05-15-2001

D

Atty. Dkt. No. 9056.43

Form PTO 1584
1-31-82

SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

.Y

101717197

To the Honorable Commissioner ... Please record the attached original documents or copies thereof

1. Name of conveying party(ies):
New Alenco Window, Ltd., (-260)

☐ Individual(s) ☐ Association
☐ General Partnership ☒ Limited Partnership Texas

☐ Corporation-State
☐ Other

Additional name(s) of conveying party(ies) attached? ☐Yes ☒No

2. Name and address of receiving party(ies):
Name: Foothill Capital Corporation
Internal Address:
Street Address: 2450 Colorado Avenue, Suite 3000 West
City: Santa Monica State: California ZIP: 90404

☐ Individual(s)citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State California
☐ Other

If assignee is not domiciled in the United States, a domestic representative designation is attached ☐ Yes ☐ No
(Designations must be a separate document from Assignment)
Additional name(s) & address(es) attached? ☐ Yes ☐No

3. Nature of conveyance:
☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name

☐ Other

Execution Date: April 12, 2001

4. Application number(s) or Registration number(s):
A. Trademark Application No.(s) N/A
B. Trademark registration No.(s) 707,376 and 2,276,324

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Michele P. Schwartz
Internal Address: Hughes & Luce, L.L.P.
Suite 2800
Street Address: 1717 Main Street
City: Dallas State: Texas ZIP: 75201

6. Total number of applications and trademarks involved: 2

7. Total fee (37 CFR 3.41): ..... $ 65.00

☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number: 501343

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michele P. Schwartz — Name of Person Signing
Michele P. Schwartz — Signature
4/26/01 — Date

Total number of pages including cover sheet:

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

04-26-2001
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #54

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

Published by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT ("Agreement"), dated as of April 12, 2001, is entered into among ALENCO HOLDING CORPORATION, NEW ALENCO WINDOW, LTD. ("AWL"), NEW GLAZING INDUSTRIES, LTD. ("NGI") (AWL and NGI each a "Grantor" or collectively, the "Grantors"), NEW ALENCO EXTRUSION, LTD., ALENCO EXTRUSION GA, LLC, ALENCO WINDOW GA, LLC, ALENCO WINDOW TN, LLC AND ALENCO TRANS, INC. (AWL and NGI and each of the above collectively, the "Borrowers") and FOOTHILL CAPITAL CORPORATION, a California corporation ("Foothill"), in light of the following:

A. The Borrowers and Foothill have entered into that certain Loan and Security Agreement, dated as of April 12, 2001 (as the same may hereafter be amended, supplemented or restated from time-to-time in accordance with the terms thereof, the "Loan Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Loan Documents"); and

B. Each Grantor identified on Schedule A attached hereto is the owner of certain intellectual property in which such Grantor is granting a security interest to Foothill.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good an valuable consideration, the parties hereto mutually agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. The following terms, as used in this Agreement, have the following meanings:

"Code" means the Texas Uniform Commercial Code, as amended and supplemented from time to time, and, any successor statute.

"Collateral" means:

(i) Each of the trademarks and rights and interest which are capable of being protected as trademarks, (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise, unless the license expressly prohibits such Grantor from granting security interests in such license) by such Grantor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights, and all goodwill associated with said trademarks ;

TRADEMARK
REEL: 002295 FRAME: 0457

(ii) All of each Grantor's right to the trademarks and trademark registrations listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time and all goodwill associated with said trademarks;

(iii) All of each Grantor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of such Grantor or in the name of Foothill for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(iv) All general intangibles relating to the foregoing; and

(v) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means all obligations, liabilities, and indebtedness of the Borrowers to Foothill, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Guaranty, or any other of the Loan Documents, including all costs and expenses described in Section 12.8 hereof.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement unless otherwise specified. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Foothill or the Grantors, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the Borrowers, Foothill, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Foothill and the Grantors.

2. GRANT OF SECURITY INTEREST.

Each Grantor hereby grants to Foothill a first-priority security interest in all of such Grantor's right, title, and interest in and to the Collateral to secure the Obligations.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Each Grantor hereby represents, warrant, and covenant that:

3.1 Trademarks. A true and complete schedule setting forth all federal and state trademark registrations owned or controlled by such Grantor or licensed to such Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A.

