

FIRST MORTGAGE

#26.00

70-37-203DN

THIS MORTGAGE ("Mortgage") dated, for convenience of reference, as of April 15, 1986 but actually executed and delivered on the date of the acknowledgment appended hereto, by National Gypsum Company, a Delaware corporation having its chief executive offices at 4500 Lincoln Plaza, Dallas, Texas 75201-3318 (hereinafter called "Mortgagor") to Citicorp Industrial Credit, Inc., 2700 Diamond Shamrock Tower, 717 North Harwood, L.B. #85, Dallas, Texas 75201 (hereinafter called the "Mortgagee"), individually and as agent for the financial institutions listed as or from time to time constituting, the Senior Lenders under that certain Credit and Security Agreement dated as of April 15, 1986, by and among National Gypsum Company, American Olean Tile Company, Inc. (hereinafter "Tile"), the Senior Lenders and Citicorp Industrial Credit, Inc. (hereinafter the "Loan Agreement").

WITNESSETH:

WHEREAS, pursuant to the Loan Agreement, the Senior Lenders (including the Mortgagee) may from time to time make loans and extend financial accommodations to Mortgagor in an aggregate principal amount not exceeding \$615,000,000 at any one time outstanding and to Tile in an aggregate principal amount not exceeding \$75,000,000 at any one time outstanding, subject to and upon the terms and conditions of the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement, such loans shall be made under and evidenced by the following promissory notes dated April 15, 1986 (the "Note"):

- Revolving Facility Notes (First Series) made by Mortgagor and payable severally to the order of each Senior Lender in an aggregate stated principal amount of \$70,000,000 with interest at the rate therein set forth (the "Gypsum Revolving Facility Notes (First Series)");
- Revolving Facility Notes (Second Series - A) made by Mortgagor and payable severally to the order of each Senior Lender in an aggregate stated principal amount of \$495,000,000 with interest at the rate therein set forth (the "Gypsum Revolving Facility Notes (Second Series - A)");
- Revolving Facility Notes (Second Series - B) made by Mortgagor and payable severally to the order of each Senior Lender in an aggregate stated principal amount of \$50,000,000, with interest at the rate therein set forth (the "Gypsum Revolving Facility Notes (Second Series - B)"); and

This document was prepared by and after recording should be returned to:

James L. Marovitz
Sidley & Austin
One First National Plaza
Chicago, Illinois 60603

BOX 229 - HV

86168902

UNOFFICIAL COPY

000000

Property of Cook County Clerk's Office

000000

000000

UNOFFICIAL COPY

3 5 1 6 3 9 0 2

- Revolving Facility Notes (First Series) made by Tile and payable severally to the order of each Senior Lender in an aggregate stated principal amount of \$75,000,000, with interest at the rate therein set forth (the "Tile Revolving Facility Notes (First Series)");

and extensions of credits may be made by the Senior Lenders in respect of certain Letters of Credit issued by a Senior Lender as "Facility Letters of Credit" (as defined in the Loan Agreement); and

WHEREAS, pursuant to the Loan Agreement, Mortgagor and Tile have agreed to pay certain other sums to the Senior Lenders for fees, expenses, indemnities and other items and have incurred, or may incur, certain other liabilities to the Senior Lenders; and

WHEREAS, Mortgagor has guaranteed payment of the Tile Revolving Facility Notes (First Series) and Tile's other liabilities to the Senior Lenders under or with respect to the Loan Agreement pursuant to its Guaranties dated as of April 15, 1986 (the "Guaranties"); and

WHEREAS, as a condition to the extension of credit under the Loan Agreement, the Senior Lenders have required that Mortgagor enter into this Mortgage and grant to Mortgagee, for the benefit of all the Senior Lenders (including the Mortgagee), the liens and security interests referred to herein in order to secure the payment of the following (hereinafter collectively referred to as the "Liabilities"):

1. The principal amount, together with interest thereon, of all present and future loans made by the Senior Lenders to Mortgagor, including, without limitation, the reborrowing of principal previously repaid, all as evidenced by the Gypsum Revolving Facility Notes (First Series) and the Gypsum Revolving Facility Notes (Second Series - A); provided, and except only, that the Gypsum Revolving Facility Notes (Second Series - B) shall not be secured hereby; and
2. All present and future reimbursement obligations and other Letter of Credit liability of the Mortgagor for Facility Letters of Credit, together with interest thereon; and
3. All other present and future obligations and Liabilities of Mortgagor to the Senior Lenders under the Loan Agreement (except only the Gypsum Revolving Facility Notes (Second Series - B)), together with interest thereon; and
4. All present and future liability of Mortgagor under the Guaranties for the principal amount, together with interest thereon, of all present and future loans made by the Senior Lenders to Tile, including, without limitation, the reborrowing of principal previously repaid, all as evidenced by the Tile Revolving Facility

