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THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

and

FIRST ALABAMA BANK OF BIRMINGHAM  
TRUSTEE

---

MORTGAGE  
AND  
INDENTURE OF TRUST

---

DATED AS OF NOVEMBER 1, 1981

FIRST MORTGAGE REVENUE BOND

ALTEC INDUSTRIES, INC.

1981 INDUSTRIAL DEVELOPMENT PROJECT

This Instrument was Prepared by:

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STATE OF ALABAMA )

SHELBY COUNTY )

THIS MORTGAGE AND INDENTURE OF TRUST made and entered into as of the 1st day of November 1981, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM, a public corporation duly organized and existing under the laws of the State of Alabama (the "Board"), party of the first part, and FIRST ALABAMA BANK OF BIRMINGHAM, an Alabama banking corporation authorized to accept and execute trusts of the character herein set out, with its principal office in the City of Birmingham, Alabama (the "Trustee"), party of the second part;

W I T N E S S E T H :

WHEREAS, the Board heretofore has been organized under, and is authorized by Act No. 648, adopted at the 1949 Regular Session of the Legislature of the State of Alabama, approved September 19, 1949, as amended (said Act being codified as Code of Alabama, 1975, Sections 11-54-80, et seq., and hereinafter referred to as the "Act"), to acquire land and buildings and other improvements thereon and machinery and equipment in order to promote industry, develop trade and further the use of the agricultural products and natural resources of the State of Alabama (the "State") by inducing manufacturing, industrial, commercial and research enterprises to establish new projects in the State or to enlarge and expand existing projects located in the State; and

WHEREAS, the Board is further authorized by the Act to issue industrial development revenue bonds payable solely from the revenues and receipts derived from the leasing or sale of the land and other improvements so constructed or acquired; and,

WHEREAS, the Board has made the necessary arrangements with Altec Industries, Inc., an Alabama corporation (hereinafter called

the "Lessee"), for constructing and equipping a corporate headquarters office facility on real property owned by the Board (such real property and facility being collectively hereinafter called the "Project") which will be of the character and accomplish the purposes provided by the Act; and

WHEREAS, the Board has further entered into a lease agreement dated as of the date hereof with the Lessee (the "Lease") specifying the terms and conditions of the acquisition, construction and equipping of the Project and the leasing of the same to the Lessee, which Lease was authorized by resolutions duly adopted and approved by the Board, and which Lease will be duly recorded in the office of the Judge of Probate of Shelby County, Alabama, immediately prior to this Mortgage and Indenture of Trust being placed on record with said Judge of Probate, and to which Lease reference may be made by any interested person for the rental rates, terms, conditions and obligations of the parties thereto; and,

WHEREAS, the execution and delivery of this Mortgage and Indenture of Trust (hereinafter sometimes referred to as the "Indenture"), and the issuance of the Board's first mortgage revenue bond under the Act have been, in all respects, duly and validly authorized by resolution duly passed and approved by the Board; and,

WHEREAS, it has been determined that the estimated amount necessary to finance the cost of the Project, including necessary expenses incidental thereto, will require the issuance, sale and delivery of such first mortgage revenue bond in the principal amount of \$1,500,000 as hereinafter provided; and,

WHEREAS, the \$1,500,000 principal amount Bond is in substantially the following form with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

[FORM OF BOND]

NO. R \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ALABAMA  
THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM  
FIRST MORTGAGE REVENUE BOND  
ALTEC INDUSTRIES, INC.  
1981 INDUSTRIAL DEVELOPMENT PROJECT

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KNOW ALL MEN BY THESE PRESENTS That The Industrial Development Board of the Town of Pelham, a public corporation created and existing under the laws of the State of Alabama (hereinafter called the "Board"), for value received, promises to pay from the source and as hereinafter provided to First Alabama Bank of Birmingham (hereinafter called the "Payee"), or registered assigns (hereinafter sometimes called the "Alternate Payee"), the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000) and in like manner to pay interest on said sum from the date hereof at the rate of sixty-five percent (65%) (the "Applicable Percentage") of the prime interest rate announced from time to time by First Alabama Bank of Birmingham, at its principal office in Birmingham, Alabama, for ninety (90) day loans to industrial borrowers of substantial sizes and high credit standing (hereinafter called the "Prime Rate"), except said interest rate shall never be lower than nine percent (9%) nor higher than thirteen percent (13%) even though the Applicable Percentage of the Prime Rate might otherwise require a lower or higher interest rate.

Said interest shall be payable semi-annually commencing May 1, 1982 and on each November 1 and May 1 thereafter on the amount of principal then outstanding. The rate of interest shall be determined based on the Prime Rate then in effect on each May 1 and November 1 and shall apply to the payment of the succeeding



November 1 and May 1, respectively, so that the interest rate being charged at the beginning of said semi-annual period shall apply throughout the period, except the rate of interest for the first semi-annual period shall be determined based on the Prime Rate in effect on the date the Bond is executed. Said principal shall be payable as follows:

<u>Payment Date</u>	<u>Principal Amount</u>
November 1, 1982	\$ 40,000
November 1, 1983	45,000
November 1, 1984	50,000
November 1, 1985	55,000
November 1, 1986	65,000
November 1, 1987	70,000
November 1, 1988	80,000
November 1, 1989	90,000
November 1, 1990	100,000
November 1, 1991	110,000
November 1, 1992	125,000
November 1, 1993	140,000
November 1, 1994	160,000
November 1, 1995	175,000
November 1, 1996	195,000

Both principal of, and interest on this Bond are payable in lawful money of the United States of America at the principal office of the Trustee, First Alabama Bank of Birmingham, in the City of Birmingham, Alabama, or of its successor in trust.

This Bond constitutes a duly authorized issue of \$1,500,000 aggregate principal amount of industrial development revenue bonds issued for the purpose of acquiring real property and constructing and equipping thereon a corporate headquarters and office facility (such land and improvements being hereinafter referred to as the "Project") and leasing the same to Altec Industries, Inc., an Alabama corporation, (hereinafter referred to as the "Lessee"), and paying necessary expenses incidental thereto. The Bond is issuable in the form of a single fully registered Bond only.

This Bond is issued under and secured and entitled to the protection given by the Mortgage and Indenture of Trust (hereinafter called the "Indenture"), dated as of November 1, 1981, duly executed and delivered by the Board to First Alabama Bank of Birmingham, Birmingham, Alabama, as Trustee (the term "Trustee"

where used herein refers to said Trustee or its successor in trust), which Indenture is recorded in the Office of the Judge of Probate of Shelby County, Alabama. The Indenture provides that the Board may hereafter issue Additional Bonds (as defined in the Indenture) from time to time, under the terms and conditions therein stated, and, if issued, such Additional Bonds will rank equally and ratably on a parity with this Bond.

Reference is hereby made to the Indenture and to all indentures supplemental thereto for a description of the property mortgaged, the provisions, among others, with respect to the nature and extent of the security, and the rights, duties and obligations of the Board, the Trustee and the holders of this Bond and the terms upon which this Bond is issued and secured. Each holder, by acceptance of this Bond, consents to all of the provisions of the Indenture.

The Board has entered into a Lease, dated as of November 1, 1981, (herein called the "Lease"), with the Lessee under the provisions of which the Board has leased the Project to the Lessee and the Lessee has leased the Project from the Board. The Lease provides for the payment by the Lessee of rents for the Project in installments sufficient to pay the principal of, premium, if any, and interest on this Bond as the same shall become due and payable. The Lease further provides that the rental installments shall be paid directly to the Trustee for the account of the Board and shall be deposited to the credit of a special fund created by the Indenture and designated "Industrial Development Bond Fund, Altec Industries, Inc. Industrial Development Project", (herein called the "Bond Fund"), which special fund is pledged to and charged with the payment of the principal of, premium, if any, and interest on this Bond issued under the Indenture, and such rental installments have been duly pledged and assigned for that purpose. In addition, all other rights of the Board under the Lease have been assigned to the Trustee to secure payment of such principal of, premium, if any, and interest on the Bond under the Indenture.



The transfer of this Bond may be registered by the holder hereof in person or by his duly authorized attorney or legal representative at the principal office of the Trustee, but only in the manner and subject to the limitations and conditions provided in the Indenture.

Prior to November 1, 1983, this Bond is subject to prepayment in the event of (1) condemnation of the Project or any part thereof, or in the event of failure of title, to the extent provided in Section 7.2 of the Lease or (2) exercise by the Lessee of the Lessee's option to purchase the Project as provided in Section 11.2 of the Lease. If any of the events described in Section 7.2 of the Lease occur, this Bond shall be subject to prepayment by the Board at any time, in whole or in part, at 100 percent of the principal amount thereof plus accrued interest to the redemption date.

The entire unpaid principal balance of this Bond or any lesser portion thereof not less than \$5,000 is subject to prepayment at the option of the Board on any interest payment date after November 1, 1983, without premium.

In addition, if a Final Determination is made that interest on this Bond is subject to federal income taxation for any reason other than the circumstances described in section 103(b)(10) of the Internal Revenue Code of 1954, as amended (relating to interest on a bond held by a "substantial user" of the Project or a "related person"), this Bond shall be prepaid in whole within 90 days following such Final Determination at a prepayment price equal to the entire unpaid principal balance of this Bond, plus interest accrued hereon to the date of such prepayment, and a premium equal to the amount of any additional interest required to produce an interest rate equal to First Alabama Bank of Birmingham's Prime Rate in effect on each interest payment date for the period of time during which the interest income on the Bond was so subject to federal income taxation. Such a Final Determination shall be deemed to have been made upon the occurrence of either of the

following: (i) the date on which the Lessee or the Trustee shall be advised by private ruling, technical advice or other written communication from an authorized official of the Internal Revenue Service that interest on this Bond is subject to federal income taxation; or (ii) the date on which the Lessee shall receive from the Bondholder notice in writing that the Bondholder has been advised by an authorized official of the Internal Revenue Service that interest on this Bond is subject to federal income taxation; provided, that no such determination shall be deemed final unless and until the Lessee has been afforded reasonable opportunity, at the Lessee's sole expense, to contest such determination through its own action (if permitted by law) or by or on behalf of the Trustee, and such contest, if made, has been abandoned by the Lessee or a final order with respect to such contest has been entered by a court of competent jurisdiction from which no further appeal exists.