3.2 Validity; Enforceability. Each of the trademarks is valid and enforceable, and each Grantor is not presently aware of any past, present, or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims.

3.3 Title. Each Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the trademarks, and trademark registrations to which it owns, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses, shop rights, and covenants by such Grantor not to sue third persons.

3.4 Notice. Each Grantor has used and will continue to use proper statutory notice in connection with its use of each of its material trademarks.

3.5 Quality. Each Grantor has used and will continue to use consistent standards of high quality (which may be consistent with such Grantor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks.

3.6 Perfection of Security Interest. Except for the filing of financing statements in the State of Texas and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by each Grantor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Grantor or for the perfection of or the exercise by Foothill of its rights hereunder to the Collateral in the United States.

4. AFTER-ACQUIRED TRADEMARK RIGHTS.

If any of the Borrowers shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. The Borrowers shall give prompt notice in writing to Foothill with respect to any such new trademarks, or renewal or extension of any trademark registration, and Foothill may, from time to time, amend Schedule A to this Agreement to reflect such after acquired trademarks. The Borrowers shall bear any expenses incurred in connection with future trademark registrations.

5. LITIGATION AND PROCEEDINGS.

Each Grantor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Each Grantor shall provide to Foothill any

information with respect thereto requested by Foothill. Foothill shall provide at Grantor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Grantor's becoming aware thereof, such Grantor shall notify Foothill of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding such Grantor's claim of ownership in any of the trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

6. INDEMNIFICATION.

Each Grantor assumes all responsibility and liability arising from the use of the trademarks, and each Grantor hereby indemnifies and holds Foothill harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of each Grantor's operations of its business from the use of the trademarks. In any suit, proceeding or action brought by Foothill under any license for any sum owing thereunder, or to enforce any provisions of such license, each Grantor will indemnify and hold Foothill harmless from and against all expense, loss or damage suffered by reason of any defense, set off, counterclaim, recoupment or reduction or liability whatsoever of the obligee thereunder, arising out of a breach of such Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from each Grantor, and all such obligations of each Grantor shall be and remain enforceable against and only against such Grantor and shall not be enforceable against Foothill.

7. POWER OF ATTORNEY.

Each Grantor grants Foothill power of attorney, having the full authority, and in the place of such Grantor and in the name of such Grantor, from time to time following an Event of Default in Foothill's discretion, to take any action and to execute any instrument which Foothill may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse such Grantor's name on all applications, documents, papers, and instruments necessary for Foothill to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that Foothill may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Foothill's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

8. RIGHT TO INSPECT.

Each Grantor grants to Foothill and its employees and agents the right to visit the Grantors' plants and facilities which manufacture, inspect, or store products sold under any of the trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

9. EVENTS OF DEFAULT.

Any of the following events shall be an Event of Default:

9.1 Loan Agreement. An Event of Default shall occur as defined in the Loan Agreement;

9.2 Misrepresentation. Any representation or warranty made herein by any Grantor or in any document furnished to Foothill by any Grantor under this Agreement is incorrect in any material respect when made or when reaffirmed; and

9.3 Breach. Grantor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof which materially and adversely affects Foothill.

10. SPECIFIC REMEDIES.

Upon the occurrence of any Event of Default, Foothill shall have, in addition to, other rights given by law or in this Agreement or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

10.1 Notification. Foothill may notify licensees to make royalty payments on license agreements directly to Foothill;

10.2 Sale. Foothill may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Foothill deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to such Grantor five (5) days prior to such disposition. Such Grantor shall be credited with the net proceeds of such sale only when they are actually received by Foothill, and such Grantor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, Foothill shall also give notice of the time and place by publishing a notice one time at least five (5) days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Foothill may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Foothill at such sale.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES. THE PARTIES AGREE THAT ALL

TRADEMARK
REEL: 002295 FRAME: 0461

ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF DALLAS, STATE OF TEXAS OR, AT THE SOLE OPTION OF FOOTHILL, IN ANY OTHER COURT IN WHICH FOOTHILL SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. EACH OF THE GRANTORS AND FOOTHILL WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11. THE GRANTORS AND FOOTHILL HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE GRANTORS AND FOOTHILL REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12. GENERAL PROVISIONS.