86168902

UNOFFICIAL COPY

3 5 1 6 3 9 0 2

Notes (First Series), and for all other present and future obligations and liabilities of Tile to the Senior Lenders under the Loan Agreement, together with interest thereon; and

5. All other payment and performance obligations related to this Mortgage, together with interest thereon; and

WHEREAS, the Liabilities secured hereby shall not exceed an aggregate principal amount, at any one time outstanding of Six Hundred Forty million and no/100 Dollars (\$640,000,000), provided, that the foregoing limitation shall apply only to the lien upon real property created by this Mortgage, and it shall not in any manner limit, affect or impair any grant of a security interest in any personal property in favor of the Mortgagee, for the benefit of the Senior Lenders, under the provisions of the Loan Agreement or under any other security agreement at any time executed by Mortgagor; and

WHEREAS, Mortgagor acknowledges and agrees that it shall directly benefit from the extension of credit by Mortgagee to Mortgagor under the Note, the Loan Agreement, and the extension of credit to Tile for which Mortgagor has issued the Guaranties;

NOW, THEREFORE, to secure payment of the Liabilities and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby grant, remise, release, alien, convey, mortgage and warrant to Mortgagee, its successors and assigns, the following described real estate in Cook County, Illinois:

See Exhibit A attached hereto and by this reference made a part hereof

which real estate, together with the property described in the next succeeding paragraph is herein called the "premises",

TOGETHER WITH all right, title and interest, if any, including any right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to (a) any lands occupied by streets, alleys, or public places adjoining said premises or in such streets, alleys or public places; and (b) all improvements, tenements, hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereunto belonging or appertaining.

As additional security for the Liabilities secured hereby, Mortgagor does hereby pledge and assign to Mortgagee from and after the date hereof (including any period of redemption), primarily and on a parity with said real estate, and not secondarily, all the rents, issues and profits of the premises and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent, for security or as earnest money or as down-payment for the purchase of all or any part of the premises) under any and all present and future leases, contracts or

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 1 6 8 9 0 2

other agreements relative to the ownership or occupancy of all or any portion of the premises and does hereby transfer and assign to Mortgagee all such leases and agreements (including all Mortgagor's rights under any contracts for the sale of any portion of the premises). Mortgagee hereby grants to Mortgagor the right to collect the rents and other amounts due under such leases, contracts or other agreements, until a default (after the giving of any required notice and the expiration of any applicable grace period as provided in the Loan Agreement) shall occur under the Note, the Guaranties, or the Loan Agreement provided that the existence of such right shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment shall be subject to the rights of the Mortgagee under this Mortgage. Mortgagor further agrees to execute and deliver such assignments of leases or assignments of land purchase contracts as Mortgagee may from time to time request. In the event of a default (after the giving of any required notice and the expiration of any applicable grace period as provided in the Loan Agreement) under the Note, the Loan Agreement, the Guaranties or this Mortgage, (1) the Mortgagor agrees, upon demand, to deliver to the Mortgagee all leases, land purchase contracts and other agreements for the ownership or occupancy of any part of the premises, with such additional assignments thereof as the Mortgagee may request and agrees that the Mortgagee may assume the management of the premises and collect the rents and other income therefrom, applying the same upon the Liabilities and (2) the Mortgagor hereby authorizes and directs all tenants, purchasers or other persons occupying or otherwise acquiring any interest in any part of the premises to pay all rents and other income due under said leases and agreements to the Mortgagee upon request of the Mortgagee. Mortgagor hereby appoints Mortgagee as its true and lawful attorney in fact to manage said property and collect the rents and other income, with full power to bring suit for collection of said rents and possession of said property, giving and granting unto said Mortgagee and unto its agent or attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the protection of the security hereby conveyed; provided, however, that this power of attorney and assignment of rents shall not be construed as an obligation upon said Mortgagee to make or cause to be made any repairs that may be needful or necessary. Mortgagee shall receive such rents and other income of said premises, out of which it shall pay: (1) reasonable charges for collection hereunder, costs of necessary repairs and other costs requisite and necessary during the continuance of this power of attorney and assignment of rents, (2) general and special taxes, insurance premiums and all of the Liabilities. This power of attorney and assignment of rents shall be irrevocable until this Mortgage shall have been satisfied and released of record and the releasing of this Mortgage shall act as a revocation of this power of attorney and assignment of rents. Mortgagee shall have and hereby expressly reserves the right and privilege (but assumes no obligation) to demand, collect, sue for, receive and recover all rents, profits, revenues, royalties, bonuses, rights and benefits under any and all oil, gas, or mineral leases of the premises, or any part thereof, now existing or hereafter made, and apply the same upon the Liabilities hereby secured, upon default hereunder (after the giving of any required notice and the expiration

