

LEASE AGREEMENT

By and between

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF PELHAM

and

PELHAM INDUSTRIAL ENTERPRISES, L.L.C.

Dated as of May 1, 1995

The interest of The Industrial Development Board of the City of Pelham in any rents, revenues and receipts derived by it under this Lease Agreement has been assigned to First Commercial Bank, as Mortgagee under the Mortgage and Indenture, dated as of May 1, 1995 from The Industrial Development Board of the City of Pelham.

This Lease Agreement was prepared by R. H. Walston of Walston, Stabler, Wells, Anderson & Bains, 500 Financial Center, Birmingham, Alabama 35203

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SHELBY COUNTY JUDGE OF PROBATE
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LEASE AGREEMENT

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STATE OF ALABAMA
SHELBY COUNTY

LEASE AGREEMENT dated as of May 1, 1995, between THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation and instrumentality under the laws of the State of Alabama, party of the first part, and PELHAM INDUSTRIAL ENTERPRISES, L.L.C., a limited liability company organized under the laws of the State of Alabama, party of the second part,

W I T N E S S E T H:

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby covenant, agree and bind themselves as follows, to-wit:

ARTICLE I

DEFINITIONS, REPRESENTATIONS AND DEMISE CLAUSE

Section 1.1 Definitions. In addition to the definitions in Section 7.8 hereof, the following words, terms or phrases, when used in this Lease Agreement, have the following meanings, unless the context clearly indicates a different meaning:

"Authorized Investments" shall have the meaning ascribed in the Indenture.

"Basic Rent" means that portion of the rent payable under Section 3.2(a) hereof.

"Bond" means the Industrial Development Revenue Bond (Pelham Industrial Enterprises, L.L.C., Phase FIVE Project) of the Lessor issued pursuant to the Indenture in the principal amount of \$1,675,000.

"Buildings" means (i) the buildings, structures and fixtures constructed or to be constructed or installed on the Leased Realty pursuant to the Inducement Agreement, and (ii) all other buildings, structures and fixtures now or hereafter located on the Leased Realty, as they may at any time exist.

"Construction Fund" means the fund established under Section 3.2 of the Indenture.

"Enabling Law" means Article 4 of Chapter 54 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-54-80 et seq.).

"Equipment" means (i) the machinery, equipment and personal property acquired and installed in or about the Buildings or on the Leased Realty pursuant to the Inducement Agreement, including without limitation any machinery, equipment and personal property acquired with the proceeds from the sale of the Bond and the machinery, equipment and personal

property described in Exhibit B attached hereto and made a part hereof, and (ii) any machinery, equipment or personal property acquired in substitution therefor or as a renewal or replacement thereof pursuant to the provisions hereof.

"Guarantors" means the Lessee and Charles H. Stephens, Marc A. Eason, David Bunkin and Marvin R. Engel, their heirs, successors and assigns.

"Guaranty Agreement" means the Guaranty Agreement dated as of May 1, 1995, between the Guarantors and the Mortgagee.

"Indenture" means the Mortgage and Indenture (including any indenture supplemental thereto) between the Lessor and First Commercial Bank, as mortgagee, of even date, which will be filed for record in the office of the Judge of Probate of Shelby County, Alabama, at the same time this Lease Agreement is so filed in said office.

"Independent Architect" means a person registered and qualified to practice as an architect under the laws of the State, satisfactory to the Mortgagee, and not in the full-time employment of either the Lessor or the Lessee.

"Independent Engineer" means a person registered and qualified to practice as an engineer under the laws of the State, satisfactory to the Mortgagee, and not in the full-time employment of either the Lessor or the Lessee.

"Inducement Agreement" means the agreement between the Lessor and Lessee dated May 25, 1995, whereby the Lessor agreed to issue the Bond to finance the cost of the Project.

"Lease Agreement" means these presents as supplemented and amended by the Lessor and the Lessee.

"Lease Term" means the duration of the leasehold estate granted in Section 3.1 of this Lease Agreement.

"Leased Realty" means the real estate referred to in Section 1.4 hereof less any such real estate, interests in real estate and other rights as may be taken by the exercise of the power of eminent domain.

"Lessee" means the party of the second part hereto.

"Lessor" means (i) the party of the first part hereto, and its successors and assigns and (ii) any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party as permitted in Section 6.3 hereof.

"Mortgagee" means the mortgagee at the time serving as such under the Indenture.

"Municipality" means the City of Pelham, Alabama.

"Net Proceeds", when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses (including reasonable attorneys' fees and any extraordinary fee of the Mortgagee) incurred in the collection of such gross proceeds.

"Project" means the Leased Realty, the Buildings, and the Equipment, as they may at any time exist, and all other property and rights referred to, or intended so to be, in the demising clauses hereof.

"Project Costs" means (i) the costs incurred in connection with the issuance and sale of the Bond and (ii) all costs of acquiring and constructing the Project.

"State" means the State of Alabama.

Section 1.2 Representations by the Lessor. The Lessor makes the following representations:

(a) The Lessor is duly incorporated under the provisions of the Enabling Law and has the power to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder. The Lessor is not in default under any of the provisions contained in its certificate of incorporation, its by-laws, or in the laws of the State. By proper corporate action the Lessor has duly authorized the execution and delivery of this Lease Agreement.

(b) The Lessor has determined that the issuance of the Bond, the acquisition and construction of the Project and the leasing of the Project to the Lessee will promote industry, develop trade and further the use of the agricultural products and natural and human resources of the State and the development and preservation of said resources.

(c) The Bond will be issued and delivered contemporaneously with the delivery of this Lease Agreement.

(d) The Leased Realty is located wholly within the corporate limits of the Municipality.

Section 1.3 Representations by the Lessee. The Lessee makes the following representations:

(a) The Lessee is duly organized and in good standing under the laws of the State and is duly authorized to do business in the State, is not in violation of any provisions of its articles of association, its operating agreement, or the laws of the State, has power to enter into this Lease

Agreement, and by proper action has duly authorized the execution and delivery of this Lease Agreement.

(b) The financing of the Project through the issuance of the Bond and the leasing of the Project to the Lessee has induced the Lessee to enlarge, expand and improve its operations in the State.

(c) The Lessee intends to operate the Project for sublease to entities engaged in storing, warehousing and distribution of products of agriculture, mining and industry as they may deem appropriate.

(d) Substantially all of the proceeds of the Bond will be used to pay for the acquisition, construction, or improvement of land or property of a character subject to the allowance for depreciation, and costs in connection therewith.

(e) The Leased Realty is located wholly within the corporate limits of the Municipality.

Section 1.4 Demise of the Project. The Lessor, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Lessee to be paid, kept and performed, does hereby demise and lease to the Lessee, and the Lessee does hereby lease, take and hire from the Lessor, the real property and interest in real property located in the City of Pelham, Shelby County, Alabama, described on Exhibit A attached hereto and made a part hereof by this reference, together with the Buildings and the Equipment, as they may at any time exist, and all other properties which, under the terms hereof, are or subsequently become a part of the Project.

ARTICLE II

ACQUISITION OF THE PROJECT

Section 2.1 Agreement to Acquire. From the principal proceeds derived from the sale of the Bond, the Lessor will, to the extent moneys are available, (a) pay the costs incurred in connection with the issuance of the Bond; (b) pay the costs of acquiring the Leased Realty; (c) pay the costs of constructing or installing buildings, structures, improvements and fixtures on the Leased Realty consisting of two office-warehouse multi-tenant buildings containing an aggregate of approximately 43,750 square feet of rentable area, and appurtenances in strict accordance with plans and specifications approved by the Mortgagee; and (d) pay the costs of acquiring and installing in or about such buildings and structures or on the Leased Realty the machinery, equipment and personal property generally described in Exhibit B attached hereto and made a part hereof.

