessity of a court order. At the Agent's request, the Mortgagor shall assemble the personal property portion of the Mortgaged Property and made it available to the Agent at any place designated by the Agent. To the extent permitted by law, the Mortgagor expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of such personal property portion of the Mortgaged Property or exercise of any other right or remedy upon default. Mortgagor agrees that the Agent may sell or dispose of both the real property and the personal property portions of the Mortgaged Property in accordance with the rights and remedies granted under this Mortgage with respect to the Land.

**3.6. Rents and Leases.** If an Event of Default exists, Agent, at its option, shall have the right, power and authority to terminate the license granted to Mortgagor in Section 1.11 to collect the rents, profits, issues and revenues of the Mortgaged Property, whether paid or accruing before or after the filing of any petition by or against Mortgagor under the federal Bankruptcy Code, and, without taking possession, in Agent's own name to demand, collect, receive, sue for, attach and levy all of such rents, profits, issues and revenues, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in said Section 1.11.

**3.7. Foreclosure Deeds.** To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Agent or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

**3.8. Order of Application of Proceeds.** All payments received by Agent as proceeds of any of the Mortgaged Property, as well as any and all amounts realized by Agent in connection with the enforcement of any right or remedy under this Mortgage, shall be applied by Agent as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Mortgage, including attorneys' fees and disbursements, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of Borrowers' Liabilities that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such order as Agent may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by Agent in an amount equal to, and as security for, any of Borrowers' Liabilities that are not then due and payable, and (4) the remainder, if any, shall be paid to Mortgagor or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

**3.9. Multiple Sales.** If an Event of Default exists, Agent shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the whole of Borrowers' Liabilities due. Any such sale may be made subject to the unmatured part of Borrowers' Liabilities, and such sale, if so made, shall not affect the unmatured part of Borrowers' Liabilities, but as to such



unmatured part of Borrowers' Liabilities this Mortgage shall remain in full force and effect as though no sale had been made under this Section 3.9. Several sales may be made hereunder without exhausting the right of sale for any remaining part of Borrowers' Liabilities, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of Borrowers' Liabilities without exhausting the power of foreclosure and the power to sell the Mortgaged Property for any other part of Borrowers' Liabilities, whether matured at the time or subsequently maturing.

**3.10. Waiver of Certain Laws.** Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisalment before sale of any portion of the Mortgaged Property (commonly known as appraisalment laws), or (2) any extension of time for the enforcement of the collection of Borrowers' Liabilities or any creation or extension of a period of redemption from any sale made in collecting Borrowers' Liabilities (commonly known as stay laws and redemption laws). Mortgagor also waives any and all rights Mortgagor may have to a hearing before any governmental authority prior to the exercise by Agent of any of its rights or remedies under any of the Loan Instruments and under applicable law.

**3.11. Prerequisites of Sales.** In case of any sale of the Mortgaged Property as authorized by this Article III, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of Borrowers' Liabilities or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

**3.12. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Agent or Lenders by the Notes, the Loan Agreement, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrowers' Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Notes, the Loan Agreement or any other Loan Instrument or any instrument evidencing or securing Borrowers' Liabilities, or now or hereafter existing at law, in equity or by statute.

## **ARTICLE FOUR MISCELLANEOUS PROVISIONS**

**4.1. Heirs, Successors and Assigns Included in Parties.** Whenever Mortgagor, Agent or Lenders are named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Agent and Lenders.

4.2. **Notices.** All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Agent shall be directed to Mortgagor or Agent, as the case may be, in the manner and at the addresses for notice set forth in the Loan Agreement.

4.3. **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.4. **Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.5. **Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought.

4.6. **Governing Law.** Except with respect to the creation, perfection, priority and enforcement of the lien and security interest created hereunder, all of which shall be construed, interpreted, enforced and governed by the laws of the State of Alabama, the validity and interpretation of this Mortgage shall be governed by and in accordance with the internal laws of the State of New York, without regard to conflicts of law principles.

4.7. **Intentionally deleted.**

4.8. **Future Advances.** This is a FUTURE ADVANCE MORTGAGE. The indebtedness secured hereby includes (a) a revolving line of credit to be made available by Agent and Lenders to Mortgagor under the Loan Agreement, pursuant to which advances may be made, prepaid and reborrowed from time to time, and (b) all other indebtedness, obligations and liabilities of Mortgagor to Agent and Lenders due or to become due and now existing or hereafter incurred, contracted or arising.

4.9. **Last Dollar.** The lien of this Mortgage shall remain in effect until the last dollar of Borrowers' Liabilities is paid in full and all obligations of Agent and Lenders under the Loan Agreement have been terminated.

4.10. **Release.** This Mortgage and Agent's liens under this Mortgage in the Mortgaged Property will not be terminated until a written mortgage satisfaction instrument executed by one of Agent's officers is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Mortgage, no satisfaction of this Mortgage shall in any way affect or impair the representations, warranties, agreements or other obligations of the Mortgagor or the powers, rights and remedies of Agent under this



Mortgage with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of Borrowers' Liabilities owing to Agent and Lenders at any one time should be paid in full, this Mortgage will continue to secure any Borrowers' Liabilities that might later be owed to Agent and Lenders until such mortgage satisfaction instrument has been executed and recorded. In no event shall Agent be obligated to satisfy its liens under this Mortgage or return or release any of the Mortgaged Property to Mortgagor (a) until the payment in full of all Borrowers' Liabilities, with the exception of contingent indemnification obligations for which no claim has been asserted, or (b) if there are any remaining obligations of Agent and/or Lenders to make further loans or advances under the Loan Agreement.