Written notice of any prepayment shall be given by the Board to the Trustee and the Bondholder at their principal offices at least five days prior to the prepayment date.

Any partial prepayment of principal shall not postpone the due date nor change the amount of any subsequent installments coming due hereunder prior to the payment in full of the principal and interest on this bond.

Additional Bonds issued pursuant to Section 207 of the Indenture shall be subject to redemption or prepayment on such dates and at such prices as may be provided in the supplement to the Indenture authorizing the issuance of such Additional Bonds.

This Bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Alabama, particularly Act. No. 648 adopted at the 1949 Regular Session of the Legislature of the State of Alabama, approved September 19, 1949, as amended, (said Act being codified as Code of Alabama, 1975, Sections 11-54-80, et seq.) pursuant to a resolution adopted and approved by the Board, which resolution authorizes the execution and delivery of the Indenture.



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This Bond is a limited obligation of the Board and is payable solely out of the revenues and receipts derived from the leasing or sale of the Project financed through the issuance of this Bond, which Project has been leased to the Lessee. This Bond does not and shall never constitute an obligation of or a charge against the general credit or taxing powers of the City of Pelham. Rental payments under the Lease sufficient for the prompt payment when due of the principal of, premium, if any, and interest on this Bond are to be paid to the Trustee for the account created by the Board under the Indenture, and, in addition, the Project has been mortgaged to secure payment of such principal, premium, if any, and interest under the Indenture.

Altec Industries, Inc. (the "Guarantor") has guaranteed, (a) the full and prompt payment of principal of, and premium, if any, on this Bond when due and payable, whether at the stated maturity thereof, by acceleration, upon mandatory prepayment prior to maturity, or otherwise, and (b) the full and prompt payment of the interest on this Bond when due and payable. The Guarantor has also agreed to indemnify the Trustee from losses resulting from an adjudication that this Bond is invalid for whatever reason, by purchasing this Bond, within 15 days after being requested so to do, for a purchase price equal to the outstanding principal balance of this Bond plus accrued interest thereon to the repurchase date.

In the event a Final Determination is made that interest on this Bond is subject to federal income taxation, the Guarantor has agreed to indemnify and hold harmless the Trustee from the consequences of such Final Determination by paying the Trustee an amount equal to the amount of any additional interest required to produce an interest rate equal to the Prime Rate in effect on each interest payment date for the period of time during which the interest income on the Bond became so subject to federal income taxation.

The holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the

covenants therein, or to take any action with respect to any event of default under the Indenture, except as provided in the Indenture, provided that nothing herein or in the Indenture stated shall affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on this Bond at and after the maturity thereof.

In certain events, on the conditions, in the manner, and with the effect set forth in the Indenture, the entire unpaid principal balance of this Bond may become or may be declared, due and payable before the stated maturity thereof, together with interest accrued thereon.

Modifications or alterations of the Indenture or of any supplements thereto may be made only to the extent and in the circumstances permitted by the Indenture.

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IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the Lease, and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; that the issuance of this Bond, together with all other obligations of the Board, do not exceed or violate any constitutional or statutory limitation, and that the rental payments under the Lease pledged to the payment of the principal of, premium, if any, and interest on this Bond, as the same become due, will be sufficient in amount for that purpose.

This Bond and the income therefrom also are exempt from all taxation in the State of Alabama.

IN WITNESS WHEREOF, The Industrial Development Board of the Town of Pelham has caused this Bond to be executed in its name with the signature of the Chairman of its Board of Directors and attested with the signature of its Secretary and its corporate seal to be hereunto imprinted, all as of the 1st day of November, 1981.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

By: \_\_\_\_\_  
Its Chairman

(SEAL)  
ATTEST:

\_\_\_\_\_  
Its Secretary

TRUSTEE'S AUTHENTICATION CERTIFICATE

This Bond is the Bond described in the within mentioned  
Mortgage and Indenture of Trust.

FIRST ALABAMA BANK OF BIRMINGHAM,  
Trustee

By: \_\_\_\_\_  
Authorized Officer

ASSIGNMENT

For value received, the undersigned owner does hereby sell,  
assign and transfer to \_\_\_\_\_ the within Bond of  
The Industrial Development Board of the Town of Pelham, designated  
as First Mortgage Revenue Bond, (Altec Industries, Inc. Project)  
and all sums of money now due and to become due on the said Bond,  
standing in the name of the undersigned on the books of said Board,  
and does hereby irrevocably constitute and appoint  
\_\_\_\_\_ attorney to effect the transfer thereof on the  
books of the Board or its Registrar.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

[END OF FORM OF BOND]

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WHEREAS, all things necessary to make the Bond, issued as in this Indenture provided, the valid, binding and legal obligation of the Board according to the import thereof, and to constitute this Indenture a valid lien on the Project and a valid pledge of the rental payments and revenues herein made to the payment of the principal of, premium, if any, and interest on the Bond, have been done and performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bond, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS MORTGAGE AND INDENTURE OF TRUST WITNESSETH:

That the Board, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bond by the holder and owner thereof, and of the sum of One Dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bond according to its tenor and effect and the performance and observance by the Board of all the covenants expressed or implied herein and in the Bond, does hereby grant, bargain, sell, convey, mortgage and pledge unto First Alabama Bank of Birmingham, as Trustee, and unto its successors in trust, and to its assigns forever for the securing of the performance of the obligations of the Board hereinafter set forth:

I.

The following described real estate and premises situated in the County of Shelby and State of Alabama, together with all buildings, additions and improvements now or hereafter located thereon or therein, with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or



appertaining, to-wit:

The real estate known as "Site 10, Inverness Center" more particularly described in Exhibit "A" attached hereto.

II.

All machinery, equipment and personal property acquired by the Board and installed in or about the Building or Mortgaged Property pursuant to the Lease Agreement, including without limitation any equipment and personal property acquired with the proceeds from the sale of the Bond and the equipment and personal property described in Exhibit B attached hereto and made a part hereof and any equipment and personal property acquired in substitution therefor or as a renewal or replacement thereof pursuant to the terms of the Lease and this Indenture;

III.

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All rights, title and interest of the Board in the Lease, and all rentals, revenues and receipts derived or to be derived thereunder (except for payments for indemnification under Section 5.6 of the Lease) as security for the payment of the Bond and the interest thereon and as security for the satisfaction of any other obligation assumed by it in connection with such Bond; and it is mutually agreed and covenanted by and between the parties hereto for the equal and proportionate benefit and security of all and singular the present and future holders of the Bonds issued under this Indenture;

IV.

The funds held by the Trustee pursuant to the terms of this Indenture; and

V.

Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, hypothecated, assigned or transferred, as and for additional security hereunder by the Board or by anyone in its behalf, or with its written consent to the Trustee which is hereby authorized to receive any and all such property at

any and all times and to hold and apply the same subject to the terms hereof.

SUBJECT HOWEVER to Permitted Encumbrances as hereinafter defined.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby and hereafter conveyed and assigned, or agreed or intended so to be, to the Trustee and its respective successors in said Trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and conditions herein set forth;

PROVIDED, HOWEVER, that if the Board, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and the interest due or to become due on the Bond, at the times and in the manner mentioned in the Bond according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under

Article 5 hereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments by the Board this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture shall remain in full force and effect.

THIS MORTGAGE AND INDENTURE OF TRUST FURTHER WITNESSETH that, the terms and conditions upon which the Bond is to be issued, authenticated, delivered, secured and accepted by all persons who from time to time shall be or become the holders thereof, and the trusts and conditions upon which the revenues pledged are to be held and disposed of, which said trusts and conditions the Trustee hereby accepts, and the covenants and agreements which the respective parties hereto undertake, are as follows:



ARTICLE I

DEFINITIONS

Section 101. Definitions. In addition to the words and terms elsewhere defined in this Indenture and in the Lease, the following words and terms as used in this Indenture and in the Lease shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Act" means Act No. 648 adopted during the 1949 Regular Session of the Legislature of the State of Alabama, as amended September 19, 1949 (said Act being codified as Code of Alabama, 1975, Sections 11-54-80, et seq.).

"Additional Bonds" mean the additional parity Bonds authorized to be issued by the Board pursuant to Section 207 hereof.

"Authorized Lessee Representative" means the person at the time designated to act in behalf of the Lessee by written certificate furnished to the Board and the Trustee including the specimen signature of such person and signed on behalf of the Lessee.

"Board" means the Industrial Development Board of the Town of Pelham, its successors and assigns and any corporation resulting from or surviving any consolidation or merger into which it or its successors may be a party.

"Bond" means the first mortgage revenue bond of the Board to be issued hereunder.

"Bond Fund" or "Industrial Development Bond Fund, Altec Industries, Inc. 1981 Industrial Development Project" means the fund created in Section 502 hereof.

"Bondholder" or "holder" or "owner of the Bond" means the owner of the Bond.

"Bond Registrar" means the Trustee.

"City" means the City of Pelham, Alabama, a municipality organized and existing under the laws of the State of Alabama.

"Construction Fund" or "Industrial Development Revenue Bond Fund, Altec Industries, Inc. 1981 Industrial Development Project" means the fund created by Section 601 hereof.

"Cost of Construction" with respect to the Project shall be deemed to include the following:

(a) obligations of the Board or the Lessee incurred for labor and materials (including reimbursements payable to the Board or the Lessee and payments on contracts in the name of the Board or the Lessee) in connection with the acquisition, construction, improvement and equipping of the Project;

(b) the cost of the contract bonds and insurance of all kinds that may be required or necessary during the course of construction of the Project;

(c) all costs of architectural and engineering services, including the costs of the Board for studies, surveys, arrangements, undertakings, and construction designs and plans and supervision having to do, directly or indirectly, with the acquisition, construction, equipping and improvement of the Project;

(d) all expenses incurred in connection with the issuance of the Bond, including, without limitation, compensation and expenses of the Trustee, legal expenses and fees, costs of printing and engraving, recording and filing fees, and compensation of the underwriters;

(e) all interest on the Bond payable prior to the Completion Date;

(f) all other costs and allowances which the Board or the Lessee may properly pay, accrue, or incur with respect to the acquisition, construction, equipping or improvement of the Project; and;

(g) any sums required to reimburse the Board or the Lessee for advances made by either of them for any of the above items, or for any other costs incurred, and for work done by either of them which are properly chargeable to the Project.