Pursuant to the Inducement Agreement the Lessor agreed to issue the Bond to finance the cost of the Project, to proceed, or permit the Lessee to proceed, pending the issuance of the Bond, with the acquisition and construction of the Project with funds advanced by the Lessee, and to reimburse the Lessee for funds so advanced from the proceeds of the Bond when issued. In accordance with the Inducement Agreement, the Lessee and the Lessor have proceeded with the acquisition and construction of the Project. The Lessor (i) shall cause withdrawals to be made from the Construction Fund to reimburse the Lessee for funds advanced to the Lessor on behalf of the Lessee or expended by the Lessee for such purpose, and to pay the costs of construction of the Project, subject to the requirements of the Indenture with respect to withdrawals from the Construction Fund, and (ii) will assume or accept the assignment of such contracts and purchase orders entered into by the Lessee prior to the execution and delivery of this Lease Agreement for the acquisition and construction of the Project as the Lessee may request.

The Lessor will continue such acquisition, construction and installation with all reasonable dispatch and due diligence and will cause the Project to be completed as promptly as practicable in accordance with the plans and specifications therefor heretofore approved by the Mortgagee and stamped as complete by the Lessee's architect and warranted by such architect in a form reasonably acceptable to the Mortgagee to be in compliance with all applicable zoning and building regulations. The Lessee will promptly give its written instructions with respect to, and will request the Lessor to enter into, such construction contracts and purchase orders for material, supplies, and equipment, and will take whatever other action may be provided for in this Lease Agreement, as shall be necessary to complete the Project. The Lessor will not execute any construction contract or purchase orders for the Project without the prior written consent of the Lessee.

The Lessee may cause changes or amendments to be made in the plans and specifications for such buildings, structures and fixtures, provided (i) such changes or amendments will not change the nature of the Project to the extent that it would not constitute a "project" as authorized by the Enabling Law, (ii) such changes or amendments will not materially affect the utility of the Project for its intended use; and (iii) any such changes or amendments have been approved in writing by the Mortgagee. The Lessor will make only such changes or amendments in the plans and specifications for the buildings, structures and fixtures as may be requested in writing by the Lessee.

If after the exercise of due diligence by the Lessor, it is impossible for the Lessor to construct or install any part of the buildings, structures or fixtures which the Lessee requests the Lessor so to construct, the Lessor will notify the

Lessee and the Mortgagee in writing and the Lessee (a) will withdraw the request in question, or (b) will itself effect the construction or installation so requested, for and in the name and on behalf of the Lessor, in which case the Lessee shall be entitled to reimbursement from the Construction Fund for the costs incurred by it in effecting such construction or installation.

The Lessor and the Lessee shall from time to time each appoint by written instrument an agent or agents authorized to act for each respectively in any or all matters relating to the acquisition of the Project and payments to be made out of the Construction Fund. One of the agents appointed by the Lessee shall be designated its Project Supervisor. Either the Lessor or the Lessee may from time to time, by written notice also filed with the Mortgagee, revoke, amend or otherwise limit the authorization of any agent appointed by it to act on its behalf, provided that there shall be at all times at least one agent authorized to act on behalf of the Lessor, and at least one agent (who shall be the Project Supervisor) authorized to act on behalf of the Lessee, with reference to all the foregoing matters.

The Lessor shall cause withdrawals to be made from the Construction Fund for the payment of the Project Costs (including reimbursement to the Lessee for Project Costs), but only upon the written approval of the Lessee and subject to the requirements of the Indenture with respect to withdrawals from the Construction Fund. In the event that, after reasonable request made to the Lessor by the Lessee, the Lessor fails or refuses to issue or execute a payment requisition from the Construction Fund for payment of any Project Costs, the Project Supervisor then designated by the Lessee, who is hereby irrevocably appointed as agent for the Lessor for such purposes, may issue and execute, also for and in the name and behalf of the Lessor and without any approval of any officer, employee or other agent thereof, a payment requisition on the Construction Fund.

Section 2.2 No Warranty of Suitability by Lessor; Lessee Required to Complete Project in Certain Events. The Lessee recognizes that since the plans and specifications for constructing and installing such buildings, structures and fixtures were furnished by it, and since the machinery, equipment and personal property acquired were selected by it and have been installed in accordance with its directions, THE LESSOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, NOR OFFERS ANY ASSURANCES THAT THE PROJECT WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS OR THAT THE PROCEEDS DERIVED FROM THE SALE OF THE BOND WILL BE SUFFICIENT TO PAY IN FULL ALL PROJECT COSTS. In the event the proceeds derived from the sale of the Bond are insufficient to pay in full all Project Costs, the Lessee shall be obligated to complete the acquisition and construction of the Project at its own expense and the Lessee

shall pay any such deficiency and shall save the Lessor whole and harmless from any obligation to pay such deficiency. The Lessee shall not by reason of the payment of such deficiency from its own funds be entitled to any diminution in the payment of the rents hereunder or to any lien on the Project.

Section 2.3 Lessor to Pursue Remedies Against Vendors, Contractors and Subcontractors and Their Sureties. In the event of default of any vendor, contractor or subcontractor under any contract or purchase order or warranty made by it for acquisition, construction or installation of the Project, the Lessor will promptly proceed (subject to the Lessee's advice to the contrary), either separately or in conjunction with others, to exhaust the remedies of the Lessor against the vendor, contractor or subcontractor so in default and against his surety (if any) for the performance of such contract or warranty or purchase order. The Lessor will advise the Lessee of the steps it intends to take in connection with any such default and the Lessee will pay all costs, fees and expenses incurred in connection therewith. If the Lessee shall so notify the Lessor, the Lessee may, in its own name or in the name of the Lessor, prosecute or defend any action or proceeding or take any other action involving any such vendor, contractor, subcontractor or surety which the Lessee deems reasonably necessary, and in such event the Lessor will cooperate fully with the Lessee and will take all action necessary to effect the substitution of the Lessee for the Lessor in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid into the Construction Fund.

Section 2.4 Investment of Construction Fund Moneys. The Lessor shall cause any moneys held as a part of the Construction Fund to be invested or reinvested by the Mortgagee in Authorized Investments at the request of, and as directed by, the Lessee. Any interest bearing deposits, including certificates of deposit, issued by or deposited with the Mortgagee shall be deemed to be investments and not trust deposits. The Mortgagee may make any and all such investments through its own investment services department.

Section 2.5 Completion of the Project. The completion of the Project shall be evidenced by delivery to the Mortgagee of (a) a certificate signed by the Lessor and by the Project Supervisor on behalf of the Lessee stating that (i) construction and installation of the buildings, structures and fixtures has been completed in accordance with the plans and specifications approved by the Lessee and the Mortgagee, (ii) all labor, services, materials and supplies in connection with such construction, acquisition and installation have been paid for, and (iii) all facilities necessary in connection with the Project have been constructed, acquired and installed and all costs and expenses incurred in connection therewith have been

paid, (b) an "as-built" survey covering the Leased Realty and the Project, and (c) a certificate of occupancy for each of the Buildings signed by the appropriate representative of the Municipality. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against any vendor, contractor, subcontractor or other person not a party to this Lease Agreement which exist at the date of such certificate or which may subsequently come into being. The Lessor and the Lessee will cooperate with each other in causing such certificate to be furnished to the Mortgagee.

After delivery of the aforesaid certificate and survey to the Mortgagee, any moneys then remaining in the Construction Fund shall be applied as provided in Section 3.3 of the Indenture.

ARTICLE III

DURATION OF LEASE TERM AND RENTAL PROVISIONS

Section 3.1 Duration of Term. The term of this Lease Agreement and of the lease herein made shall begin on the date of the delivery of this Lease Agreement and, unless terminated pursuant to any of the provisions hereof shall continue until midnight of May 1, 2010. The Lessee is in possession of the Project pursuant to the Inducement Agreement. The Lessor will deliver to the Lessee possession of the Project pursuant hereto on the commencement date of the Lease Term, subject to the inspection and other rights reserved in this Lease Agreement, and the Lessee will accept such possession thereof at such time; provided, however, the Lessor will be permitted such possession of the Project as shall be necessary and convenient for it to complete construction of the Project and to construct or install any additions or improvements and to make any repairs or restorations required or permitted to be constructed, installed or made by the Lessor pursuant to the provisions hereof.

Section 3.2 Rental Provisions. (a) Basic Rent. The Lessee does hereby covenant and agree to pay to the Lessor Basic Rent in installments as follows:

(i) On June 5, 1995, and on the first day of each calendar month thereafter an amount equal to interest accrued on the unpaid principal amount of the Bond to such date; and

(ii) On May 5, 1997, an amount equal to the entire unpaid principal amount of the Bond plus the interest accrued and unpaid thereon to the date of payment.