86168902

UNOFFICIAL COPY

8 5 1 6 3 9 0 2

of any applicable grace period as provided in the Loan Agreement).

Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee-in-possession in the absence of the taking of actual possession of the premises by the Mortgagee. Nothing contained in this Mortgage shall be construed as imposing on Mortgagee any of the obligations of the lessor under any lease of the premises in the absence of an explicit assumption thereof by Mortgagee. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagee.

TO HAVE AND TO HOLD the premises, properties, ^(except for The personal property) rights and privileges hereby conveyed or assigned, or intended so to be, unto Mortgagee, its successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois and Mortgagee hereby covenants and warrants that, at the time of the ensembling and delivery of these presents, Mortgagor is well seized of said real estate and the premises in fee simple except as provided in Exhibit B attached hereto and made a part hereof, and with good right, full power and lawful authority to sell, assign, convey and mortgage the real estate, and that the real estate described in Exhibit A attached hereto is free and clear of encumbrances, except as described on Exhibit B, and that Mortgagor will forever defend the same against all lawful claims.

The following provisions shall also constitute an integral part of this Mortgage.

1. Mortgagor agrees to pay, when due or declared due, all of the Liabilities secured hereby.

2. Mortgagor hereby covenants and represents that:

(a) Mortgagor is duly authorized to make and enter into this Mortgage and to carry out the transactions contemplated herein.

(b) This Mortgage has been duly executed and delivered pursuant to authority legally adequate therefor; Mortgagor has been and is authorized and empowered by all necessary persons having the power of direction over it to execute and deliver said instrument; said instrument is a legal, valid and binding obligation of Mortgagee, enforceable in accordance with its terms, subject, however, to bankruptcy and other law, decisional or statutory, of general application affecting the enforcement of creditors' rights, and to the fact that the availability of the remedy of specific performance or of injunctive relief in equity is subject to the discretion of the court before which any proceeding therefor may be brought.

3. [Intentionally omitted]

4. Mortgagor agrees that, if the United States or the State of Illinois or any of their subdivisions having

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

500-201-1000

jurisdiction shall levy, assess, or charge any tax (excluding any income, franchise or doing business tax), assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the premises or upon Mortgagee by reason of or as holder of any of the foregoing then, Mortgagor shall pay (or reimburse Mortgagee for) such taxes, assessments or impositions and, unless all such taxes, assessments and impositions are paid or reimbursed by Mortgagor when and as they become due and payable, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee, notwithstanding anything contained herein or in any law heretofore or hereafter enacted. Mortgagor agrees to exhibit to Mortgagee, at any time upon request, official receipts showing payment of all taxes, assessments and charges which Mortgagor is required or elects to pay hereunder.

5. Mortgagor agrees that, if the United States Government or any department, agency or bureau thereof or the State of Illinois or any of its subdivisions shall at any time require documentary stamps to be affixed to the Mortgage, Mortgagor will, upon request, pay for such stamps in the required amount and deliver them to Mortgagee, and Mortgagor agrees to indemnify Mortgagee against liability on account of such documentary stamps, whether such liability arises before or after payment of the Liabilities and regardless whether this Mortgage shall have been released.

6. Mortgagor agrees faithfully to perform all of its obligations under all present and future material leases or other agreements relative to the occupancy of the premises at any time assigned to Mortgagee by separate instrument as additional security, and to refrain from any action or inaction which would result in termination of any such material leases or agreements or in the material diminution of the value thereof or of the rents or revenues due thereunder if the effect of such failure to perform or the termination of any such lease(s) would have a material adverse effect on the business, properties, assets, operations or conditions (financial or otherwise) of either or both of the Borrowers (as defined in the Loan Agreement). Mortgagor further agrees that any lease of the premises made after the date of recording of this Mortgage shall contain a covenant to the effect that such lease shall, at Mortgagee's option, agree to attorn to Mortgagee, as lessor and, upon demand, to pay rent to Mortgagee.