"Default" means those defaults specified in and defined by Section 1101 hereof.

"Extraordinary Services" and "Extraordinary Expenses" mean all services rendered and all expenses incurred by the Trustee under the Indenture other than Ordinary Services and Ordinary Expenses.



"Government Obligations" means obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, or which are unconditionally guaranteed as full faith and credit obligations by the United States of America.

"Guaranty" means the guaranty agreement of even date herewith executed by Altec Industries, Inc. for the benefit of the Trustee and the holder of the Bond as such guaranty agreement may hereafter be supplemented or amended.

"Indenture" means this Trust Indenture, dated as of November 1, 1981, between the Board and First Alabama Bank of Birmingham, Birmingham, Alabama, as Trustee, pursuant to which the Bond is authorized to be issued, and including any indenture supplemental hereto.

"Lease" means the lease agreement pertaining to the Project executed by and between the Board and the Lessee of even date herewith, as such lease agreement may hereafter be amended or supplemented.

"Lessee" means Altec Industries, Inc., an Alabama corporation, and its successors and assigns.

"Mortgaged Property" means the properties comprising the Project, including the properties leased to the Lessee under the Lease, as well as all properties which, under the terms hereof, subsequently become subject to the lien of this Indenture, but excluding all property owned by the Lessee the title to which remains in the Lessee under the terms of the Lease.

"Ordinary Services" and "Ordinary Expenses" mean those services normally rendered and those expenses normally incurred by a trustee under instruments similar to this Indenture.

The term "outstanding" or "Bond outstanding" means any Bond which has been authenticated and delivered by the Trustee under this Indenture, except a Bond cancelled because of payment or redemption prior to maturity.

"Permitted Encumbrances" means, as of any particular time, (i) mechanics' and other liens and liens for ad valorem taxes permitted

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to exist as provided in Sections 6.1 and 6.2 of the Lease or not then delinquent, (ii) this Indenture and the Lease, (iii) utility, access and other easements and rights of way, restrictions and exceptions that an Independent Engineer certifies will not interfere with or impair the operations of the Project as a corporate headquarters and office facility, (iv) any mechanics', laborers', materialmen's, suppliers' or vendors' lien or right or purchase money security interest in respect thereof if payment is not yet due and payable under the contract in question, (v) those exceptions under Schedule B, Section 2 of the interim title insurance binder issued with respect to the real estate comprising a part of the Project, and (vi) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the Project and as do not, in the opinion of Independent Counsel, materially impair the Project for the purpose for which it was acquired or is held by the Board.

"Person" means natural persons, firms, associations, corporations and public bodies.

"Project" means the industrial facilities described in the Plans and Specifications referred to in the Lease together with the Mortgaged Property.

"State" means the State of Alabama.

"Trust Estate" or "property herein conveyed" means the Mortgaged Property.

"Trustee" means the First Alabama Bank of Birmingham, Birmingham, Alabama, and its successors and any corporation or association resulting from or surviving any consolidation, merger or conversion to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

## ARTICLE 2

### THE BOND

Section 201. Authorized Amount of Bond. No Bond may be issued under the provisions of this Indenture except in accordance

with this Article. The total principal amount of the Bond authorized to be issued is \$1,500,000, provided that, Additional Bonds may be issued as provided in Section 207.

Section 202. Issuance of the Bond. A single, fully registered bond shall be issued hereunder in the principal amount of \$1,500,000. The Bond shall be in such form, shall bear interest at such rate, shall be payable at such time or times and in such amounts, shall be subject to prepayment at such time and under such conditions, and shall contain such other terms as in the form of the Bond hereinabove set forth.

Section 203. Execution. The Bond shall be executed and attested on behalf of the Board with the signatures of the Chairman or Vice Chairman and the Secretary or Assistant Secretary of its Board of Directors and shall have imprinted thereon the corporate seal of the Board. In case any officer whose signature shall appear on the Bond shall cease to be such officer before the delivery of the Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 204. Authentication. Only such Bond as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the Form of Bond herein, duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication shall be deemed to have been executed by it if signed by an authorized officer of the Trustee.

Section 205. Form of the Bond. The Bond to be issued under this Indenture shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture.



Section 206. Delivery of the Bond. Upon the execution and delivery of this Indenture, the Board shall execute and deliver to the Trustee the Bond to be issued in the aggregate principal amount of \$1,500,000 and the Trustee shall deliver it to the purchaser as may be directed by the Board as hereinafter in this Section 206 provided.

Prior to the authentication and delivery by the Trustee of the Bond, there shall be filed with the Trustee;

(1) A copy, duly certified by the Secretary or Assistant Secretary of the Board of Directors of the Board, of the resolution adopted and approved by said Board of Directors authorizing the execution and delivery of the Lease;

(2) An original executed counterpart of the Lease and of this Indenture;

(3) An original executed counterpart of the Guaranty;

(4) A copy, duly certified by the Secretary or Assistant Secretary of the Board of Directors of the Board, of the resolution authorizing the execution and delivery of this Indenture and the issuance of the Bond;

(5) A commitment to issue a title insurance policy in the amount of \$1,500,000 issued by a company acceptable to the Trustee, insuring the title of the Board for the benefit of the Trustee;

(6) A request and authorization to the Trustee on behalf of the Board and signed by the Chairman or Vice Chairman and Secretary or Assistant Secretary of its Board of Directors to deliver the Bond to the purchaser therein identified upon payment to the Trustee, but for account of the Board, of a specified sum plus accrued interest. The proceeds of the Bond shall be paid over to the Trustee and deposited to the credit of the Bond Fund and Construction Fund as hereinafter provided under Article 5 and 6 hereof; and

(7) An opinion of counsel acceptable to the Trustee concerning the tax exempt nature of the interest on the Bond, the validity of the Bond, the Lease, this Indenture and other matters required by the Trustee.



Section 207. Issuance of Additional Bonds. So long as no event of default hereunder is occurring, the Board, at the request of the Lessee and to the extent permitted by law in effect at the time thereof, shall use its best efforts to issue Additional Bonds on a parity with the Bond and any Additional Bonds theretofore or thereafter issued and payable from the Bond Fund from time to time for the purpose of providing additional monies to be used for any one or more of the following: (a) the costs of completing the Project; (b) the costs of making such renovations, additions, improvements, extensions, alterations, relocations, enlargements, expansions, modifications or changes in, on, or to the Project as the Board may deem necessary or desirable and will be located on land owned by the Board; (c) the costs of the issuance and sale of the Additional Bonds, capitalizable interest for such period and other costs reasonably related to the financing as shall be agreed upon by the Lessee and the Board; (d) to refund all or any part of the Bond; and, (e) for any combination of such purposes. Before any Additional Bonds are authenticated and delivered, there shall be delivered to the Trustee the items required therefor by this Section.

Such Additional Bonds shall be issued in such series and principal amounts, shall be dated, shall bear interest at such rate or rates, shall be subject to redemption at such times and prices, and shall mature in such years as the indenture supplemental hereto authorizing the issuance thereof shall fix and determine, and shall be deposited with the Trustee for authentication and delivery.

Upon the execution and delivery in each instance of an appropriate indenture supplemental hereto, the Board shall execute and deliver to the Trustee, and the Trustee shall authenticate, such Additional Bonds and deliver them to the purchaser or purchasers as may be directed by the Board, hereinafter in this Section 207 provided. Prior to the delivery by the Trustee of any such Additional Bonds, there shall be filed with the Trustee:

(1) A valid and effective amendment to the Lease and the Guaranty, providing for the inclusion within the Project of any

real estate and interests therein and any buildings, and structures to be acquired by purchase from the proceeds of the Additional Bonds, and providing for an increase in the obligations of the Board and the Lessee in accordance with Section 4.2 of the Lease;

(2) A valid and effective supplemental indenture providing for the issuance of such Additional Bonds and subjecting to the lien of this Indenture any and all real estate and interests therein, and any buildings and structures acquired by purchase from the proceeds of such Additional Bonds, and pledging and assigning the additional payments to the payment of the Bond, subject to the rights of the Lessee under the Lease;

(3) A copy, duly certified by the Secretary or Assistant Secretary of the Board of Directors of the Board, of the resolution theretofore adopted and approved by said Board of Directors authorizing the execution and delivery of such supplemental indenture and such amendments to the Lease and the issuance of such Additional Bonds;

(4) A request and authorization to the Trustee on behalf of the Board signed by the Chairman or Vice Chairman and the Secretary or an Assistant Secretary of the Board to deliver such Additional Bonds to the purchaser or purchasers therein identified upon such payment to the Trustee for the account of the Board of a specified sum, plus an accrued interest. The proceeds of such Additional Bonds shall be paid over to the Trustee and deposited to the credit of the Bond Fund or Construction Fund as hereinafter provided (or to such other funds as are provided and created by the supplemental indenture);

(5) A certificate signed by the Lessee to the effect that no event of default under this Indenture or the Lease is occurring or will result from the issuance of such Additional Bonds; and

(6) A valid and effective amendment to the Guaranty, pursuant to which such Additional Bonds are subjected to the terms of the Guaranty.

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(7) An opinion of bond counsel acceptable to the Trustee to the effect that the amendment to the Lease and the supplemental indenture have been properly authorized and executed and that the issuance of the Additional Bonds will not affect the tax exempt status of interest payable on the Bond.

Section 208. Priority Over Other Liens. This Indenture is given in order to secure funds to pay for new construction and, by reason thereof, it is intended that this Indenture shall be superior to any laborers', mechanics', or materialmen's liens which may be placed upon the Project.

Section 209. Bond; Limited Obligations. The Bond does not now and shall never constitute an obligation of or a charge against the general credit or taxing powers of the City. No covenant or agreement stated in this Indenture or in the Bond, nor any obligation herein or therein imposed upon the Board, or its directors, or the breach thereof, shall constitute or give rise to or impose upon the Board or its members a pecuniary liability or a charge upon its or their general credit or property other than the Mortgaged Property and the pledged revenues. All obligations respecting money are limited to the proper application of the proceeds of the sale of the Bond, the pledged revenues, and the proceeds of any sale at foreclosure. The City is not liable for payment of the principal of, premium, if any, and interest on the Bond, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Board. Neither the Bond nor any agreement of the Board shall be construed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provision whatever.