All Basic Rent payments shall be made directly to the Mortgagee for the account of the Lessor. The Lessee recognizes, understands and acknowledges that it is the

intention hereof that this Lease Agreement be a net lease and that until the Bond is fully paid Basic Rent shall be in such amounts and shall be due at such times as shall be required to pay the installments of principal and interest on the Bond as the same become due and payable. This Lease Agreement shall be construed to effectuate such intent.

(b) Additional Rent. The Lessee shall pay as additional rent to the Mortgagee the reasonable charges and expenses of the Mortgagee for necessary services rendered by it and expenses incurred by it under the Indenture, as and when the same become due.

(c) Any installment of Basic Rent or Additional Rent not paid on the due date thereof shall bear interest until paid at the Prime Rate (as defined in the Bond) plus 3% per annum, or the maximum rate of interest allowed by law, whichever is less.

Section 3.3 Obligations of Lessee Unconditional. The obligation of the Lessee to pay Basic Rent and additional rent, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Lessor or the Mortgagee. The Lessee will not suspend or discontinue any such payment or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure of the Lessor to complete the Project, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration or commercial frustration of purpose, the invalidity of any provision of the Lease Agreement, or any damage to or destruction of the Project or any part thereof, or the taking by eminent domain of title to or the right to temporary use of all or any part of the Project, or any change in the tax or other laws or administrative rulings, actions or regulations of the United States of America or of the State or any political or taxing subdivision of either thereof, or any failure of the Lessor to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation rising out of or in connection with this Lease Agreement. Notwithstanding the foregoing, the Lessee may, at its own cost and expense and in its own name or in the name of the Lessor, prosecute or defend any action or proceeding, or take any other action involving third persons which the Lessee deems reasonably necessary in order to secure or protect its rights of use and occupancy and the other rights hereunder. The provisions of the first and second sentences of this Section shall apply only so long as any part of the principal of and the interest on the Bond remains outstanding and unpaid.

ARTICLE IV

MAINTENANCE, ALTERATIONS, REPLACEMENTS, TAXES AND INSURANCE

Section 4.1 Maintenance and Repairs, Alterations and Improvements to Buildings, Party Walls, and Liens. (a) The Lessee will, at its own expense, (i) keep the Project in as reasonably safe condition as its operations and the operations of its subtenants permit, (ii) from time to time make all necessary and proper repairs, renewals and replacements thereto, including external and structural repairs, renewals and replacements, and (iii) pay all gas, trash removal, fire protection, electric, water, sewer and other charges for the operation, maintenance, use and upkeep of the Project.

(b) The Lessee may, at its own expense, and with the prior written consent of the Mortgagee, make structural changes, additions, improvements, alterations or replacements to the Buildings that it may deem desirable; provided such structural changes, additions, improvements, alterations or replacements do not change the character of the Project as a "project" under the Enabling Law; and provided further that the Lessee files with the Lessor and the Mortgagee a certificate of an Independent Engineer or an Independent Architect that such additions, improvements, alterations or replacements will not adversely affect the utility of the Project or substantially reduce its value. In lieu of making such additions, improvements or alterations itself, the Lessee may, if it so desires, furnish to the Lessor the funds necessary therefor, in which case the Lessor will proceed to make such additions, improvements, alterations or replacements. All such additions, improvements, alterations and replacements whether made by the Lessee or the Lessor shall become a part of the Project and shall be covered by this Lease Agreement and the Indenture.

(c) With the prior written consent of the Mortgagee, the Lessee may connect or "tie-in" walls of the Buildings and utility and other facilities located on the Leased Realty to other structures and facilities owned or leased by it on real property adjacent to the Leased Realty. With the prior written consent of the Mortgagee, the Lessee may use as a party wall any wall of the Buildings which is on or contiguous to the boundary line of real property owned or leased by it, and in the event of such use, each party hereto hereby grants to the other a ten-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction. If the Lessee so utilizes any wall of the Buildings as a party wall for the purpose of tying in new construction that will be utilized under common control with the Project, the Lessee may also remove any non-loadbearing wall panel in the party wall; provided, however, if the adjacent property ceases to be operated under common control with the Project, the Lessee will

at its expense, install wall panels similar in quality to those that have been removed. Prior to the exercise of any one or more of the rights granted by this subsection (c), the Lessee shall furnish the Lessor and Mortgagee a certificate of an Independent Engineer or an Independent Architect that the operation of the Project will not be adversely affected by the exercise of such rights.

(d) The Lessor will also, upon request of the Lessee, and with the prior written consent of the Mortgagee, grant such utility and other similar easements over, across or under the Leased Realty as shall be necessary or convenient for the furnishing of utility and other similar services to real property adjacent to or near the Leased Realty and owned or leased by the Lessee; provided that such easements shall not adversely affect the operation of the facilities forming a part of the Project.

(e) The Lessee will not permit any mechanics' or other liens to stand against the Project for labor or material furnished it. The Lessee may, however, in good faith contest any such mechanics' or other liens and in such event may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless the Mortgagee is of the opinion, after notice thereof, that by such action the lien of the Indenture on the Project or any part thereof, or the Project or any part thereof shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall be promptly satisfied.

Section 4.2 Removal of, Substitution and Replacement for Equipment. The Lessor and the Lessee recognize that portions of the Equipment may from time to time become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project, but the Lessor shall not be under any obligation to renew, repair or replace any such Equipment. If the Lessee in its sole discretion determines that any item of Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project, the Lessee may, with the prior written consent of the Mortgagee, remove such Equipment from the Buildings or the Leased Realty and (on behalf of the Lessor) sell, trade in, exchange or otherwise dispose of it without any responsibility or accountability to the Lessor or the Mortgagee therefor, provided that

(i) the Lessee shall substitute and install in the Buildings or on the Leased Realty (either by direct payment of the costs thereof or by advancing to the Lessor the funds necessary therefor) other machinery, equipment or personal property having equal or greater value and utility (but not necessarily the same function) in the operation of the Project, which such substituted machinery, equipment or personal property shall be free of

all liens and encumbrances, shall be the sole property of the Lessor, shall be and become a part of the Equipment subject to the demise hereof and to the lien of the Indenture, and shall be held by the Lessee on the same terms and conditions as the items originally comprising the Equipment;

(ii) such removal and substitution shall not impair the operating unity of the Project; and

(iii) such removal and substitution shall not change the nature of the Project as a "project" under the Enabling Law.

Section 4.3 Installation By Lessee of Its Own Machinery and Equipment. The Lessee may, at its own expense, install in the Buildings or on the Leased Realty any machinery, equipment or personal property which in the Lessee's judgment will facilitate the operation of the Project. Any such machinery, equipment or personal property which is installed at the Lessee's expense and does not constitute a substitution or replacement for the Equipment pursuant to Section 4.2 hereof shall be and remain the property of the Lessee and may be removed by the Lessee at any time and from time to time while it is not in default under the terms of this Lease Agreement; provided, however, that any damage to the Project occasioned by such removal shall thereupon be repaired by the Lessee at its own expense. At the time of the installation by the Lessee of any items of its own machinery, equipment or personal property in the Buildings or on the Leased Realty, the Lessee shall plainly, distinctly, permanently and conspicuously place and fasten on each item a metal plate (or other practicable identification) readily visible identifying the item as the property of the Lessee. In case any such plate shall at any time be removed, defaced or destroyed, the Lessee shall immediately cause the same to be restored or replaced. All machinery, equipment and personal property located on the Leased Realty and not so identified shall be conclusively presumed to be a part of the Equipment.