7. Mortgagor agrees that it shall not permit the public to use the premises or any other property covered by this Mortgage in any manner that might tend, in Mortgagee's reasonable judgment, to impair Mortgagor's title to such property or any portion thereof, or to make possible any claim or claims of easement by prescription or of implied dedication to public use, if any such impairment or claim would have a material adverse effect on the business, properties, assets, operations or conditions (financial or otherwise) of either or both of the Borrowers.

8. Without limiting any indemnification Mortgagor has granted in the Loan Agreement, Mortgagor agrees to indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

expenses (including reasonable attorneys' fees and disbursements) (collectively "Claims") which may be imposed on, or on account of, or in connection with (i) the construction, reconstruction or alteration of the premises, (ii) any negligence or willful misconduct of Mortgagor, any lessee of the premises, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (iii) any accident, injury, death or damage to any person or property occurring in, on or about the premises or any street, drive, sidewalk, curb or passageway adjacent thereto, or (iv) any other transaction arising out of or in any way connected with the premises, excluding from the foregoing indemnification any Claims arising out of the willful misconduct or gross negligence of the Mortgagee.

9. Mortgagor hereby assigns to Mortgagee, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or injury to the premises for public use, and Mortgagor agrees that the proceeds of all such awards shall be paid to Mortgagee to be retained by Mortgagee in accordance with the terms of Section 2.4K of the Loan Agreement.

10. Mortgagor agrees that, from and after the occurrence of a default (after the giving of any required notice and expiration of any applicable grace period as provided in the Loan Agreement) under this Mortgage, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient after reasonable inquiry into the validity thereof. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, (i) make full or partial payments of insurance premiums which are unpaid by Mortgagor, coordinate liens or encumbrances, if any, and (ii) purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof, or (iii) redeem all or any part of the premises from any tax or assessment. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the premises and the lien hereof shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest thereon at the post-default interest rate described in the Loan Agreement ("Interest Rate") until paid to Mortgagee in full. In making any payment hereby authorized relating to taxes, assessments or prior or coordinate liens or encumbrances, Mortgagee shall be the sole judge of the legality, validity and priority thereof and of the amount necessary to be paid in satisfaction thereof.

11. Any of the following occurrences or acts shall constitute an event of default under this Mortgage ("default"): (i) Mortgagor fails to pay the indebtedness evidenced by the Note when due or when declared due; and such failure continues for five(5) business days; (ii) an "Event of Default" (including the giving of any required notice and the expiration of any applicable grace period as provided in the Loan Agreement) shall occur under the Loan Agreement or the Guaranties (whether in payment or otherwise); and (iii) Mortgagor (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, at law, in equity, or before any administrative tribunal, which have prevented or might have the effect of

preventing Mortgagor from complying with the terms of this Mortgage), shall fail to observe or perform any of Mortgagor's covenants, agreements or obligations under this Mortgage and such default shall continue for thirty (30) days after written notice thereof from Mortgagee, provided, however, if such failure cannot with due diligence be cured within said thirty (30) day period Mortgagor shall commence such curing within such thirty (30) day period and thereafter diligently prosecute such curing to completion. If any such default shall have occurred, then, in addition to any rights and remedies provided for in the Loan Agreement, and to the extent permitted by applicable law, the following provisions shall apply:

(a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without presentment, demand or further notice.

(b) It shall be lawful for Mortgagee to (i) immediately sell the premises either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law or (ii) immediately foreclose this Mortgage by action. The court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the liabilities secured hereby, and without regard to the true value of the premises or the occupancy thereof as a homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made) for the benefit of Mortgagee, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and coordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the premises, and may pay all or any part of the liabilities or other sums secured hereby or any deficiency decree entered in such foreclosure proceedings. Upon or at any time after the filing of a suit to foreclose this Mortgage, the court in which such suit is filed shall have full power to enter an order placing Mortgagee in possession of the premises with the same power granted to a receiver pursuant to this Section 11(b) and with all other rights and privileges of a mortgagee-in-possession under applicable law.