### ARTICLE 3

#### PREPAYMENT OF BOND BEFORE MATURITY

Section 301. Prepayment Under Certain Conditions. The Bond is subject to prepayment in the event of (1) condemnation of the Project or any part thereof, or in the event of failure of title, to the extent provided in Section 7.2 of the Lease or (2) exercise



by the Lessee of its option to purchase the Project as provided in Section 11.2 of the Lease. If prepaid in any of the events described in Section 7.2, the Bond shall be subject to prepayment by the Board at any time, in whole or, in part, at 100 percent of the principal amount thereof plus accrued interest to the prepayment date.

Section 302. Optional Prepayment. The entire unpaid principal balance of this Bond or any lesser portion thereof not less than \$5,000 is also subject to prepayment at the option of the Board, without premium, on any interest payment date after November 1, 1983. Any partial prepayment of principal shall not postpone the due date nor change the amount of any subsequent monthly installments coming due hereunder prior to the payment in full of the principal and interest on the Bond.

Section 303. Mandatory Prepayment. If a Final Determination is made that interest on the Bond is subject to income taxation for any reason other than the circumstances described in Section 103 (b)(10) of the Internal Revenue Code of 1954, as amended (relating to interest on a bond held by a "substantial user" of the Project or a "related person"), the Bond shall be prepaid in whole within 90 days following such Final Determination at a prepayment price equal to the entire unpaid principal balance of the Bond, plus interest accrued thereon to the date of such prepayment, and a premium equal to the amount of any additional interest required to produce an interest rate equal to First Alabama Bank of Birmingham's Prime Rate in effect on each interest payment date for the period of time during which the interest income on the Bond was so subject to federal income taxation. For the purpose of this Indenture and the Bond, a Final Determination shall be deemed to have been made upon the occurrence of either of the following: (i) the date on which the Lessee shall be advised by private ruling, technical advice or other written communication from an authorized official of the Internal Revenue Service that interest on the Bond is subject to federal income taxation; or (ii) the date on which

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the Lessee shall receive from the Bondholder notice in writing that the Bondholder or the Trustee has been advised by any authorized official of the Internal Revenue Service that interest on the Bond is subject to federal income taxation; provided, that no such determination shall be deemed final unless and until the Lessee has been afforded reasonable opportunity, at its expense, to contest such determination through its own action (if permitted by law) or by or on behalf of the Trustee, and such contest, if made, has been abandoned by the Lessee or a final order with respect to such contest has been entered by a court of competent jurisdiction from which no further appeal exists.

Written notice of any such mandatory prepayment shall be given by the Board to the Trustee at its principal office at least five days prior to the prepayment date.

Additional Bonds issued pursuant to Section 207 hereof shall be subject to redemption or prepayment on such dates and at such prices as may be permitted in the supplement to this Indenture authorizing the issuance of such Additional Bonds.

ARTICLE 4  
GENERAL COVENANTS

Section 401. Payment of Principal, Premium and Interest.

The Board covenants that it will promptly pay the principal of, premium, if any, and interest on the Bond on the dates, and in the manner provided herein and in said Bond according to the true intent and meaning thereof. The principal, premium, if any, and interest are payable solely from revenues and receipts derived from the leasing or sale of the Project, which revenues and receipts are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bond or in this Indenture should be considered as pledging any other funds or assets of the Board. The City shall not in any event be liable for the payment of the principal of, premium, if any, or interest on the Bond, or for the performance of any pledge, mortgage, obligation or agreement undertaken by the Board.



Section 402. Covenant of Performance. The Board covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions set forth in this Indenture and in the Bond issued hereunder and in all proceedings of its Board of Directors pertaining thereto. The Board covenants that it is duly authorized under the Constitution and laws of the State, including, particularly, and without limitation, the Act, to issue the Bond authorized hereby and to execute this Indenture, to assign and pledge the Lease, and to pledge the revenues and receipts under the Lease in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bond and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bond in the hands of the holder thereof is, and will be a valid and enforceable obligation of the Board according to the import thereof.

Section 403. Ownership; Instruments of Further Assurance. The Board covenants that it lawfully owns and is lawfully seized and possessed of the lands herein described, that it has good and indefeasible title and estate therein (except as otherwise provided herein or in the Lease) and that it will defend the title thereto and every part thereof to the Trustee, for the benefit of the holder of the Bond against the claims and demands of all persons whomsoever.

The Board further covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such mortgages or indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the assuring, transferring, mortgaging, pledging, assigning and confirming unto the Trustee all and singular the property herein described and the revenues and receipts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bond.

Section 404. Payment of Taxes, Assessments and Charges. Pursuant to the provisions of Section 6.2 of the Lease, the Lessee



has agreed to pay all lawful taxes, assessments, and charges at any time levied or assessed upon or against the Project, or any part thereof, which might impair or prejudice the lien and priority of this Indenture. In the event that the Lessee shall fail to pay any of the items required to be paid by Section 6.2 of the Lease, the Board or the Trustee may pay the same pursuant to Section 1206 hereof; provided, however, that nothing set forth in this Section 404 shall require the payment of any such taxes, assessments or charges if the same are not required to be paid under the provisions of Section 6.2 of the Lease.

Section 405. Recordation of the Indenture. The Board covenants that it will cause this Indenture and financing statements, and all supplements hereto, to be kept filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Bondholder and the rights of the Trustee hereunder.

Section 406. Inspection of Project Books. The Board covenants and agrees that all books and documents in its possession relating to the Project, and the revenues derived from the Project, shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 407. Rights Under the Lease. The Lease, a duly executed counterpart of which has been filed with the Trustee, sets forth the covenants and obligations of the Board and the Lessee, including a provision that subsequent to the issuance of the Bond and prior to its payment in full, or provisions for payment thereof in accordance with the provisions hereof, the Lease may not be effectively amended, changed, modified, altered or terminated, except in accordance with this Indenture, and reference is hereby made to the same for a detailed statement of said covenants and obligations of the Lessee under the Lease.

The Board will require the Lessee faithfully to perform at all times any and all covenants, undertakings, stipulations and provisions set forth in the Lease. The Board will promptly notify the

Trustee in writing if, to the knowledge of the Board, the Lessee fails to perform or observe any of the agreements or covenants on its part set forth in the Lease. The Board will promptly comply with the instructions or directions of the Trustee with respect to the giving of notice of default to the Lessee and the exercise of rights and remedies in the event of default under the Lease. Unless so instructed or directed, the Board will not give the Lessee a notice of default or exercise any right or remedy under the Lease. Further, the Board agrees that the Trustee, in its name, or in the name of the Board, may enforce all rights of the Board and all obligations of the Lessee under, and pursuant to the Lease for, and on behalf of the Bondholder, whether or not the Board is in default hereunder.

Section 408. Priority of Pledge. The pledge herein made of the revenues and receipts from leasing or sale of the Project shall at no time be impaired by the Board and shall not otherwise be pledged and no persons shall have any rights with respect thereto, except as provided herein and in the Lease.

Section 409. Assurance of Board's Cooperation. In addition to all specific covenants and undertakings of the Board pursuant to this Indenture and the Lease, the Board covenants that it will cause the Project to be constructed and completed with due diligence, and agrees to cooperate fully with the Trustee and the Lessee so that the Project may become operational at the earliest possible time and may be operated by the Lessee in a successful and productive fashion thereafter.

## ARTICLE 5

### THE BOND FUND

Section 501. Source of Payment of Bond. The Bond herein authorized and all payments by the Board hereunder, are not general obligations of the Board, but are limited obligations payable solely from revenues and receipts derived from the leasing or sale of the Project as authorized by the Act and provided herein and from payments made pursuant to the Guaranty.



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The Bond, together with interest thereon, shall be payable from the Bond Fund and shall be a valid claim of the holder thereof only against such fund and the revenues and receipts from the leasing or sale of the Project pledged to such fund, which revenues and receipts are hereby pledged and mortgaged for payment of the Bond and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bond, except as may be otherwise expressly authorized in this Indenture. The Bond is secured by a first mortgage lien on the Project and a pledge of the Lease.

The Project has been leased to the Lessee under the Lease and the rental payments provided in Section 5.3 of the Lease are to be remitted directly to the Trustee for the account of the Board and deposited in the Bond Fund. The said payments are sufficient in amounts to insure the prompt payment of the principal of, premium, if any, and interest on the Bond, and the entire amount of said payments is pledged to the payment of the principal of, premium, if any, and interest on the Bond.

Section 502. Creation of the Bond Fund. There is hereby created by the Board and ordered established with the Trustee a trust fund to be designated "Industrial Development Bond Fund, Altec Industries, Inc. 1981 Industrial Development Project," sometimes referred to herein as the Bond Fund, which shall be used to pay the principal of, premium, if any, and interest on the Bond.

Section 503. Payments into the Bond Fund. There shall be deposited into the Bond Fund all accrued interest received at the time of the delivery of Bond. In addition, there shall be deposited into the Bond Fund, as and when received, (a) any amount remaining in the Construction Fund to the extent provided in Section 4.3 of the Lease; (b) all payments specified in Section 5.3 of the Lease; and (c) all other monies received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions that such monies are to be paid into the



Bond Fund. The Board hereby covenants and agrees that until the principal of, premium, if any, and interest on the Bond shall have been fully paid, or provisions for the payment thereof shall have been made in accordance herewith, the Board will deposit, or cause to be deposited, in the Bond Fund for its account sufficient sums of revenues and receipts derived from the leasing or sale of the Project, whether or not under and pursuant to the Lease, promptly to meet and pay the principal of, premium, if any, and interest on the Bond, as the same become due and payable and to this end the Board covenants and agrees that, until the principal of, premium, if any, and interest on the Bond shall have been paid or provision for the payment thereof shall have been made in accordance herewith, the Board will cause the Project to be continuously and efficiently leased as a revenue and income producing undertaking. Should there be a default under the Lease with the result that the right of possession of the Project under the Lease is returned to the Board, the Board shall fully cooperate with the Trustee and with the Bondholder to the end of fully protecting the rights and security of the Bondholder and shall diligently proceed in good faith and use its best efforts to secure another tenant for the premises to the end that at all times sufficient revenues and receipts will be derived from the Project promptly to meet and pay the principal of, and interest on the Bond as the same become due and payable, as well as covering the cost of maintaining and insuring the Project. Nothing herein shall be construed as requiring the Board to operate the Project or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 504. Use of Monies in the Bond Fund. Except as provided in Sections 507, 702, 1108, and 1202 hereof, and applicable provisions of the Lease, monies in the Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on the Bond and for the prepayment of the Bond at or prior to maturity.