Section 4.4 Taxes, Other Governmental Charges and Utility Charges. The Lessor and the Lessee acknowledge (a) that under present law the Project will be subject to ad valorem taxation by the State and by the political or taxing subdivisions thereof, except for the abatements granted by the Lessor as provided in Chapter 9B of Title 40 of the Code of Alabama 1975 and the Inducement Agreement, and that under present law the income and profits (if any) of the Lessor from the Project are not subject to either federal or state taxation, and (b) that these factors, among others, have induced the Lessee to enter into this Lease Agreement. The Lessee will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or

any other property installed or brought by the Lessee on the Leased Realty, including without limitation any taxes levied on or with respect to the revenues, income or profits of the Lessor from the Project and any other taxes levied upon or with respect to the Project and the construction thereof which, if not paid, will become a lien on the Project prior to or on a parity with the lien of the Indenture or a charge on the revenues and receipts from the Project prior to or on a parity with the charge thereon and pledge or assignment thereof created and made in the Indenture and including any ad valorem taxes assessed upon the Lessee's interest in the Project, and (ii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Lease Term. The foregoing provisions of this Section shall be effective only so long as any part of the principal of or the interest on the Bond remains outstanding and unpaid.

The Lessee may, at its own expense and in its own name and behalf or in the name and behalf of the Lessor, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, if during such period enforcement of such contested items shall be effectively stayed. The Lessor, at the expense of the Lessee, will cooperate fully with the Lessee in any such contest.

Section 4.5 Insurance Required. The Lessee will take out and continuously maintain in effect the following insurance with respect to the Project, paying as the same become due all premiums with respect thereto:

(a) Insurance, including builder's risk insurance, to the extent of the full replacement value of the Project against loss or damage by fire, with uniform multi-peril standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State;

(b) In time of war in which the United States of America is a belligerent, such insurance to the extent of the full insurable value of the Project as may be available against loss or damage by the risks and hazards of war;

(c) Comprehensive general liability coverage with a general aggregate limit of \$2,000,000, a fire damage limit of \$100,000, and umbrella coverage of at least \$5,000,000;

(d) Flood insurance under the national flood insurance program established by the Flood Disaster Protection Act of 1973, as at any time amended, at all times while the Project is eligible under such program, in an amount at least equal to the unpaid principal amount of the Bond or to the maximum limit of coverage made available with respect to the Project under said Act, whichever is less; and

(e) Workers' compensation insurance to the full extent required by law.

All policies evidencing the insurance required by the terms of the preceding paragraph shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State to assume the respective risks undertaken; provided that any policy or policies evidencing the insurance required in clauses (b) and (d) of the preceding paragraph may be taken out from and maintained in the United States of America or an agency thereof. All such insurance policies shall name as insureds the Lessor, the Mortgagee and the Lessee (as their respective interests shall appear) and shall contain New York standard mortgagee clauses providing for all losses thereunder in excess of \$25,000 to be paid to the Mortgagee; provided that all losses (including those in excess of \$25,000) may be adjusted by the Lessee, subject, in the case of any single loss in excess of \$25,000, to the approval of the Mortgagee. The Lessee may insure under a blanket policy or policies.

Each insurance policy required to be carried by this Section shall contain, to the extent obtainable, an agreement by the insurer that (i) the Lessee may not, without the consent of the Lessor and Mortgagee, cancel such insurance or sell, assign or dispose of any interest in such insurance, such policy, or any proceeds thereof, (ii) such insurer will notify the Lessor and the Mortgagee if any premium shall not be paid when due or any such policy shall not be renewed prior to the expiration thereof, and (iii) such insurer shall not cancel any such policy except on thirty days' prior written notice to the Lessor and the Mortgagee.

All policies evidencing the insurance required to be carried by this Section shall be deposited with the Mortgagee; provided, however, that in lieu thereof the Lessee may deposit with the Mortgagee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the Lessee will furnish to the Mortgagee evidence reasonably satisfactory to the Mortgagee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease Agreement.

Section 4.6 Advances by Lessor or Mortgagee. In the event that the Lessee fails to take out or maintain the full

insurance coverage required by this Lease Agreement, fails to pay the taxes or other charges required to be paid by the Lessee at or prior to the time they are required to be paid, or fails to keep the Project in good order and repair and in as reasonably safe condition as its operations permit, the Lessor or the Mortgagee, after first notifying the Lessee of any such failure on its part, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same, pay such taxes or other charges, or make such repairs, renewals or replacements as may be necessary to maintain the Project in as reasonably safe condition as the Lessee's operations permit and to keep the Project in good order and repair. All amounts so advanced therefor by the Lessor or the Mortgagee, together with interest thereon from the date of advancement at the Prime Rate (as defined in the Bond) plus 3% per annum or the maximum rate of interest allowed by law, whichever is less, shall become an additional obligation payable by the Lessee to the Lessor or to the Mortgagee, as the case may be. Any remedy herein vested in the Lessor or the Mortgagee for the collection of the rental payments shall also be available to the Lessor and the Mortgagee for the collection of all such additional obligations for amounts so advanced.

Section 4.7 Indemnity of Lessor and Mortgagee. The Lessee agrees to pay, and to indemnify and hold the Lessor and the Mortgagee harmless against, any and all liabilities, losses, damages, claims or actions (including all reasonable attorneys' fees and expenses of the Lessor or the Mortgagee, as the case may be), of any nature whatsoever incurred by the Lessor or the Mortgagee, as the case may be, without gross negligence on its part arising from or in connection with its performance or observance of any covenant or condition on its part to be observed or performed under this Lease Agreement or the Indenture, including without limitation, (i) any injury to, or the death of, any person or any damage to property at the Project, or in any manner growing out of or connected with the use, nonuse, condition or occupation of the Project or any part thereof, (ii) any damage, injury, loss or destruction of the Project, (iii) any other act or event occurring upon, or affecting, any part of the Project, (iv) violation by the Lessee of any contract, agreement or restriction affecting the Project or the use thereof of which the Lessee has notice and which shall have existed at the commencement of the term hereof or shall have been approved by the Lessee, or of any law, ordinance or regulation affecting the Project or any part thereof or the ownership, occupancy or use thereof, and (v) liabilities, losses, damages, claims or actions arising out of the offer and sale of the Bond or a subsequent sale of the Bond or any interest therein, unless, in the case of the Lessor, the same resulted from a representation or warranty of the Lessor in the Lease Agreement or any certificate delivered by the Lessor pursuant thereto being false or misleading in a material respect and such representation or warranty was not based upon

a similar representation or warranty of the Lessee furnished to the Lessor in connection therewith. The covenants of indemnity by the Lessee contained in this Section shall survive the termination of this Lease Agreement.

The Lessee hereby agrees that neither the Lessor nor the Mortgagee shall incur any liability to the Lessee, and each shall be indemnified against all liabilities, in exercising or refraining from asserting, maintaining or exercising any right, privilege or power of the Lessor or the Mortgagee, as the case may be, under the Indenture if the Lessor or the Mortgagee, as the case may be, is acting in good faith and without gross negligence or in reliance upon a written request by the Lessee.

ARTICLE V

PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage and Destruction. If the Project is destroyed or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is not greater than \$25,000, the Lessee will continue to pay the rent required to be paid hereunder and the Lessee, or the Lessor at the Lessee's direction and expense, (i) will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition in which it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair the operating unity or productive capacity of the Project or its character as a "project" under the Enabling Law, and (ii) will apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses, as well as any additional moneys of the Lessee necessary therefor. If the cost of such repairs, rebuilding and restoration is less than the amount of Net Proceeds of the insurance referable thereto, the Lessee may retain the amount by which such insurance proceeds exceed said total cost.

If the Project is destroyed (in whole or in part) or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is in excess of \$25,000, the Lessee will continue to pay the rent required to be paid hereunder and will promptly give written notice of such damage and destruction to the Mortgagee and the Lessor. All Net Proceeds of insurance resulting from claims for such losses shall be paid to the Mortgagee and deposited in the Construction Fund, whereupon, with the prior written approval of and at the direction of the Mortgagee, (a) the moneys shall be applied to the prepayment of the principal of the Bond if there is an Event of Default at the time of such application and the damage to the Project is such that the Project cannot

be restored within a period of four consecutive months to its condition immediately preceding such damage or destruction, or (b) (i) the Lessee, or the Lessor at the Lessee's direction, will proceed promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition in which it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair the operating unity or productive capacity of the Project or its character as a "project" under the Enabling Law and (ii) the Lessor will cause withdrawals to be made from the Construction Fund in the manner provided in the Indenture to pay the costs of such repair, rebuilding or restoration, either on completion thereof, or as the work progresses, and (iii) the balance, if any, of insurance proceeds in the Construction Fund remaining after the payment of all of the costs of any such repair, rebuilding or restoration shall be applied to the prepayment of the principal of the Bond on the earliest practicable installment payment date or, if the Bond is fully paid, shall be paid to the Lessee.