(c) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, either with or without process of law, forcibly or otherwise, to enter upon and take possession of the premises, expel and remove any persons, goods, or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part thereof, from time to time, and, after

deducting all reasonable attorneys' fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the premises, apply the remaining net income upon the Liabilities or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

12. In any foreclosure of this Mortgage by action, or any sale of the premises by advertisement, there shall be allowed (and included in the decree for sale in the event of a foreclosure by action), to be paid out of the rents or the proceeds of such foreclosure proceeding or sale:

(a) all of the Liabilities and other sums secured hereby which then remain unpaid;

(b) all other items advanced or paid by Mortgagee pursuant to this Mortgage, with interest thereon at the Interest Rate from the date of advancement; and

(c) all court costs, reasonable attorneys' and paralegals' fees and expenses, appraiser's fees, advertising costs, notice expenses, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies, Torrens certificates and similar data with respect to title which Mortgagee in the reasonable exercise of its judgment may deem necessary. All such expenses shall become additional Liabilities secured hereby and immediately due and payable, with interest thereon at the post-default interest rate specified in the Note, when paid or incurred by Mortgagee in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosure, whether or not actually commenced, or sale by advertisement. The proceeds of any sale (whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale) shall be distributed and applied to its items described in (a), (b), and (c) of this paragraph, as Mortgagee may in its sole discretion determine, and any surplus of the proceeds of such sale shall be paid to Mortgagor.

13. Each remedy or right of Mortgagee shall not be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or in different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

14. If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any obligation secured

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

5/11/2015

hereby, or if Mortgagee exercises its power of sale, execution may be made upon or Mortgagee may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at Mortgagee's election.

15. In the event of a foreclosure of this Mortgage the Liability then due the Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages which also secure said Liabilities.

16. Mortgagor agrees that, upon request of Mortgagee from time to time, it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage. In the event that Mortgagor shall fail to do any of the foregoing, Mortgagee may, in its sole discretion, do so in the name of Mortgagor, and Mortgagor hereby appoints Mortgagee as its attorney-in-fact to do any of the foregoing.

17. Except as otherwise provided herein, any notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Mortgage shall be in writing, shall be sent by United States registered or certified mail postage prepaid and shall be deemed to have been validly served, given or delivered five (5) days following deposit in the United States mails, addressed to the party so notified as follows:

if to Mortgagor:

National Gypsum Company
4500 Lincoln Plaza
Dallas, Texas 75201-3318
Attn: Vice President - Finance

with a copy to:

National Gypsum Company
4500 Lincoln Plaza
Dallas, Texas 75201-3318
Attn: General Counsel

if to Mortgagee:

Citicorp Industrial Credit, Inc.
2700 Diamond Shamrock Tower
717 North Harwood, L.B. #85
Dallas, Texas 75201
Attn: F. Rockwell Lowe

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20250305

with a copy to:

Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
Attn: James L. Marovitz

Mortgagor or Mortgagee shall, from time to time, have the right to specify as the proper addressee and/or address for the purposes of this Mortgage any other address in the United States upon giving ten (10) days' written notice thereof.

18. Mortgagor agrees that, without affecting the liability of any person for payment of the Liabilities secured hereby or affecting the lien of this Mortgage upon the premises or any part thereof (other than persons or property explicitly released as a result of the exercise by Mortgagee of its rights and privileges hereunder), Mortgagee may at any time and from time to time, on request of the Mortgagor, without notice to any person liable for payment of any Liabilities secured hereby, extend the time, or agree to alter the terms of payment of such Liabilities.

19. Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

20. Upon full payment of all sums secured hereby or upon application on the Liabilities of the proceeds of any sale of the premises in accordance with the provisions of this Mortgage, at the time and in the manner provided, this conveyance shall be null and void and, upon demand therefor following such payment, a satisfaction of mortgage shall promptly be provided by Mortgagee to Mortgagor.

21. This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of the Mortgagee's successors and assigns; all references herein to the Mortgagor and to the Mortgagee shall be deemed to include their successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for the Mortgagor. Wherever used, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

22. The Mortgagor, within ten (10) days after the request in person or within fifteen (15) days after request by mail, will furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest and principal, if any, has been paid and stating either that no offsets or defenses exist against the mortgage debt, or, if such offsets or defenses are alleged to exist, the nature thereof.