12.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by Grantors and Foothill.

12.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that no Grantor may assign this Agreement or any rights or duties hereunder without Foothill's prior written consent and any prohibited assignment shall be absolutely void. Foothill may assign this Agreement and its rights and duties hereunder and no consent or approval by any Grantor is required in connection with any such assignment.

12.3 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

12.4 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Foothill or the Grantors, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

12.5 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

TRADEMARK
REEL: 002295 FRAME: 0462

12.6 Amendments in Writing. This Agreement can only be amended by a writing signed by both Foothill and the Grantors.

12.7 Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

12.8 Fees and Expenses. The Grantors shall pay to Foothill on demand all costs and expenses that the Foothill pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Foothill; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Grantor under this Agreement that Grantor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against the Foothill arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by the Grantors. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

12.9 Notices. Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Section 12 of the Loan Agreement.

12.10 Termination By Foothill. After termination of the Guaranty and when Foothill has received payment and performance, in full, of all Obligations, Foothill shall execute and deliver to the Grantors a termination of all of the security interests granted by the Grantors hereunder.

TRADEMARK
REEL: 002295 FRAME: 0463

12.11 Integration. This Agreement, together with the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

FOOTHILL CAPITAL CORPORATION,
a California corporation

By: _____
Katy J. Brooks
Vice President

AGREED TO AND ACCEPTED BY:

ALENCO HOLDING CORPORATION

By: _____
Patrick M. Cahill
Vice President

NEW ALENCO EXTRUSION, LTD.,
a Texas limited partnership,

By: Alenco Extrusion Management, LLC,
a Delaware limited liability company,
its General Partner

By: _____
Patrick M. Cahill,
Sole Manager

TRADEMARK
REEL: 002295 FRAME: 0464

NEW ALENCO WINDOW, LTD.,
a Texas limited partnership,

By: Alenco Building Products Management, LLC,
a Delaware limited liability company,
its General Partner

By: _____
Patrick M. Cahill,
Sole Manager

NEW GLAZING INDUSTRIES, LTD.,
a Texas limited partnership

By: Glazing Industries Management, LLC,
a Delaware limited liability company,
its General Partner

By: _____
Patrick M. Cahill,
Sole Manager

ALENCO EXTRUSION GA, LLC,
a Delaware limited liability company

By: _____
Patrick M. Cahill,
Sole Manager

ALENCO WINDOW GA, LLC,
a Delaware limited liability company

By: _____
Patrick M. Cahill,
Sole Manager

ALENCO WINDOW TN, LLC,
a Delaware limited liability company

By: _____
Patrick M. Cahill,
Sole Manager

ALENCO TRANS, INC.,
a Delaware corporation

By: _____
Patrick M. Cahill
Vice President

SCHEDULE "A"

REGISTERED FEDERAL TRADEMARKS

Grantor/Owner	Trademark	Registration Date	Registration No.
New Alenco Window, Ltd.	ALENCO	11/22/1960	707,376
New Alenco Window, Ltd.	Builders' View	09/07/1999	2,276,324

TRADENAMES

Grantor/Owner	Tradenames
New Alenco Window, Ltd.	GAPCO
New Alenco Window, Ltd.	Timber Tech
New Alenco Window, Ltd.	ALENCO
New Alenco Window, Ltd.	Gallatin Aluminum Products
New Alenco Window, Ltd.	Robert Lee Industries, Inc.
New Alenco Window, Ltd.	Fenesco
New Alenco Window, Ltd.	Living Windows
New Alenco Window, Ltd.	RBP Windows, Inc.
New Alenco Window, Ltd.	Living Windows Corporation
New Glazing Industries, Ltd.	Glazing Industries

COMMON LAW TRADEMARKS

Grantor/Owner	Trademark
New Alenco Window, Ltd.	Olympian
New Alenco Window, Ltd.	Bay Ridge
New Alenco Window, Ltd.	Ultra Glass
New Alenco Window, Ltd.	Ultra Vinyl
New Alenco Window, Ltd.	Vinyl Patio Door Designs
New Alenco Window, Ltd.	Weathermaster