In the event the Net Proceeds of insurance are not sufficient to pay in full the costs of repairing, rebuilding and restoring the Project as provided in this Section, and that alternative is selected, the Lessee will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the amount of said proceeds or will pay to the Mortgagee for the account of the Lessor the moneys necessary to complete said work. The Lessee shall not by reason of the payment of such excess costs (whether by direct payment thereof or payment to the Mortgagee therefor) be entitled to any reimbursement from the Lessor or any abatement or diminution of the rents payable hereunder, or to any lien on the Project.

Anything in this Section to the contrary notwithstanding, if, as a result of such damage or destruction (irrespective of whether the loss resulting therefrom is greater than \$25,000 or not), the Lessee is entitled to exercise an option to purchase the Project and duly does so in accordance with the applicable provisions of Section 9.2 hereof, then neither the Lessee nor the Lessor shall be required to repair, rebuild or restore the property damaged or destroyed, and so much (which may be all) of any Net Proceeds referable to such damage or destruction as shall be necessary to provide for full payment of the Bond (as specified in Section 6.4 hereof) shall be paid to the Mortgagee and the excess thereafter remaining (if any) shall be paid to the Lessee.

Section 5.2 Condemnation. In the event that title to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain and as a result thereof the Lessee is entitled to exercise an option to purchase the Project and duly does so in accordance with the

applicable provisions of Section 9.2 hereof, so much (which may be all) of the Net Proceeds referable to such taking, including the amounts awarded to the Lessor and the Mortgagee and the amount awarded to the Lessee for the taking of all or any part of the leasehold estate of the Lessee in the Project created by this Lease Agreement, as shall be necessary to provide for full payment of the Bond (as specified in Section 6.4 hereof) shall be paid to the Mortgagee and the excess of such Net Proceeds remaining (if any) shall be paid to the Lessee.

If as a result of such taking, the Lessee is not entitled to exercise an option to purchase the Project under Section 9.2 hereof, or, having such option, fails to exercise the same in accordance with the terms thereof or notifies the Lessor and the Mortgagee in writing that it does not propose to exercise such option, the Lessee shall be obligated to continue to make the rental payments required to be paid under this Lease Agreement, and the entire Net Proceeds hereinabove referred to shall be paid to the Mortgagee and applied in one or more of the following ways as shall be directed in writing by the Lessee with the prior written consent of the Mortgagee:

(a) To the restoration of the remaining improvements located on the Leased Realty to substantially the same condition in which they existed prior to the exercise of the power of eminent domain;

(b) To the acquisition, by construction or otherwise, by the Lessor of other lands or improvements suitable for the Lessee's operations at the Project, which land or improvements shall be deemed a part of the Project and available for use and occupancy by the Lessee without the payment of any rent other than that herein provided to the same extent as if such land or other improvements were specifically described herein and demised hereby, and which land or improvements shall be acquired by the Lessor subject to no liens or encumbrances prior to the lien of the Indenture; and

(c) To the prepayment of the principal of the Bond.

Any balance of such Net Proceeds remaining after the application thereof as provided in subsections (a) and (b) of this Section shall be applied to the prepayment of the principal of the Bond on the earliest practicable principal installment payment date or, if the Bond is fully paid, shall be paid to the Lessee.

The Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit the Lessee to litigate in any such proceeding in the name and behalf of the Lessor. In no event will the Lessor settle, or consent to the

settlement of, any prospective or pending condemnation proceeding without the prior written consent of the Lessee.

Section 5.3 Condemnation of Lessee-Owned Property. The Lessee shall be entitled to the Net Proceeds of any award or portion thereof made for damage to or taking of its own property not included in the Project, provided that any Net Proceeds resulting from the taking of all or any part of the leasehold estate of the Lessee in the Project created by the Lease Agreement shall be paid and applied in the manner provided in the foregoing Section of this Lease Agreement.

ARTICLE VI

CERTAIN PROVISIONS RELATING TO ASSIGNMENT, SUBLEASING, MORTGAGING AND THE BOND

Section 6.1 Provisions Relating to Assignment and Subleasing. The Lessee may assign this Lease Agreement and the leasehold interest created hereby and may sublet the Project or any part thereof, subject, however, to the following conditions:

(a) No such assignment or subleasing and no dealings or transactions between the Lessor or the Mortgagee and any assignee or sublessee shall in any way relieve the Lessee from primary liability for any of its obligations hereunder. In the event of any such assignment or subleasing the Lessee shall continue to remain primarily liable for the payment of all rentals herein provided to be paid by it and for the performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

(b) The Lessee will not assign the leasehold interest created hereby nor sublease the Project in violation of its representation in Section 1.3(c) hereof or to any person unless the operations of such assignee or sublessee at the Project are consistent with, and in furtherance of, the purpose and intent of the Enabling Law.

(c) The Lessee shall within thirty days after the delivery thereof furnish to the Lessor and the Mortgagee a true and complete copy of each such assignment or sublease.

(d) The Mortgagee has consented in writing to such assignment or subleasing, but no such consent shall be required for any subleasing using substantially the form of sublease presented to the Mortgagee by the Lessee prior to the delivery of this Lease Agreement if the effective rental thereunder is at least \$5.50 per square foot over the life of the lease.

Section 6.2 Assignment of Lease Agreement and Rents by the Lessor. The Lessor has, simultaneously with the delivery of this Lease Agreement, assigned its interest in and pledged any money receivable under this Lease Agreement to the Mortgagee as security for payment of the Bond, and the Lessee hereby consents to such assignment and pledge. The Lessor has in the Indenture obligated itself to follow the instructions of the Mortgagee in the election or pursuit of any remedies herein vested in it. The Mortgagee shall have all rights and remedies herein accorded to the Lessor and any reference herein to the Lessor shall be deemed, with the necessary changes in detail, to include the Mortgagee, and the Mortgagee is deemed to be a third party beneficiary of the covenants, agreements and representations of the Lessee herein contained. Prior to the payment in full of the Bond, the Lessor and the Lessee shall have no power to modify, alter, amend or terminate this Lease Agreement without the prior written consent of the Mortgagee and then only as provided in the Indenture. The Lessor will not amend the Indenture or any indenture supplemental thereto without the prior written consent of the Lessee. Neither the Lessor nor the Lessee will unreasonably withhold any consent herein or in the Indenture required of either of them. The Lessee shall not be deemed to be a party to the Indenture or the Bond and reference in this Lease Agreement to the Indenture and the Bond shall not impose any liability or obligation upon the Lessee other than its specific obligations and liabilities undertaken in this Lease Agreement.

Section 6.3 Restrictions on Mortgage or Sale of Project by Lessor; Consolidation or Merger of, or Transfer of Assets by, Lessor. Except for the mortgage of the Project to the Mortgagee pursuant to the Indenture, the Lessor will not mortgage, sell, assign, transfer or convey the Project at any time during the Lease Term without the prior written consent of the Mortgagee, and the Lessee while the Lessee is not in default hereunder. If the laws of the State at the time shall permit it, nothing contained in this Section shall prevent the consolidation of the Lessor with, or merger of the Lessor into, or transfer of the Project as an entirety to, any public or municipal corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of owning and leasing the Project; provided (a) that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and provisions of this Lease Agreement to be kept and performed by the Lessor shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety, and (b) that the Mortgagee has consented to any such consolidation, merger or transfer.

Section 6.4 Prepayment of Bond. The amount necessary to prepay the entire principal balance of the Bond shall be deemed to include, in addition to the unpaid principal amount of the

Bond, all interest on the Bond to the date on which prepayment is to be made and all other obligations under the Indenture that shall become due and payable on or prior to the prepayment date, including the Mortgagee's charges and expenses.