86165902

UNOFFICIAL COPY

8 6 1 6 3 9 0 2

23. Mortgagor represents that it has been authorized to, and Mortgagor does hereby, waive (to the full extent permitted under Illinois law) any and all statutory or equitable rights of redemption from sale by advertisement or sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor and each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the premises subsequent to the date hereof.

24. Mortgagor shall not permit any liens or security interests (including any mechanics' or materialmen's liens), other than those described on Exhibit B attached hereto, those in favor of Mortgagee or an affiliate of Mortgagee, those for any real estate taxes or assessments not yet due and payable and any liens permitted under Section 7.2 of the Loan Agreement, to remain filed or attached to the premises for a period in excess of thirty (30) days without the written consent of Mortgagee. In the event Mortgagor shall sell, transfer or convey the premises or any portion thereof in accordance with the provisions of Sections 7.2 and 7.8 of the Loan Agreement, Mortgagee shall, to the extent required by the Loan Agreement, release the premises or the portion thereof which is the subject of such sale, transfer or conveyance from the lien of this Mortgage.

25. Mortgagor shall have the right to grant easements and rights-of-way, leases, reservations, or other rights in and to the premises to third parties, in accordance with the provisions of the Loan Agreement.

26. Notwithstanding anything in this Mortgage to the contrary, in the event of a conflict or inconsistency between the Mortgage and the Loan Agreement or the Note, the provisions of the Loan Agreement, the Guaranties and/or the Note shall govern.

27. This Mortgage is given for the purpose of securing loan advances which the Mortgagee may make to or for Mortgagor pursuant and subject to the terms and provisions of the Loan Agreement. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances made after this Mortgage is delivered to the Recorder of Deeds, Cook County, Illinois, whether made pursuant to an obligation of Mortgagee or otherwise. Such loan advances may or may not be evidenced by notes executed pursuant to the Loan Agreement.

IN WITNESS WHEREOF, this instrument is executed as of the day and year first above written by A. H. Swanson on behalf of Mortgagor (and said person hereby represents that he possessed full power and authority to execute this instrument).

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

50121600

UNOFFICIAL COPY

8 6 1 6 3 9 0 2

THE MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE.

NATIONAL GYPSUM COMPANY, a
Delaware corporation

By *Michael Swanson*
Its President (Vice)

Attest:

Andrew J. ...
Assistant Secretary

AFFIX CORPORATE SEAL

Witnesses:

Elizabeth K. McCoy
[Name]

Debra L. DeAruda
[Name]

Property of Cook County Clerk's Office

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 24th day of April, 1986, before me appeared A. H. Swanson to me personally known, who, being by me duly sworn, did say that he is the president of National Gypsum Company, a corporation of the State of Delaware, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and said Vice President acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Karen Wiedenski
Notary Public

My term expires: 1-27-89

Property of Cook County Clerk's Office

COOK COUNTY, ILLINOIS
FILED FOR RECORD

1986 APR 30 AM 11:15

86168902

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office



50280109

00000000

UNOFFICIAL COPY

21800 Maple St.,
Matteson

EXHIBIT A
TO
MORTGAGE DATED as of April 15, 1986
between
NATIONAL GYPSUM COMPANY, Mortgagor
and
CITICORP INDUSTRIAL CREDIT, INC.,
as aforesaid, Mortgagee

31-26-117-001
-002

31-26-118-007
-008
-010

31-26-118-001
-002
-004

Legal Description of the Premises:

Parcel 1

That part of Lot 1 of County Clerk's division of the SE40TNW4 OSEC 26, Township 35 North, Range 13 East of the Third Principal Meridian, lying South of the right of way line of Elgin, Joliet and Eastern Railroad Company's right of way (except that part of said lot described as beginning at a point of intersection of said South right of way line and East line of Lot 1; thence South along said East line 19 feet; thence Northwesterly along a straight line to a point in said South right of way line which is 75 feet West of the East line of said Lot 1; thence East along said South right of way line, 75 feet to place of beginning;

Also, the North 49 feet of the West 264.5 feet of Lot 6 in aforesaid County Clerk's division of the South East 1/4 of the North West 1/4 of Section 26, Township 35 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2

The North 1/2 of the North 1/2 of the South 1/2 and that part of the North 1/2 lying South of the South right of way of the Elgin, Joliet and Eastern Railroad Company, of Lot 2 in Miller, Lewis and Miller's Subdivision of the West 1/2 of the West 1/2 of Section 26, Township 35 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3