Section 505. Custody of the Bond Fund. The Bond Fund shall be in custody of the Trustee, but in the name of the Board and the Board hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of, premium, if any, and interest on the Bond, as the same become due and payable, which authorization and direction the Trustee hereby accepts.

Section 506. Monies to be Held in Trust. All monies required to be deposited with or paid to the Trustee for account of the Bond Fund and the Construction Fund under any provision of this Indenture shall be held by the Trustee in trust, and, shall, while held by the Trustee, constitute part of the trust estate and be subject to the security interest created hereby. But any monies which shall be deposited in the Bond Fund and which shall remain unclaimed by the holder of the Bond for the period of seven (7) years after the date on which the Bond shall have become fully due and payable shall, upon request in writing, be paid to the Board or to the Commissioner of Revenue, or other representatives of the State of Alabama pursuant to the Uniform Disposition of Unclaimed Property Act, if applicable, and thereafter the holder of the Bond shall look only to the Board or to such Commissioner, as the case may be, for payment and then only to the extent of the amounts so due without any interest thereon, and the Trustee and the additional paying agents shall have no responsibility with respect to such monies.

Section 507. Repayment to the Lessee from the Bond Fund. Any amounts remaining in the Bond Fund after payment in full of the Bond, the fees, charges and expenses of the Trustee, and the paying agents, and all other amounts required to be paid hereunder, shall be paid to the Lessee upon the expiration or sooner termination of the terms of the Lease as provided in Section 12.5 of the Lease.

## ARTICLE 6

### THE CONSTRUCTION FUND

Section 601. Creation of the Construction Fund-Disbursements. There is hereby created and established with the Trustee a trust fund in the name of the Board to be designated "Industrial



Development Construction Fund, Altec Industries, Inc. 1981 Industrial Development Project", which is sometimes herein referred to as the "Construction Fund." The balance of the proceeds derived from the sale of the Bond remaining after the deduction for accrued interest provided by Section 503 hereof has been made, shall be deposited in the Construction Fund. Any money received by the Trustee from any other source for the purchase, construction, equipping and improvement of the Project shall be deposited in the Construction Fund.

Monies in the Construction Fund shall be expended in accordance with the provisions of the Lease, and, particularly, Section 4.3 thereof.

The Board covenants and agrees to take all necessary and appropriate action promptly in approving and ordering all such disbursements. The said Trustee is hereby authorized and directed to issue its checks for each disbursement required by the aforesaid provisions of the Lease, and the Trustee shall have no liability or responsibility with respect to making payments in accordance with Section 4.3 of the Lease, except liability for its own negligence.

The Trustee shall keep and maintain adequate records pertaining to the Construction Fund and all disbursements therefrom and, after the Project has been completed and a certificate of payment of all costs filed as provided in Section 602 hereof, the Trustee shall file an accounting thereof with the Board and with the Lessee.

Section 602. Completion of the Project. The completion of the Project and payment of the Cost of Construction shall be evidenced by the filing with the Trustee of: (a) the certificate of the Authorized Lessee Representative required by the provisions of Section 4.5 of the Lease, and (b) a certificate signed by the Chairman or Vice Chairman of the Board and by the Authorized Lessee Representative, which certificate shall state that the Cost of Construction payable out of the Construction Fund has been paid and discharged except for amounts retained by the Trustee with the



approval of the Lessee and the Board for the payment of Cost of Construction not then due and payable, as provided in the Lease. As soon as practicable, and in any event within sixty (60) days from the date of the certificate referred to in subsection (b) of the preceding sentence, any balance remaining in the Construction Fund, other than the amounts retained by the Trustee referred to in the preceding sentence, shall, without further authorization, be deposited in the Bond Fund by the Trustee with advice to the Board and to the Lessee of such action.

## ARTICLE 7

### INVESTMENTS

Section 701. Investment of Construction Fund Monies. Any monies held as part of the Construction Fund shall be invested and reinvested by the Trustee in accordance with the provisions of Section 4.8 of the Lease. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Construction Fund and the interest accruing thereon and any profit realized from such investments shall be credited to such Fund, and any loss resulting from such investments shall be charged to such Fund. The Trustee is directed to sell and reduce to cash funds a sufficient amount of such investments whenever the cash balance in the Construction Fund is insufficient to pay a requisition when presented pursuant to the provisions of the Lease.

Section 702. Investment of Bond Fund Monies. Any monies held as part of the Bond Fund shall be invested and reinvested by the Trustee in accordance with the provisions of Section 4.8 of the Lease, to the extent that such investment is feasible and consistent with the required payment of the principal of, premium, if any, and interest on the Bond. Any such investments shall be held by or under control of the Trustee and shall be deemed at all times a part of the Bond Fund, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund, and any loss resulting from such investments shall be charged to such fund. The Trustee shall sell and reduce to cash funds a sufficient portion of investments under the provisions of this Section 702 when-

ever the cash balance in the Bond Fund is insufficient to pay the current principal, premium, if any, and interest requirements. Pursuant to the provisions of Section 5.3 of the Lease, the Lessee has agreed that if on any payment date the balance in the Bond Fund is insufficient to make required payments of principal of, premium, if any, and interest due on the Bond on such date, then the Lessee will forthwith pay such deficiency to the Trustee.

Section 703. Trustee Responsibility; Investments Through Bond Department. The Trustee shall have no liability or responsibility for any loss resulting from investments made pursuant to Sections 701 and 702, except liability for its own negligence. The Trustee shall not be required to pay interest on any money received hereunder unless specifically otherwise agreed with the Board or the Lessee. The Trustee may make any and all investments permitted by the provisions of Section 701 and 702 through its own bond department, pursuant to Section 4.8 of the Lease.

#### ARTICLE 8

##### SPECIAL COVENANT AGAINST ARBITRAGE

Section 801. Covenants and Representations Regarding Section 103 of the Internal Revenue Code of 1954. The Board hereby covenants and agrees with the Trustee and the holder of the Bond that the proceeds of the Bond shall not be used or applied by it in such manner as to constitute the Bond an "arbitrage bond" as that term is defined in Section 103(c) of the Internal Revenue Code of 1954, as amended (the "Code"). Without limiting the generality of the foregoing, the Board covenants with the purchaser of the Bond that the Board will make no use, or allow the use of the proceeds of the Bond which, if such use had been reasonably expected on the date of issue of the Bond, would have caused the Bond to be an "arbitrage bond" within the meaning of Section 103(c) of the Code.

#### ARTICLE 9

##### POSSESSION, USE AND PARTIAL RELEASE OF MORTGAGED PROPERTY

Section 901. Subordination to Rights of the Lessee. This Indenture and the rights and privileges hereunder of the Trustee



and the holder of the Bond are specifically made subject and subordinate to the rights and privileges of the Lessee set forth in the Lease. So long as the Lessee is not in default under the provisions of the Lease, it shall be entitled to possess, use and enjoy the Project and all its rights under said Lease, and so long as not otherwise provided in this Indenture, the Board shall be permitted access to the Mortgaged Property and appurtenances so as to carry out its obligations under the Lease.

Section 902. Release of Mortgaged Land. Reference is made to the provisions of the Lease, including, without limitation, Section 8.4, 8.7, and 11.3 thereof, whereby the Board and the Lessee have reserved the right to withdraw certain portions of the land herein described and forming a part of the Mortgaged Property upon compliance with the terms and conditions of the Lease. The Trustee shall release from the lien of this Indenture any such land upon compliance with the provisions of the Lease.

Section 903. Granting of Easements. The Trustee shall, if requested, execute or confirm the grants or releases of easements, licenses, rights of way and other rights and privileges permitted by Sections 8.4, 8.7 and 11.3 of the Lease upon compliance with the provisions thereof.

Section 904. Condemnation or Destruction of or Damage to the Project. In the event of condemnation, failure of title, or destruction of or damage to the Project, provision is made in the Lease for the application of the Net Proceeds (as therein defined) of insurance or condemnation awards. All such proceeds shall be held and applied as provided in Sections 6.4 and 7.2 of the Lease.

Section 905. Prohibition of Mortgages and Pledges. The Board agrees and covenants that it will not mortgage, pledge or otherwise encumber the Project or any part thereof or the revenues and receipts pledged hereunder, except as provided in this Indenture.

#### ARTICLE 10

##### DISCHARGE OF LIEN

Section 1001. Discharge of Lien. If the Board shall pay, or cause to be paid to the owner of the Bond the principal, premium,



if any, and interest to become due thereon at the times and in the manner stipulated therein, and if the Board shall keep, perform and observe all and singular the covenants and promises in the Bond and in this Indenture expressed as to be kept, performed and observed by it or on its behalf, and shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, and irrevocable instructions to make such payments have been given by the Board to the Trustee, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Board such instruments in writing as shall be requisite to satisfy the lien hereof and reconvey to the Board the estate hereby conveyed, and assign and deliver to the Board any property at the time subject to the lien of this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Lessee under Section 507 hereof, and except cash held by the Trustee for the payment of the principal of, premium, if any, and interest on the Bond.

#### ARTICLE 11

##### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDER

Section 1101. Defaults, Events of Default. If any of the following events occur, subject to the provisions of Section 1111 hereof, it is hereby defined as, and declared to be and to constitute, an "event of default":

(a) Default in the due and punctual payment of any interest on the Bond;

(b) Default in the due and punctual payment of the principal of, or premium on the Bond, whether at the stated maturity thereof, upon proceedings for redemption thereof, or upon maturity thereof by declaration;

(c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Board in this Indenture or in the Bond stated, and the continuance thereof

for a period of thirty days after written notice given to the Board and to the Lessee by the Trustee;

(d) The occurrence of an "event of default" under Section 10.1 of the Lease.

(e) The occurrence of an "event of default" under the Guaranty.

Section 1102. Acceleration. Upon the occurrence of an event of default, the Trustee may, and upon the written request of the Bondholder shall, by notice in writing delivered to the Board, declare the principal of the Bond and the interest accrued thereon, immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Board and the Trustee shall, if the Lessee is in default under Section 10.1 of the Lease, immediately declare all rental payments payable under Section 5.3 of the Lease to be immediately due and payable.