The Lessee may, at its election and at any time while it is not in default hereunder, pay to the Mortgagee such amount as shall be sufficient to enable the Lessor to prepay, in accordance with its terms, the entire unpaid principal balance of the Bond or any lesser portion thereof in multiples of \$5,000. If less than the entire unpaid principal balance of the Bond is prepaid, the Lessee shall continue to pay Basic Rent each month in the full amount of each installment provided in Section 3.2 hereof until the principal of and interest on the Bond have been paid in full, it being intended that, subject to the next paragraph hereof, any partial prepayment of principal shall not serve to postpone the due date of any subsequent monthly installments before the principal and interest on the Bond have been paid in full.

Any payment made by the Lessee under this or any other section of this Lease Agreement to be applied to the prepayment of the Bond shall be made at least one day prior to the proposed prepayment date and at the time of such payment the Lessee shall notify and the Lessor and the Mortgagee, in writing, as to the purpose of such payment, and the Lessor, upon receiving such notice, shall be obligated and hereby agrees to take all necessary action to have the payment applied to the prepayment of the principal of the Bond to the extent permitted under the prepayment provisions thereof.

Section 6.5 References to Bond Ineffective After Bond Paid. Upon indefeasible payment in full of the Bond and of all fees and charges of the Mortgagee, under such circumstances that such sums are not subject to rescission or repayment upon any bankruptcy, insolvency, arrangement, reorganization, receivership, or similar proceeding, all references in this Lease Agreement to the Bond, the Indenture and the Mortgagee shall be ineffective and the Mortgagee shall not thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested.

In the event the Bond is fully paid prior to the termination of this Lease Agreement, this Lease Agreement shall remain in full force and effect, and the Lessee shall be entitled to the use and occupancy of the Project from the date of such payment until the expiration of the term provided for in Section 3.1 hereof without the payment of any further Basic Rent or additional rent under Section 3.2 hereof but otherwise on all of the terms and conditions hereof, except that the provisions of Sections 5.1, 5.2, 5.3 and 7.2 hereof shall not apply and except further that the Lessee shall not be required to carry any insurance for the benefit of the Mortgagee, but shall be required to carry insurance under Section 4.5 hereof

for the benefit of the Lessor as its interest may appear. If, after full payment of the Bond, there is any surplus remaining in the Construction Fund, the Lessor or the Mortgagee will promptly pay such surplus to the Lessee.

ARTICLE VII

PARTICULAR COVENANTS OF THE LESSEE

Section 7.1 General Covenants. The Lessee will not do or permit to be done, or omit to do or permit to be omitted to be done, at the Project anything that will constitute a violation of or a failure to comply with any of the restrictions or agreements contained in any of the instruments described in Exhibit C to the Indenture, or that will affect, impair or contravene any policies of insurance that may be carried on the Project or any part thereof against public liability or loss or damage by fire, casualty or otherwise. The Lessee will, in the use of the Project and the public ways abutting the same comply with all lawful requirements of all governmental bodies; provided, however, the Lessee may, at its own expense in good faith contest the validity or applicability of any such requirement.

Section 7.2 Inspection of Project. The Lessee will permit the Lessor, the Mortgagee and their duly authorized agents (subject to the restrictions and requirements imposed by regulations of or contracts with the United States of America or agencies thereof, or by subcontracts governed by such contracts, being performed by the Lessee, or its subtenant or subtenants, in any part of the Project) at all reasonable times to enter upon, examine and inspect the Project; and in the event of default as hereinafter provided, the Lessee will permit a public accountant or firm of public accountants designated by the Mortgagee to have access to, inspect, examine and make copies of the books and records, accounts and data of the Lessee.

Section 7.3 Financing and Continuation Statements. The Lessee shall file with the Mortgagee not less than thirty days nor more than six months prior to each date on which continuation statements are required to be filed under Section 7-9-403 of the CODE OF ALABAMA 1975 (or successor statute or law), such information as shall be required by the Mortgagee for the Mortgagee to continue the security interests created by the Lessee on the date of delivery hereof for the benefit of the Bond.

Section 7.4 Change in Members. The Lessee covenants and agrees that from the date hereof and until payment in full of the Bond, unless the Mortgagee shall otherwise consent in writing, the Lessee will not permit the addition of new members or the withdrawal of any of the present members; provided that nothing herein shall prevent (a) the withdrawal of Charles H.

Stephens as a member of the Lessee upon the purchase of his interest in the Lessee by one or more of the other members of the Lessee, or (b) the withdrawal of any member of the Lessee caused by his death, followed by the purchase of his interest in the Lessee by one or more of the other members thereof.

Section 7.5 Hazardous Substances. (a) The Lessee covenants and warrants that there are not and will not be on the Leased Realty any material amount of asbestos, toxic, hazardous, and other substances, the exposure to which is prohibited, limited, regulated or harmful nor are there any pending claims related thereto. The Lessee shall obtain and furnish the Mortgagee upon completion of construction of the Project a certificate satisfactory to the Mortgagee to that effect with respect to the Buildings. The Lessee shall not in violation of applicable law make, store, use, treat, release or dispose of any material amount of asbestos, toxic substances, hazardous substances, pollutants or other contaminants the exposure to which is prohibited, limited, regulated or harmful ("Prohibited Substances") on or under the Leased Realty. If any such Prohibited Substances are nonetheless made, stored, used, treated, released, disposed of or found to exist on or under the Project, or any claim is made against the Lessee with respect thereto, the Lessee shall give immediate written notice to the Mortgagee of such occurrence or existence. If the Lessee fails to keep the Leased Realty and the Project free of such Prohibited Substances, the Mortgagee may, but shall not be obligated to, do or cause to be done such acts as are necessary or desirable in the Mortgagee's opinion to remove and dispose of such Prohibited Substances. All amounts spent by the Mortgagee for the removal and disposal of such Prohibited Substances and the return of the Leased Realty and the Project to a condition free of Prohibited Substances shall become a debt due by the Lessee to the Mortgagee and at once payable, without demand or notice, and shall become a part of the rental obligation to bear interest from the date of payment by the Mortgagee until paid by the Lessee at the Prime Rate (as defined in the Bond) plus 3% per annum.

(b) The Lessee hereby warrants that, to the best of its knowledge, (i) there are no civil, criminal or administrative environmental proceedings involving the Project that are pending or to the Lessee's knowledge threatened; (ii) the Lessee knows of no facts or circumstances that might give rise to such a proceeding in the future; (iii) the Lessee is in compliance with all applicable federal, state and local statutory and regulatory environmental requirements; and (iv) the Project is free from any and all "hazardous substances," "pollutants" and other "contaminants," as those terms are defined in the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and rules and regulations thereunder. The Lessee shall give immediate written notice to the Mortgagee of any actual or threatened

"release" (as defined in CERCLA and rules and regulations thereunder) of such substances on or from the Project or any portion thereof at any time during or preceding the Lessor's or the Lessee's ownership of the Project. The Lessee shall indemnify and hold the Mortgagee and the Lessor harmless from and against all loss, damages, fines, penalties, liability and expenses (including but not limited to reasonable attorneys' fees and costs of investigation and litigation) caused by or in any manner resulting from such substances on or under the Project or any portion thereof at any time during or preceding the Lessor's or the Lessee's ownership of the Leased Realty. The indemnity provisions of this Section shall survive the termination of this Lease Agreement and shall continue in full force and effect notwithstanding the payment of the Bond in full. Notwithstanding the foregoing provisions, in the event of any claim, action, suit or proceeding covered by this indemnity, (A) the Lessee shall be entitled to assume the defense thereof, with counsel reasonably satisfactory to the Mortgagee, and after notice from the Lessee to Mortgagee of the Lessee's election to assume the defense thereof, the Lessee shall not be liable to Mortgagee for any legal or other expenses subsequently incurred by the Mortgagee in connection with the defense thereof (unless the Mortgagee reasonably objects to such assumption of the defense by the Lessee on the grounds that there may be defenses available to the Mortgagee which are different from or in addition to those available to the Lessee, in which event the Mortgagee shall be reimbursed by the Lessee for the reasonable fees and expenses of separate legal counsel retained by the Mortgagee promptly after statements therefor are received) and (B) if the Lessee shall have assumed the defense as provided in clause (A) immediately above, the Lessee shall be entitled to settle any such claim, action, suit or proceeding unless the Mortgagee reasonably objects to such settlement. For these purposes, without limiting the possible objections which may be asserted by the Mortgagee, an objection to any settlement which includes any express or implied admission of culpability by the Mortgagee shall be deemed reasonable. The Lessee shall give the Mortgagee not less than twenty (20) days prior written notice of any proposed settlement, together with true and correct copies of any proposed agreements relating thereto. The provisions in this Section that allow the Lessee to assume the Mortgagee's defense apply only to the one circumstance stated therein, i.e., the Lessee's indemnity of the Mortgagee because the Project or the Leased Realty is determined to be in violation of applicable environmental laws, rules, or regulations. In no other circumstance whatsoever may the Lessee appoint legal counsel for the Mortgagee.