All of Lots 3, 5, 6 and 7 in the County Clerk's Division of the South East 1/4 of the North West 1/4 of Section 26, Township 35 North, Range 13 East of the Third Principal Meridian (except the 6 following described tracts of land:

- 1) That part of Lots 3 and 7 lying North of the South right of way line of the Elgin, Joliet and Eastern Railroad Company;
- 2) The North 49 feet of the West 264.5 feet of Lot 6 aforesaid;
- 3) A tract of land described as follows:

Beginning at a point on the West line of the aforesaid Lot 3, being a point where said line is intersected by the South line of the right of way of the Elgin, Joliet and Eastern Railroad Company, said right of way line being 43 feet South of and parallel to the South main track of said railroad; thence Southeasterly along the 10 degree and 30 minutes curve convex to the North East parallel to the Southerly line of

86168902

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20000000

land conveyed to the Illinois Central Railroad Company by deed recorded as Document Number 6478016, for a distance of 300 feet; thence Southeasterly along the 12 degree and 52 minutes curve convex to the North East for a distance of 164 feet to a point in the Southerly line of the 100 foot strip of land conveyed to the Illinois Central Railroad Company by deed recorded as Document Number 6374252; thence Southeasterly along the Southerly line of the aforesaid 100 foot strip to the Easterly line of Lot 7 which line is also the Westerly right of way line of said Illinois Central Railroad Company; thence Northeasterly along the Easterly line of Lot 7 to the Northerly line of the aforesaid 100 foot strip; thence Northwesterly along the said Northerly line of said 100 foot strip to the Westerly line of Lot 7; thence Northeasterly along said Westerly line of Lot 7 to the South right of way line of the Elgin, Joliet and Eastern Railroad Company; thence Westerly along said South right of way line of the Elgin, Joliet and Eastern Railroad to the place of beginning;

4) That part of Lot 7 in the County Clerk's division aforesaid bounded and described as follows:

Beginning at the South East corner of aforesaid Lot 7, said South East corner being a point in the Westerly line of the 200 foot right of way of the Illinois Central Railroad Company; thence running Westerly along the South Line of said Lot 7, 54.5 feet to a point 50 feet distant Westerly from said right of way line measured at right angles thereto; thence Northeasterly parallel to said right of way line, 635.5 feet; thence Northerly and Northwesterly along a 12 degree 52 minutes curve to the left, a distance of 332 feet to the Southerly line of the 100 foot strip of land conveyed to the Illinois Central Railroad Company by deed recorded as Document Number 6374252; thence Southeasterly along a curve convex to the North East having a radius of 523.6 feet along the Southerly line of the aforesaid 100 foot strip conveyed in Document 6374252 aforesaid, 284 feet to a point in the East line of Lot 7, 691.6 feet Northerly from a point of beginning; thence Southeasterly along said East line, 691.6 feet to the place of beginning;

5) The Easterly 50 feet of that part of Lot 7 in the County Clerk's division aforesaid which lies South of the Elgin, Joliet and Eastern Railroad right of way and North of the 100 foot strip conveyed in Document Number 6374252 aforesaid; all in Cook County, Illinois;

6) That part of Lot 7 in the County Clerk's division of the South East 1/4 of Section 26, Township 35 North, Range 13 East of the Third Principal Meridian bounded and described as follows: commencing at the intersect of the South line of said Lot 7 and a line 50 feet West of and parallel to the East line of said Lot 7 (said line being Westerly right of way line of the Illinois Central Railroad) thence North 295.05 feet on said Westerly right of way line thence North West on a line norm to said right of way line a distance of 70 feet thence South West 110 feet on a line normal to last described line thence South East 40 feet on a line normal to last described line thence South West 197.17 feet on a line normal to last said line and 30 feet West of and parallel to the West line of the Illinois Central Railroad to the South line of Lot 7, thence East 32.35 feet to the point of beginning all in Cook County, Illinois.

86163902

UNOFFICIAL COPY

8 6 1 6 3 9 0 2

EXHIBIT B
TO
MORTGAGE DATED as of April 15, 1986
between
NATIONAL GYPSUM COMPANY, Mortgagor
and
CITICORP INDUSTRIAL CREDIT, INC.,
as aforesaid, Mortgagee

The following title exceptions listed on Schedule B
of title commitment #7037203 issued by Chicago Title Insurance
Company dated March 4, 1986, are the permitted exceptions:

Nos. 5, 6, 9, 12 and 15

Property of Cook County Clerk's Office

86168902