4.11. **Time of the Essence.** Time is of the essence with respect to this Mortgage and all the provisions hereof.

4.12. **Loan Agreement.** The Loans are governed by terms and provisions set forth in the Loan Agreement and in the event of any conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

4.13. **Replacement of Notes.** Any one or more of the financial institutions which are or become a party to the Loan Agreement as Lenders may from time to time be replaced and, accordingly, one or more of the Notes may from time to time be replaced, provided that the terms of the Notes following such replacement, including the principal amount evidenced thereby, shall remain the same. As the indebtedness secured by this Mortgage shall remain the same, such replacement of the Notes shall not be construed as a novation and shall not affect, diminish or abrogate Mortgagor's liability under this Mortgage or the priority of this Mortgage.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officer as of the day and year first above written, although actually executed on the date set forth in the acknowledgment below.

ELASTIC CORPRATION OF AMERICA,  
INC., a Delaware corporation

By   
Its Sec. & Treas

**THIS INSTRUMENT WAS PREPARED BY:**

Carole K. Towne, Esq.  
GOLDBERG, KOHN, BELL, BLACK,  
ROSENBLOOM & MORITZ, LTD.  
55 East Monroe Street  
Suite 3700  
Chicago, Illinois 60603  
(312) 201-4000

**AFTER RECORDING RETURN TO THE ABOVE ADDRESS**



# ACKNOWLEDGMENT

STATE OF New York )  
 ) SS  
COUNTY OF New York )

I, the undersigned authority, a Notary Public in and for said County in said State, HEREBY CERTIFY THAT Mitchell R. Setzer, whose name as Secretary-Treasurer of ELASTIC CORPORATION OF AMERICA, INC., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal this 4<sup>th</sup> day of March, 2002.

  
Notary Public

AFFIX SEAL

My Commission Expires: \_\_\_\_\_

LINDA J. TRACHTER  
Notary Public, State of New York  
No. 02TR4871568  
Qualified In New York County  
Commission Expires September 2, 2002

LINDA J. TRACHTER  
Notary Public, State Of New York  
No. 02TR4871568  
Qualified In New York County  
Commission Expires September 2, 2002

## EXHIBIT A

### Legal Description

#### PARCEL FOUR:

Commence at the Northeast corner of Section 27, Township 21 South, Range 1 West; thence run in a Southerly direction along the East line of Section 27 for a distance of 849.27 feet to a point on the Northwest right-of-way of Industrial Road; thence turn an angle to the right of 55 degrees 51 minutes 35 seconds and run in a Southwesterly direction along the Northwest right-of-way for a distance of 384.75 feet; thence turn an angle to the left of 30 degrees 00 minutes and run in a Southeasterly direction for a distance of 80.00 feet to a point on the Southeast right-of-way of Industrial Road, to the point of beginning; from said point of beginning thus obtained, thence turn an angle to the right of 90 degrees 00 minutes to the tangent of a curve to the left having a central angle of 45 degrees 24 minutes 53 seconds and a radius of 355.14 feet; thence run in a Southwesterly direction along the arc of said curve and the Southeast right-of-way of Industrial Road for a distance of 281.50 feet; thence turn an angle to the left from the tangent if extended to said curve of 44 degrees 35 minutes 10 seconds and run in a Southeasterly direction for a distance of 94.43 feet to a point at the intersection of the North right-of-way of Alabama Highway No. 70 and the Northwest right-of-way of the Southern Railroad; thence turn an angle to the left of 90 degrees 00 minutes and run in a Northeasterly direction along the Northwest right-of-way of the Southern Railroad for a distance of 523.87 feet; thence turn an angle to the left of 29 degrees 54 minutes 58 seconds and run in a Northwesterly direction for a distance of 200.26 feet to a point on the Southeast right-of-way of Industrial Road; thence turn an angle to the left of 90 degrees 04 minutes 59 seconds and run in a Southwesterly direction along the Southeast right-of-way of Industrial Road a distance of 271.23 feet to the point of beginning. According to survey of Jimmy A. Gay, RLS #8759, dated November 13, 1997

#### PARCEL FIVE:

Commence at the Southwest corner of the Northwest quarter of Section 26, Township 21 South, Range 1 West; thence run in a Northerly direction along the West line of the Northwest quarter for a distance of 459.65 feet to a point in the centerline of a Creek and the point of beginning; from the point of beginning thus obtained turn an angle to the right of 74 degrees 51 minutes 04 seconds and run in a Northeasterly direction along the centerline of a creek for a distance of 127.96 feet; thence turn an angle to the left of 3 degrees 53 minutes 24 seconds and continue in a Northeasterly direction along the centerline of a creek for a distance of 148.04 feet; thence turn an angle to the left of 73 degrees 21 minutes 32 seconds and run in a Northerly direction for a distance of 182.00 feet; thence turn an angle to the left of 100 degrees 48 minutes 34 seconds and run in a Southwesterly direction for a distance of 262.79 feet; thence turn an angle to the left of 76 degrees 47 minutes 34 seconds and run in a Southerly direction for a distance of 203.53 feet to the point of beginning. According to survey of Jimmy A. Gay, RLS #8759, dated November 13, 1997

Inst # 2002-11076

03/07/2002-11076

12:30 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

016 CH 57.00