(c) The Lessee will comply with all laws, governmental standards and regulations applicable to the Lessee or to the Project in respect of occupational health and safety, toxic and hazardous waste and substances and environmental matters. The

Lessee will promptly notify the Lessor and the Mortgagee of its receipt of any notice of a violation of any such law, standard or regulation.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. The following shall be events of default under this Lease Agreement and the term "event of default" shall mean, whenever used in this Lease Agreement, any one or more of the following events:

(a) Failure to pay any installment of Basic Rent that has become due and payable by the terms of this Lease Agreement and such failure continues for a period of five days after such Basic Rent becomes due and payable.

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) of this Section, for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Lessor, or the Mortgagee, unless the Mortgagee shall agree in writing to an extension of such time prior to its expiration, which agreement shall not be unreasonably withheld if corrective action is instituted by the Lessee promptly upon receipt of the written notice and is diligently pursued until the default is corrected; provided that with respect to the failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed as provided in Sections 4.5, 7.4 and 7.5 hereof, no period of 30 days after notice for cure shall be applicable before such failure becomes an event of default.

(c) The dissolution or liquidation of the Lessee or the filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Project, the Lessee's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all its property or of the Project, or the adjudication of the Lessee as a bankrupt, or any assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or if a petition or answer is filed by the Lessee proposing the adjudication of the Lessee as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty days.

(d) Any event of default under the Guaranty Agreement.

(e) Any representation or warranty by the Lessee contained herein is false or misleading in any material respect when made.

Section 8.2 Remedies on Default. Whenever any such event of default shall have happened and be continuing, the Lessor or the Mortgagee may take any of the following remedial steps:

(a) Declare all installments of Basic Rent payable under Section 3.2(a) hereof for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) Reenter the Project, without terminating this Lease Agreement, and, upon five days' prior written notice to the Lessee, relet the Project or any part thereof for the account of the Lessee, for such term (including a term extending beyond the Lease Term) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Project or any part thereof, as the Lessor may, with the approval of the Mortgagee, deem advisable, and such reentry and reletting of the Project shall not be construed as an election to terminate this Lease Agreement nor relieve the Lessee of its obligations to pay Basic Rent and additional rent or to perform any of its other obligations under this Lease Agreement, all of which shall survive such reentry and reletting, and the Lessee shall continue to pay Basic Rent and all additional rent provided for in this Lease Agreement until the end of the Lease Term, less the net proceeds, if any, of any reletting of the Project or any part thereof after deducting all of the Lessor's and Mortgagee's expenses in connection with such reletting, including, without limitation, all repossession costs, brokers' commissions, attorneys' fees, alteration costs and expenses of preparation for reletting;

(c) Terminate this Lease Agreement, exclude the Lessee from possession of the Project and, if the Lessor or the Mortgagee elect so to do, lease the same for the account of the Lessor, holding the Lessee liable for all rent due up to the date such lease is made for the account of the Lessor; and

(d) Take whatever legal proceedings may appear necessary or desirable to collect the rent then due, whether by declaration or otherwise, or to enforce any obligation or covenant or agreement of the Lessee under this Lease Agreement or by law.

Section 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lessor or the Mortgagee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this

Lease Agreement 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 shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 8.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Lease Agreement and the Lessor or the Mortgagee (in its own name or in the name and on behalf of the Lessor) should employ attorneys or incur other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee will on demand therefor pay to the Lessor or the Mortgagee (as the case may be) the reasonable fee of such attorneys and such other expenses so incurred, plus interest until paid at the Prime Rate (as defined in the Bond) plus 3% per annum, or the maximum rate of interest allowed by law, whichever is less.

Section 8.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.6 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Lease Agreement invalid or unenforceable.

ARTICLE IX

OPTIONS

Section 9.1 Options to Terminate. The Lessee shall have, if no Event of Default has occurred and is continuing hereunder, the following options to cancel or terminate the term of this Lease Agreement:

(a) At any time prior to full payment of the Bond, the Lessee may terminate the term of this Lease Agreement by paying to the Mortgagee for the account of the Lessor such an amount, determined as specified in Section 6.4 hereof, as shall be required to prepay the entire unpaid principal balance of the Bond.

(b) At any time after full payment of the Bond the Lessee may terminate the term of this Lease Agreement by giving the Lessor notice in writing of such termination and such termination shall forthwith become effective.

Section 9.2 Option to Purchase Project Prior to Payment of the Bond. The Lessee, if no Event of Default has occurred and is continuing hereunder, shall have the option to purchase the Project at any time prior to the full payment of the Bond if any of the following shall have occurred:

(a) The Project or any part thereof shall have been damaged or destroyed (i) to such extent that, in the opinion of the Lessee, it cannot be reasonably restored within a period of four consecutive months substantially to the condition thereof immediately preceding such damage or destruction, or (ii) to such extent that, in the opinion of the Lessee, the Lessee is thereby prevented from carrying on its normal operations at the Project for a period of four consecutive months or (iii) to such extent that the cost of restoration thereof would exceed the Net Proceeds of insurance carried thereon pursuant to the requirements of this Lease Agreement; or

(b) Title to the Project or any part thereof or the leasehold estate of the Lessee in the Project created by this Lease Agreement or any part thereof shall have been taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority, which taking may result, in the opinion of the Lessee, in the Lessee being thereby prevented from carrying on its normal operations at the Project for a period of four months; or

(c) As a result of any changes in the Constitution of the State or the Constitution of the United States of America or of legislative or administrative action (whether state or federal), or by final decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Lessee in good faith, this Lease Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed on the Lessor or the Lessee, including without limitation, the imposition of taxes of any kind on the Project or the income or profits of the Lessor therefrom, or upon the interest of the Lessee therein, which taxes were not being imposed on the date of this Lease Agreement.

To exercise such option, the Lessee shall, within thirty days following the event authorizing the exercise of such option, give written notice to the Lessor and to the Mortgagee and shall specify therein the date of closing such purchase, which date shall be not less than forty-five nor more than

ninety days from the date such notice is mailed, and shall make arrangements satisfactory to the Mortgagee for the giving of the required notice of prepayment of the Bond. The purchase price payable by the Lessee in the event of its exercise of the option granted in this Section shall be such an amount determined as specified in Section 6.4 hereof as shall be required to prepay the entire unpaid principal balance of the Bond. The purchase price shall be paid by the Lessee to the Mortgagee.

Upon the exercise of the option granted in this Section and the payment of the option price, any Net Proceeds of insurance or condemnation award then on hand or thereafter received shall be paid to the Lessee.

Section 9.3 Option to Purchase Project After Payment of the Bond. The Lessee, if no Event of Default has occurred and is continuing hereunder, shall also have the option to purchase the Project at any time during the Lease Term or within one year thereafter following full payment of the Bond for a purchase price of one dollar. To exercise the option granted in this Section, the Lessee shall notify the Lessor of its intention so to exercise such option not less than forty-five days nor more than ninety days prior to the proposed date of purchase and shall on the date of purchase pay such purchase price to the Lessor.

Section 9.4 Conveyance on Exercise of Option to Purchase. At the closing of the purchase pursuant to the exercise of any option to purchase granted herein, the Lessor will upon receipt of the purchase price deliver to the Lessee documents conveying to the Lessee the property with respect to which such option was exercised, as such property then exists, subject to the following: (i) all easements or other rights, if any, required to be reserved by the Lessor under the terms and provisions of the option being exercised by the Lessee; (ii) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Lessor; (iii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; and (iv) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1 Covenant of Quiet Enjoyment. So long as the Lessee performs and observes all the covenants and agreements on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term subject to all the terms and provisions hereof.