Section 1103. Surrender of Possession of Mortgage Property; Rights and Duties of Trustee in Possession. Upon the occurrence of an event of default, the Board, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Mortgaged Property together with the books, papers and accounts of the Board pertaining thereto, and including the rights, obligations and the position of the Board under the Lease, and to hold, operate and manage the same, and from time to time to make all needful repairs and improvements as the Trustee shall deem wise; and the Trustee may lease with or without an option to purchase the Project or any part thereof granted in such lease, in the name and for account of the Board and collect, receive and sequester the rents, revenues, issues, earnings, income, products and profits therefrom, and out of the same and any monies received from any receiver of any part thereof pay, or set up the proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same,



including reasonable compensation to the Trustee, its agents and counsel, and any charges of the Trustee hereunder, and any taxes and assessments and other charges prior to the lien of this Indenture which the Trustee may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the monies so received in accordance with the provisions of Section 1108 hereof. Whenever all that is due upon the Bond shall have been paid and all defaults made good except amounts due by reason of an acceleration which has been rescinded, the Trustee shall surrender possession to the Board, its successors or assigns; the same right of entry, however, to exist upon any subsequent event of default.

While in possession of such property the Trustee shall render annually to the Board, and the Lessee, a summarized statement of income and expenditures in connection therewith.

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Upon the occurrence of an event of default, the lien on the Project created and vested by this Indenture may be foreclosed either by sale at public outcry or by proceedings in equity, and the Trustee, whether or not then in default of payment of principal or interest, may become the purchaser at any foreclosure sale if the highest bidder, and, in the event of sale at public outcry, the Trustee may sell, or cause to be sold, all and singular, the Project and the Mortgaged Property and all the estate, right, title and interest, claim and demand therein, such sale or sales to be made at public outcry at the main door of the county courthouse of the county in which the Project is situated, at such time or times and upon such terms as may be required by law or as the Trustee may determine, after having first given notice of the time, place, and terms of sale, together with the description of the property to be sold, by publication once a week for three consecutive weeks prior to said sale in any newspaper then published in said county.

While the Bond is outstanding, the Board shall not exercise any of the remedies on default specified in Section 10.2 of the Lease without the prior written consent of the Trustee.



Section 1104. Other Remedies. If any event of default has occurred and is continuing, the Trustee, in its discretion, may, in its own name:

(a) By mandamus, or other suit, action, or proceeding at law or in equity, enforce all rights of the Board and the Trustee, including the right to require the Board to enforce any rights under the Lease and to require the Board to carry out any other provisions of this Indenture for the benefit of the Bondholders and to perform its duties under the Act;

(b) Bring suit upon the Bond or upon the Guaranty;

(c) By action or suit in equity require the Board to account as if it were the trustee of an express trust for the Trustee; and

(d) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Trustee.

No remedy conferred upon or reserved to the Trustee by the terms of this Indenture is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by the Trustee or by the Bondholder, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

Section 1105. Appointment of Receivers. Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee under this Indenture, the Trustee shall be entitled, as a

matter of right, to the appointment of a receiver, or receivers of the Mortgaged Property and of the rents, revenues, issues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 1106. Waiver of Appraisal Rights. Upon the occurrence of an event of default, to the extent that such rights then lawfully may be waived, neither the Board, nor the City, nor anyone claiming through or under either of them, shall set up, claim, or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture or the foreclosure of this Indenture, but the Board, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all rights to appraisement and redemption to which it may be entitled under the laws of the State.

Section 1107. Application of Monies. All monies received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such monies, and of the fees, expenses, liabilities and advances earned, incurred or made by the Trustee, be deposited in the Bond Fund, and all monies in the Bond Fund shall be applied as follows:

(a) Unless the principal of the Bond shall have become, or shall have been declared due and payable, all such monies shall be applied to the payment to the person entitled thereto of: (i) all installments of interest then due on the Bond, in the order of the maturity of the installments of such interest and, (ii) the unpaid principal of the Bond which shall have been due, with interest on the Bond, at the rate payable on the Bond, from the respective dates upon which they became due.

(b) If the principal of the Bond shall have become due, or shall have been declared due and payable, all such monies shall be applied to the payment of the principal and interest then due and



unpaid upon the Bond, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, according to the amounts due, respectively, for principal and interest; and

(c) If the principal of the Bond shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under the provisions of this Article, then, subject to the provisions of paragraph (b) of this Section 1107, in the event that the principal of the Bond shall later become due or be declared due and payable, the monies shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever monies are to be applied pursuant to the provisions of this Section 1107, such monies shall be applied at such times, and from time to time, as the Trustee shall determine, having regard to the amount of such monies available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date, which shall be an interest payment date, unless it shall deem another date more suitable, upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give notice as it may deem appropriate of the deposit with it of any such monies and of the fixing of any such date, and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of, and interest on the Bond have been paid under the provisions of this Section, and all expenses and charges of the Trustee have been paid, any balance remaining in the Bond Fund shall be paid to the Lessee as provided in Section 507 hereof.

Section 1108. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise,



and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then, and in every such case, the Board and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 1109. Waivers of Events of Default. The Trustee may, in its discretion, waive any event of default hereunder and its consequences, and rescind any declaration of maturity of principal provided, however, that there shall not be waived: (a) any event of default in the payment of the principal of any outstanding Bond at the date of maturity specified therein, or, (b) any default in the payment when due of the interest on any such Bond, unless, prior to such waiver or rescission, all arrears of interest, with interest, to the extent permitted by law, at the rate borne by the Bond in respect of which such default shall have occurred on overdue installments of interest, or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such default, shall have been paid or provided for, and, in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then, and in every case, the Board and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 1110. Notice of Defaults Under Section 1101(c) - Opportunity for the Board and the Lessee to Cure Such Defaults. Anything in this Indenture to the contrary notwithstanding, no default under Section 1101(c) hereof shall constitute an event of default until actual notice of such default by registered or certified mail shall be given by the Trustee or the Bondholder to the

Board and the Lessee, and the Board and the Lessee shall have had thirty days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or have caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an event of default if corrective action is instituted by the Board or the Lessee within the applicable period and diligently pursued until the default is corrected.

With regard to any alleged default concerning which notice is given to the Board and the Lessee under the provisions of this Section 1110, the Board hereby grants the Lessee full authority for account of the Board to perform any covenant or obligation alleged in said notice to constitute a default, in the name and stead of the Board, with full power to do any and all things and acts to the same extent that the Board could do and perform any such things and acts and with power of substitution.

Section 1111. Notice of Defaults in Payments. Under Section 5.3 of the Lease, rental payments for the Project are to be paid by the Lessee directly to the Trustee but for the account of the Board. If the Trustee does not receive such payments on the day it becomes due, the Trustee shall, as soon as practicable, notify the Lessee in writing that such payment is due and payable and that it has not been paid.

## ARTICLE 12

### THE TRUSTEE

Section 1201. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture. and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an event of default, and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case



an event of default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof, and perform any of its duties by or through attorneys, agents, receivers or employees, but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney, who may be the attorney or attorneys for the Board or the Lessee, approved by the Trustee, in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any act or failure to act done in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bond (except in respect to the certificate of the Trustee endorsed on the Bond), or for the recording or rerecording, filing, or refiling of this Indenture, or for insuring the Project or collecting any insurance monies, or for the validity of the execution by the Board of this Indenture, or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bond issued hereunder or intended to be secured hereby, or for the value or title of the Project or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the Project pursuant to any provision of this Indenture it shall use due diligence in preserving all or any part of the Project so entered, and the Trustee shall not be bound to ascertain or inquire

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as to the performance or observance of any covenants, conditions or agreements on the part of the Board or on the part of the Lessee under the Lease in connection with the matters referred to in Sections 402 and 403 hereof, except as hereinafter set forth; but the Trustee may require of the Board or the Lessee full information and advice as to the performance of the covenants, conditions and agreements aforesaid and as to the condition of the property herein conveyed. Except as otherwise provided in Section 1103 hereof, the Trustee shall have no obligation to perform any of the duties of the Board as lessor under the Lease.

(d) The Trustee shall not be accountable for the use of any Bonds delivered hereunder except those which it owns pursuant to Section 1209 hereof.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of the Bond, shall be conclusive and binding upon all future owners of the Bond.

(f) As to the existence or nonexistence of any fact, or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Board by its Chairman or Vice Chairman and attested by its Secretary or Assistant-Secretary as sufficient evidence of the facts therein set forth and, prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or

advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Secretary of the Board under its seal to the effect that a resolution in the form therein set forth has been adopted by the Board as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its gross negligence or willful default.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder, except failure by the Board to cause to be made any of the payments to the Trustee required to be made by Article 5, or failure by the Board or the Lessee to file with the Trustee any document required to be filed under this Indenture, or the Lease, unless the Trustee shall be specifically notified in writing of such default by the Board, and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the principal office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(i) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries, or nonfulfillment of contracts during any period in which it may be in the possession of or managing the Project as in this Indenture provided.

(j) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect all books, papers and records of the Board pertaining to the Project and the Bond, and to take such memoranda from and in regard thereto as may be desired.

(k) The Trustee shall not be required to give any bond or

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surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(1) Notwithstanding statements elsewhere made in this Indenture, the Trustee shall have the right, but shall not be required to demand, in respect of the authentication of the Bond the withdrawal of any monies, the release of any property, or any action whatsoever within the purview of this Indenture, any showing, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, by the Trustee deemed desirable for the purpose of establishing the right of the Board to the withdrawal of any monies, the release of any property, or the taking of any other action within the purview of this Indenture.

(m) Before taking any action hereunder, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except which is adjudicated from its gross negligence or willful default in taking such action.

(n) All monies received by the Trustee shall, until used, applied or invested as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent provided for herein or required by law. The Trustee shall not be under any liability for interest on any monies received hereunder except such as may be agreed on.

Section 1202. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its Ordinary Services rendered hereunder and for all advances, counsel fees, and other Ordinary Expenses reasonably and necessarily made or incurred by the Trustee in connection with such services and, in the event that it should become necessary that the Trustee perform Extraordinary Services it shall be entitled to reasonable extra compensation therefor, and to reimbursement for

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reasonable and necessary Extraordinary Expenses in connection therewith; provided that, if such Extraordinary Services or Extraordinary Expenses are occasioned by the neglect or misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall have a right of payment prior to payment on account of principal of, or interest on the Bond for the foregoing advances, fees, costs and expenses incurred.