Section 10.2 This Lease a Net Lease. The Lessee recognizes, understands and acknowledges that it is the intention hereof that this Lease Agreement be a net lease and that until the Bond is fully paid all Basic Rent be available for payment of the installments of principal and interest on the Bond and that all additional rent shall be available for the purposes specified therefor. This Lease Agreement shall be construed to effectuate such intent.

Section 10.3 Lessor's Liabilities Limited. This Lease Agreement is entered into under and pursuant to the provisions of the Enabling Law. No provision hereof shall be construed to impose a charge against the general credit of the Lessor or any personal or pecuniary liability upon the Lessor except to apply the proceeds to be derived from the sale of the Bond and the revenues and receipts to be derived from any leasing or sale of the Project or any part thereof as provided herein and in the Indenture.

Section 10.4 Prior Agreements Cancelled. This Lease Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the Lessor and the Lessee relating to the acquisition of the Leased Realty, the construction of the Buildings, the acquisition and installation of the Equipment, the leasing of the Project and any options to renew or to purchase, other than the Inducement Agreement; excepting however (a) any deed or other instrument by which the Project, any part thereof, or any interest therein has been transferred and conveyed by the Lessee to the Lessor and (b) the commitment agreement from the Mortgagee to the Lessee dated May 3, 1995, and accepted by the Lessee and the Guarantors. Neither the Lessor nor the Lessee shall hereafter have any rights under such prior agreements except for those enumerated, but shall look solely to this Lease Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the Project.

Section 10.5 Execution Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.6 Binding Effect; Governing Law. This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee and their permitted respective successors and assigns. This Lease Agreement shall be governed exclusively by the applicable laws of the State.

Section 10.7 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.8 Article and Section Captions. The Article and Section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

Section 10.9 Public Service Payments. The Lessee acknowledges that public services rendered by the Municipality benefit the Lessee and enhance the value of the interest of the Lessee in the Project. In order to compensate for the aforesaid services, the Lessee shall pay directly to the Municipality the following amounts (the "Service Payments") during the Lease Term: on October 1, 1996, and on the first day of each October thereafter during the Lease Term, until and including October 1, 2005, the sum of \$4,857.50.

If, as a result of a change in law, the Project becomes subject during the Lease Term to all ad valorem taxes and if the Lessee shall pay such taxes pursuant to the requirements of the other provisions of this Lease Agreement, then in such case the Lessee shall not be required to pay any Service Payments scheduled with respect to the period for which such taxes are levied. The Service Payments are not and shall not be assigned or pledged by the Lessor to the Mortgagee for any purpose.


Section 10.10 Sign. The Lessor and the Lessee agree that the Mortgagee may erect a sign in a conspicuous location on the Leased Realty during and throughout the construction phase indicated that the financing for the Project is provided by the Mortgagee, and that the Mortgagee may publicize and advertise such financing including, without limitation, newspaper, magazine, radio and television advertising.

Section 10.11 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: if to the Lessor, at City Hall, P. O. Box 277, Pelham, Alabama 35124; if to the Lessee, at P. O. Box 530487, Birmingham, Alabama 35283, Attention of Marc A. Eason; and if to the Mortgagee at P. O. Box 11746, Birmingham, Alabama 35202. A duplicate copy of each notice, certificate or other communication given hereunder by either the Lessor or the Lessee to the other shall also be given to the Mortgagee. The Lessor, the Lessee and the Mortgagee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

IN WITNESS WHEREOF, the Lessor has caused this Lease Agreement to be executed in its corporate name, has caused its

corporate seal to be hereunto affixed and to be attested, all by its duly authorized officers and the Lessee has caused this Lease Agreement to be executed in its name by its duly authorized members, and the parties have caused this Lease Agreement to be dated as of May 1, 1995.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF PELHAM


By 
Chairman of its Board of
Directors


S E A L


Attest: 
Its Secretary

PELHAM INDUSTRIAL ENTERPRISES,
L.L.C.

By 
A Member

By 
A Member

By 
A Member

By 
A Member

STATE OF ALABAMA
Shelby COUNTY

I, ROBERT H. WALSTON, a Notary Public in and for said County in said State, hereby certify that Daniel M. Spitler, Jr., whose name as Chairman of the Board of Directors of The Industrial Development Board of the City of Pelham, a public corporation, is signed to the foregoing Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 4th day of May, 1995.

Robert H. Walston
Notary Public

NOTARIAL SEAL

My commission expires: 12-30-98

STATE OF ALABAMA
JEFFERSON COUNTY

I, ROBERT H. WALSTON, a Notary Public in and for said County in said State, hereby certify that Marc A. Eason, Charles H. Stephens and David Bunkin, whose names as members of Pelham Industrial Enterprises, L.L.C., a limited liability company, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, they, as such members and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 5th day of May, 1995.

Robert H. Walston
Notary Public

NOTARIAL SEAL

My Commission expires: 12-30-98

STATE OF ALABAMA

Jefferson COUNTY

I, ROBERT H. WALSTON, a Notary Public in and for said County in said State, hereby certify that Marvin R. Engel, whose name as a member of Pelham Industrial Enterprises, L.L.C., a limited liability company, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 4th day of May, 1995.

Notary Public

NOTARIAL SEAL

My Commission expires: 12-30-98

EXHIBIT A

Part of Block 4 of Cahaba Valley Park North as recorded in Map Book 13 page 140 in the Probate Office of Shelby County, Alabama, situated in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at Station 47+73.31 on the centerline of Cahaba Valley Parkway, said point also being on the centerline of Cahaba Valley Circle; thence run Easterly along said centerline of Cahaba Valley Parkway for 80.0 feet to a point; thence turn an angle to the right of 90 deg. 00 min. 00 sec. and run Southerly for 30.0 feet to a point on the Southerly right of way line of Cahaba Valley Parkway, said point also being the point of beginning; thence turn an angle to the left of 90 deg. 00 min. 00 sec. and run Easterly along the South right of way of Cahaba Valley Parkway for 265.00 feet to a point; thence turn an angle to the right of 90 deg. 00 min. 00 sec. and run Southerly for 537.78 feet to a point; thence turn an angle to the right of 64 deg. 31 min. 39 sec. and run Southwesterly for 249.65 feet to a point; thence turn an angle to the right of 90 deg. 00 min. 00 sec. and run Northwesterly for 283.31 feet to a point on the Easterly right of way line of Cahaba Valley Circle, said point being on a curve to the left, said curve having a radius of 228.01 feet and subtending a central angle of 30 deg. 49 min. 35 sec.; thence turn an angle to the right of 56 deg. 17 min. 56 sec. to become tangent to said curve; thence run along the arc of said curve and the Easterly right of way line of Cahaba Valley Circle for 122.67 feet to the end of said curve; thence at tangent to said curve run Northerly along the Easterly right of way line of Cahaba Valley Circle for 222.54 feet to a point on a curve to the right, said curve having a radius of 50.00 feet and subtending a central angle of 90 deg. 00 min. 00 sec.; thence run along the arc of said curve and the Easterly right of way line of Cahaba Valley Circle for 78.54 feet to the end of said curve, said point also being the point of beginning; being situated in Shelby County, Alabama.

EXHIBIT B

All building materials, equipment, fixtures, supplies and fittings of every kind or character now or hereafter acquired by the Lessor or the Lessee for the purpose of or used or useful in connection with the improvements, additions and fixtures to be constructed and installed on the Leased Realty as defined in the Lease Agreement, whether such materials, equipment, fixtures, supplies and fittings are actually located on or adjacent to the Leased Realty or not, and whether in storage or otherwise, wheresoever the same may be located. The property included as a part of the Project shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing materials, paint, doors, windows, hardware, pails, wires and wiring, plumbing and plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, in general all building material and equipment of every kind and character used or useful in connection with the construction and installation of said improvements, additions and fixtures.

Inst # 1995-12894

Inst # 1995-12894
05/17/1995-12894
08:39 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
040 MCD 106.00