Section 1203. Trustee's, Fees, Charges and Expenses.

Pursuant to the provisions, and during the term of the Lease, the Lessee has agreed to pay the fees and charges of the Trustee, such fees and charges to be paid directly to the Trustee as and when such fees and charges become due and payable.

Section 1204. Intervention by Trustee. In any judicial proceeding to which the Board is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Trustee as a holder of the Bond, the Trustee may intervene in such proceeding. The rights and obligations of the Trustee under this section are subject to the approval of a court of competent jurisdiction.

Section 1205. Successor Trustees. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole, or substantially as a whole, or any corporation or association resulting from such conversion, sale, merger, consolidation or transfer to which it is a party shall be and become, ipso facto, successor trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 1206. Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment, or governmental or other

charge upon any part of the Project or the premiums on insurance on the Project or the expenses of maintaining or preserving the Project is not paid as required herein, the Trustee may pay such tax, assessment or governmental charge, premiums or expenses, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this section, with interest thereon from the date of payment at the rate of 15% per annum, shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over the Bond, and shall be paid out of the proceeds of revenues collected from the property herein conveyed, if not otherwise paid, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Bondholder and shall have been provided with adequate funds for the purpose of such payment.

Section 1207. Trustee Protected in Relying Upon Resolutions, etc. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection, and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

Section 1208. Trustee May Hold Bond. The Trustee, in its individual or any other capacity, may become the owner or pledgee of the Bond and may otherwise deal with the Board or a purchaser of the Project with the same rights it would have if it were not Trustee.

Section 1209. Duties of Trustee. Notwithstanding any statement to the contrary herein, the Trustee shall, prior to the occurrence of an event of default, as defined in Section 1101, and after the curing of all such events of default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall, during the existence of any such event of default which has not been cured, exercise such of the rights and powers vested in it by this Indenture, and



use the same degree of care and skill in such exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(a) Prior to an event of default hereunder, and after the curing of all events of default which may have occurred;

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and, (2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee, conforming to the requirements of this Indenture; but, notwithstanding any provision of this Indenture to the contrary, in the case of any such certificate or opinion, or any evidence which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this Indenture.

(b) at all times, regardless of whether or not any event of default shall exist;

(1) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, or officers, of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(2) the Trustee shall not be liable with respect to any action taken, or omitted to be taken by it in good faith in accordance with the direction of the Bondholder relating to the time, method, and place of conducting any proceeding for any remedy



available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(3) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The term "responsible officers" of the Trustee, as used in this Indenture, shall mean and include the Chairman of the Board of Directors, the President, any Vice President, the Cashier, any Assistant Cashier, any Trust Officer or their assistants, and every other officer and assistant officer of the Trustee customarily performing functions similar to those, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with a particular subject.

#### ARTICLE 13

##### SUPPLEMENTAL INDENTURES

Section 1301. Supplemental Indentures. The Board and the Trustee may, with the prior written consent of the Lessee and the Bondholder, at any time, enter into an indenture, or indentures supplemental to this Indenture, as shall not be inconsistent with the terms and provisions hereof.

#### ARTICLE 14

##### AMENDMENT OF LEASE AND GUARANTY

Section 1401. Amendments to Lease and Guaranty. The Board shall not consent to any amendment, changes or modifications of the Lease or the Guaranty without the prior written consent of the Trustee and the Bondholder except as may be required: (a) by the provisions of the Lease, the Guaranty and this Indenture; or (b) for the purpose of curing any ambiguity or formal defect in omission; or (c) for the purpose of identifying more precisely the real estate or equipment, furniture, fixtures or other personal

property comprising the Project or any substitutions thereof or additions thereto; or (d) in connection with the issuance, sale and delivery of Additional Bonds, as provided and in compliance with Section 207 hereof, to provide for payments of additional amounts sufficient to pay the principal of, premium, if any, and interest on such Additional Bonds and such other charges necessary in connection with the issuance of such Additional Bonds as shall not, in the opinion of the Trustee, prejudice in any material respect the rights of the holder of the Bond; or (e) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Bondholder.

#### ARTICLE 15

##### MISCELLANEOUS

Section 1501. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bond, is intended or shall be construed to give any person or lessee other than the parties hereto, any legal or equitable right, remedy, or claim under, or in respect to this Indenture, and all of the covenants, conditions, and provisions hereof being intended to be, and being for the sole and exclusive benefit of the parties hereto, and the Lessee as herein provided.

Section 1502. Severability. If any provision to this Indenture shall be held, or deemed to be, or shall, in fact, be inoperative, or unenforceable, as applied in any particular case, in any jurisdiction, or jurisdictions, or in all jurisdictions, or in all cases, because it conflicts with any other provision, or provisions hereof, or with any constitution, or statute, or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein stated invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses,



or sections in this Indenture stated, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 1503. Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed as follows: if to the Board, in care of City Hall Building, Pelham, Alabama 35214; if to the Trustee, at P. O. Box 10247, Birmingham, Alabama 35202, Attention: Trust Department; and if to the Lessee, at P. O. Box 43626, Birmingham, Alabama 35243, Attention: Lee J. Styslenger, Jr. A duplicate copy of each notice required to be ~~given thereunder by either the Board or the Trustee shall also be~~ given to the Lessee, and a duplicate copy of each notice required to be given hereunder by the Trustee to either the Board or the Lessee also shall be given to the other. The Board, the Lessee, and the Trustee may, by notice given hereunder, designate any additional or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 1504. Payments due on Saturday, Sundays and Holidays. In any case where the date of maturity or principal of, premium, if any, and interest on the Bond, shall be a Saturday, a Sunday, or, in the place of payment, a legal holiday, or a day on which banking institutions are authorized by law to close, then payment of principal, premium or interest, need not be made on such date in such place, but may be made on the next succeeding business day not a Saturday, a Sunday, or a legal holiday, or a day upon which banking institutions are authorized by law to close, with the same force and effect as if made on the date of maturity, and no interest will accrue for the period after such prior date.

Section 1505. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 1506. Applicable Provisions of Law. This Indenture



shall be governed by and construed in accordance with the laws of the State of Alabama.

Section 1507. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope and intent of any provision of this Indenture.

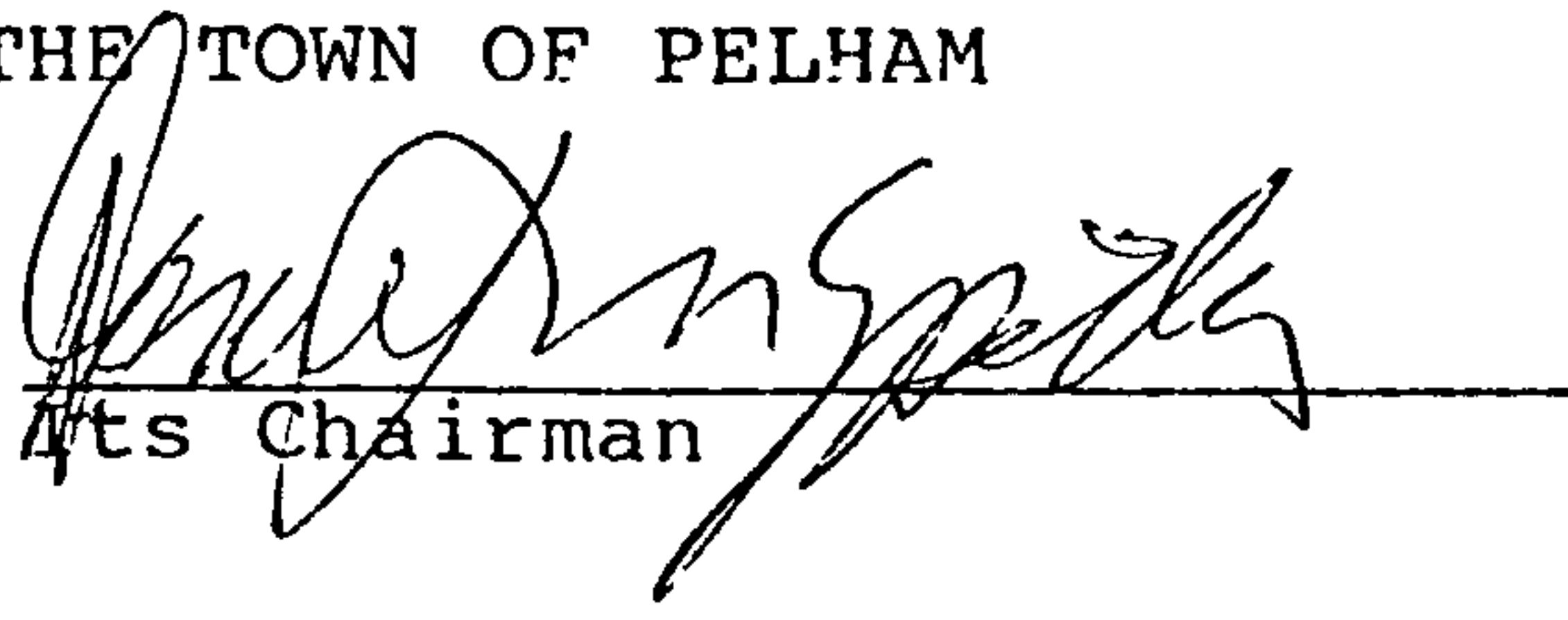
Section 1508. Date of Indenture and Bond. The date of this Indenture and of the Bond is intended as and for a date for the convenient identification of this Indenture and of the Bond and is not intended to indicate that the Bond was delivered or issued on the date, or that this instrument was executed and delivered on said date.

Section 1509. Successors and Assigns of Parties Hereto. All the covenants, stipulations, promises and agreements in this Indenture set forth by or on behalf of the Board or the Trustee, or either of them, shall inure to the benefit of and bind their respective successors and assigns.

IN WITNESS WHEREOF, The Industrial Development Board of the Town of Pelham has caused these presents to be signed in its name and behalf by the Chairman of its Board of Directors, and its corporate seal to be hereunto affixed and attested by its Secretary, and to evidence its acceptance of the trusts hereby created, First Alabama Bank of Birmingham, has caused these presents to be signed in its name and behalf by its Vice President, Corporate Trust Manager and its official seal to be hereunto affixed and the same to be attested by one of its authorized officers this 25 day of November, all effective as of November 1, 1981.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

By:

  
Its Chairman

ATTEST:

  
Its Secretary

FIRST ALABAMA BANK OF BIRMINGHAM

By: Roy D. Brindley  
Its Vice President,  
Corporate Trust Manager

ATTEST:

B. H. Brown  
Its assistant Secretary

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Daniel M. Spitzer, whose name as Chairman of the Board of Directors of The Industrial Development Board of the Town of Pelham, is signed to the foregoing Mortgage and Indenture of Trust, and who is known to me, and known to be such officer, acknowledged before me on this day that being informed of the contents of said Mortgage and Indenture of Trust, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said Board.

Given under my hand and official seal this the 25 day of November, 1981.

C. J. H. Hester  
Notary Public

STATE OF ALABAMA     )

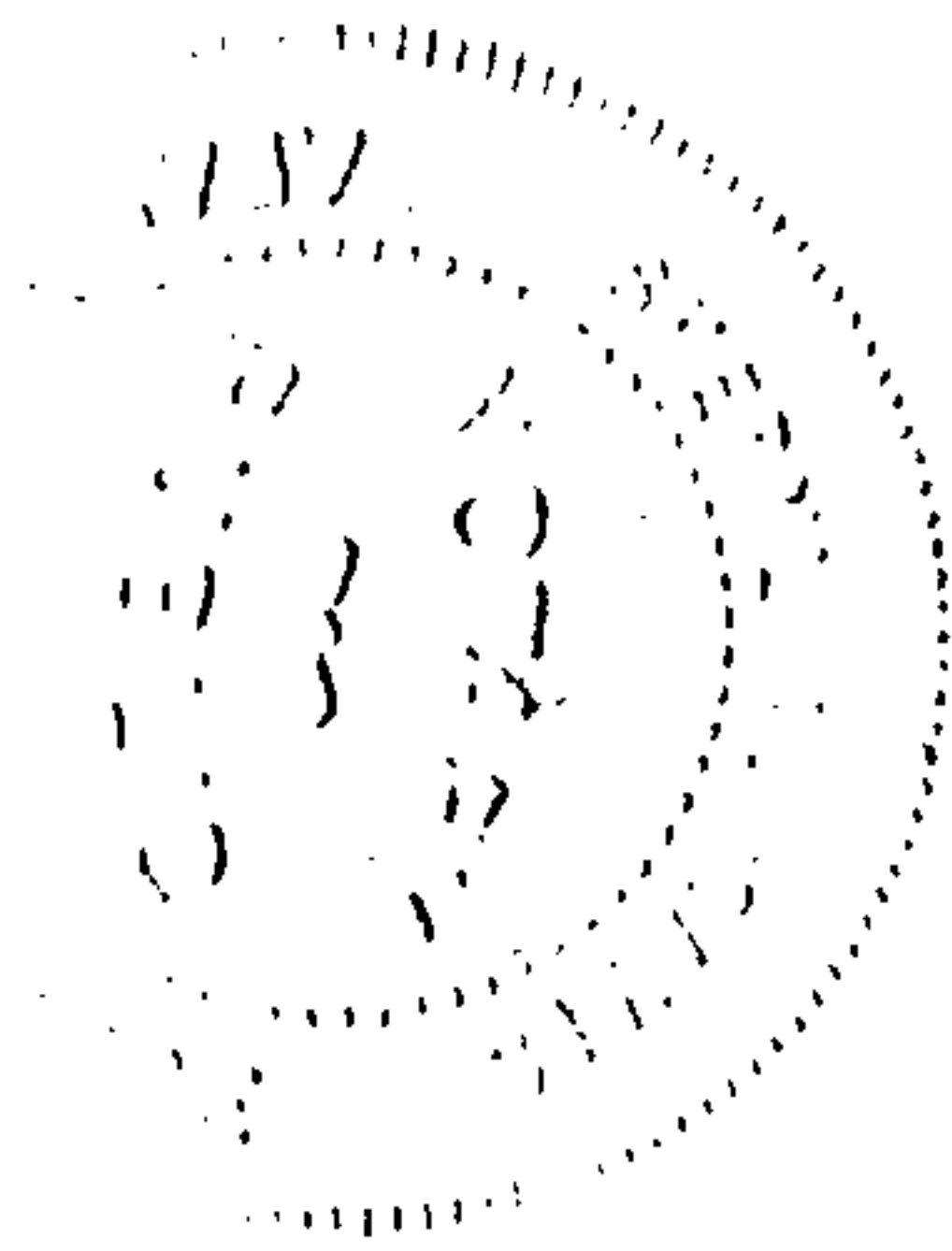
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Roy D. Birdwell, whose name as Vice President, Corporate Trust Manager of First Alabama Bank of Birmingham, is signed to the foregoing Mortgage and Indenture of Trust, and who is known to me, and known to me to be such person, acknowledged before me on this day that, being informed of the contents of the said Mortgage and Indenture of Trust, he as such officer, and with full authority, executed the same voluntarily for and as the act of the said Bank.

Given under my hand and official seal this the 25<sup>TH</sup> day of NOVEMBER, 1981.

*Sheryl A. Davis*  
Notary Public

MY COMMISSION EXPIRES AUGUST 14, 1985



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A part of the Southwest Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Commence at the Southeast Corner of the Southwest Quarter of Section 36, Township 18 South, Range 2 West and run North along the East line of the Southwest Quarter 2513.59 feet to a point on the Southerly right of way line of U.S. Highway #280; thence backsighting on last course turn an interior angle right of  $119^{\circ}05'10''$  and run Northwesterly 119.32 feet to a point on the centerline of the Southerly bound lanes of Inverness Center Drive; thence backsighting on last course turn an interior angle right of  $94^{\circ}10'39''$  and run Southwesterly 281.94 feet along said centerline to the point of curve to the right; running thence Southwesterly along the arc of said curve having a chord of 155.15 feet that forms an interior angle to the left of  $169^{\circ}29'$  to chord and an arc distance of 156.02 feet (said curve having a radius of 425.02 feet and a central angle of  $21^{\circ}02'$ ); thence backsighting last chord turn an interior angle left of  $169^{\circ}29'$  and run Southwesterly 151.38 feet along said centerline to a point of curve to the left; running thence Southwesterly to Southeasterly along the arc of said curve having a chord of 280.45 feet that forms an interior angle to the right of  $150^{\circ}41'38''$  to chord and an arc distance of 293.06 feet (said curve having a radius of 286.48 feet and a central angle of  $58^{\circ}36'44''$ ); thence backsighting last chord turn an interior angle left of  $119^{\circ}18'22''$  and run Westerly 28.0 feet to the point of beginning being on the Westerly right of way of Inverness Center Drive; thence backsighting last course turn an interior angle right of  $90^{\circ}00'$  and run Southeasterly 124.65 feet along said right of way to a point of curve to the right; running thence Southwesterly along the arc of said curve having a chord of 209.81 feet that forms an interior angle to the left of  $164^{\circ}37'48''$  to chord and an arc distance of 212.35 feet (said curve having a radius of 395.77 feet and a central angle of  $30^{\circ}44'30''$ ); thence backsighting last chord turn an interior angle left of  $111^{\circ}05'46''$  to chord and run Southwesterly 303.17 feet; thence backsighting last course turn an interior angle left of  $92^{\circ}56'$  and run Northerly 25.25 feet along the shoreline of Lake Heather; thence backsighting last course turn an interior angle left of  $226^{\circ}33'$  and run Northwesterly 85.30 feet along said shoreline; thence backsighting last course turn an interior angle left of  $161^{\circ}42'$  and run Northwesterly 35.63 feet along said shoreline; thence backsighting last course turn an interior angle left of  $153^{\circ}40'38''$  and run Northwesterly 23.6 feet along said shoreline; thence backsighting last course turn an interior angle left of  $144^{\circ}23'20''$  and run Northeasterly 80.85 feet along said shoreline; thence backsighting last course turn an interior angle left of  $161^{\circ}33'30''$  and run Northeasterly 34.90 feet along said shoreline; thence backsighting last course turn an interior angle left of  $159^{\circ}31'30''$  and run Northeasterly 80.68 feet along said shoreline; thence backsighting last course turn an interior angle left of  $190^{\circ}06'$  and run Northeasterly 131.53 feet along said shoreline; thence backsighting last course turn an interior angle left of  $155^{\circ}21'30''$  and run Northeasterly 100.45 feet along said shoreline; thence backsighting last course turn an interior angle left of  $227^{\circ}55'$  and run Northeasterly 29.00 feet along said shoreline; thence backsighting last course turn an interior angle left of  $113^{\circ}15'$  and run Easterly 65.12 feet along said shoreline; thence backsighting last course turn an interior angle left of  $230^{\circ}02'30''$  and run Northeasterly 55.68 feet to a point on the Westerly right of way of Inverness Center Drive; thence backsighting last course turn an interior angle left of  $59^{\circ}44'09''$  to the chord of a curve to the right; running thence Southerly along the arc of said curve being on said right of way having a chord of 16.60 feet and an arc distance of 16.93 feet (said curve having a radius of 25.0 feet and a central angle of  $38^{\circ}48'$ ); thence backsighting on last chord turn an interior angle left of  $164^{\circ}04'15''$  to the chord of a curve to the left; running thence Southerly along the arc of said curve being on said right of way having a chord of 38.11 feet and an arc distance of 38.13 feet (said curve having a radius of 314.48 feet and a central angle of  $6^{\circ}56'30''$ ) to the point of beginning. Said parcel contains 2.86179 acres.

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EXHIBIT B

All building materials, equipment, fixtures and fittings of every kind or character to be hereafter acquired for use and incorporation in the building to be constructed on the real estate described in Exhibit A hereto, and the equipment and machinery, specifically including data processing equipment and machinery, which will be purchased by The Industrial Development Board of the Town of Pelham for installation and use in connection with the Project. The said materials, equipment and machinery have not been acquired as of the date of the execution of this instrument.

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SHELBY COUNTY, ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
1981 NOV 30 AM 10:51

*James P. Harrison, Jr.*  
JUDGE OF PROBATE

Recd 93.00  
Jud 1.00  
94.00