
LEASE AGREEMENT

between

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

and

W. C. JERNIGAN

Dated as of September 1, 1983

The interests of The Industrial Development Board of The Town of Pelham in this Lease Agreement have been assigned to O. D. Carlton, II, under the Financing Agreement and Mortgage dated as of September 1, 1983, from The Industrial Development Board of The Town of Pelham in connection with the issuance by the Board of its Industrial Development First Mortgage Revenue Bond (Jernigan Project), Series 1983 in the principal amount of \$325,000.

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STATE OF ALABAMA)

SHELBY COUNTY)

THIS LEASE AGREEMENT made and entered into as of September 1, 1983 by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM (herein called the "Board"), a public corporation duly organized and existing under the laws of the State of Alabama, as lessor, and W. C. JERNIGAN, as lessee (the "Lessee").

W I T N E S S E T H:

In consideration of the respective representations and agreements herein contained, the parties hereto agree as follows (provided, that any obligation of the Board to pay money created by or arising out of this Lease Agreement shall be payable solely out of the proceeds derived from this Lease Agreement, the sale of the bond referred to in Section 2.1 hereof, the insurance and condemnation awards as herein provided and any other revenues arising out of or in connection with its ownership of the Project as hereinafter defined):

ARTICLE I.

DEFINITIONS

"Act" means Act No. 648 enacted at the 1949 Regular Session of the Legislature of Alabama, as amended (appearing as Code of Ala. 1975, § 11-54-80 thru § 11-54-101).

"Authorized Board Representative" means the person or persons at the time designated to act on behalf of the Board by written certificate furnished to the Lessee and the Bank containing the specimen signature of such person or persons and signed on behalf of the Board by its chairman.

"Authorized Lessee Representative" means the person or persons at the time designated to act on behalf of the Lessee by written certificate furnished to the Board and the Bank containing the specimen signature of such person.

"Board" means The Industrial Development Board of the Town of Pelham, a public corporation duly organized and existing under the laws of the State of Alabama, and its lawful successors and assigns.

"Bond" means the Board's \$325,000 principal amount Industrial Development First Mortgage Revenue Bond, Series 1983, (Jernigan Project).

"Bond Fund" means the Bond principal and interest fund created by Section 502 of the Financing Agreement.

"Bond Owner" means the registered owner of the Bond and Mortgagee under the Financing Agreement.

"Building" means that certain building and all other structures and improvements which are required by this Lease Agreement to be constructed on the Leased Land, as they may at any time exist.

"Code" means the Internal Revenue Code of 1954, as amended.

"Completion Date" means the date of completion of the acquisition, construction and equipping of the Project as that date shall be certified as provided in Section 4.5 hereof.

"Construction Period" means the period between the beginning of construction of the Project or the date on which the Bond is first delivered to the Bank (whichever is earlier) and the Completion Date.

"Determination of Taxability" means the issuance by the Internal Revenue Service of a statutory notice of deficiency holding, in effect, that the interest payable on the Bond is includable in the gross income of the holder thereof (other than a holder who is a "substantial user" of the Project or a "related person" as used in Section 103(b) of the Code) for any reason other than a change in the tax laws from those in force on the date hereof. Such Determination of Taxability shall be deemed to have occurred on the date borne by said statutory notice of deficiency.

"Financing Agreement" means the Financing Agreement and Mortgage of even date herewith between the Board and the Bond Owner, pursuant to which the Bond is issued.

"Government Obligations" means (a) direct 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 (b) obligations issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of, premium, if any, and interest on which is fully and unconditionally guaranteed as a full faith and credit obligation by the United States of America.

"Lease" means this Lease Agreement as it now exists and as it may hereafter be amended pursuant to the terms hereof and Article XI of the Financing Agreement.

"Lease Term" means the duration of the leasehold estate as provided in Section 5.1 hereof.

"Leased Equipment" means those items of machinery, equipment and other tangible personal property required or permitted herein to be acquired and installed as part of the Project with the proceeds from the sale of the Bond or the proceeds from any payment by the Lessee pursuant to Section 4.4 hereof and any item of machinery, equipment and other tangible personal property acquired and installed in substitution therefor and renewals and replacements thereof pursuant to the provisions of Sections 4.1, 6.1(a), 6.2, 7.1 and 7.2, hereof, but not including any machinery, equipment and other tangible personal property installed so as not to constitute part of the Project under the provisions of Section 6.1(b) hereof.

"Leased Land" means the real estate and interests in real estate described in Exhibit "A" attached hereto and by this reference made a part of this Lease, less such real estate and interests in real estate as may be released from

this Lease pursuant to Sections 8.3 and 11.3 hereof or taken by the exercise of the power of eminent domain as provided in Section 7.2 hereof.

"Lessee" means W. C. Jernigan, his heirs and assigns.

"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 expenses incurred in the collection of such gross proceeds.

"Permitted Encumbrances" means, as of any particular time, (i) liens for ad valorem taxes and special assessments not then delinquent or permitted to exist as provided in Section 6.3 hereof, (ii) this Lease and the Financing Agreement, (iii) utility, access and other easements, licenses, right-of-way, restrictions, reservations and exceptions which, according to the certificate of a licensed engineer (who may be an employee of the Lessee), will not materially interfere with or impair the operations being conducted at the Project (or, if no operations are being conducted therein, the operations for which the Project was designed or last modified), (iv) unfiled and inchoate mechanics', materialmen's or other similar liens for construction work in progress, (v) mechanics', laborers', materialmen's, suppliers' and vendors' liens or other similar liens not then payable permitted to exist as provided in Section 6.1 hereof, and (vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as do not, in the aggregate, and in the opinion of counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Board.

"Project" means the facilities, including the Leased Land, the Building and the Leased Equipment, acquired or to be acquired, constructed and installed with the proceeds from the sale of the Bond or the proceeds of any payment by the Lessee pursuant to plans and specifications prepared by and directions given by the Lessee.

"Project Development Costs" shall include the following:

(a) all obligations of the Board or the Lessee incurred on or after May 10, 1983, pursuant to contracts for the purchase or supply of equipment, machinery, labor and materials in connection with the acquisition, construction, installation and equipping of the Project;

(b) the cost of contract bonds and of 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 or the Lessee for test borings, surveys, estimates, preliminary studies, all costs connected with developing the plans and specifications for the Project, and for supervising construction, as well as for the performance

of all other duties required by or consequent upon the proper construction and equipping of the Project;

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

(e) all other costs and expenses which the Board or the Lessee may properly pay or accrue for the acquisition, construction, installation or equipping of the Project or the leasing thereof to the Lessee;

(f) 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, whether incurred before or after the date of this Lease; and

(g) interest on the Bond during construction of the Project.

* * * * *

ARTICLE II.

REPRESENTATIONS

SECTION 2.1 Representations by the Board. The Board makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Board is a public corporation duly incorporated under the provisions of the Act by certificate of incorporation duly filed for record in the office of the Judge of Probate of Shelby County, Alabama. Under the provisions of the Act, the Board has the power to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. The Project constitutes and will constitute a "project" within the meaning of the Act. The Board is not in default under any of the provisions contained in its certificate of incorporation or in the laws of the State of Alabama. By proper corporate action, the Board has duly authorized the execution and delivery of this Lease.

(b) The Board proposes to acquire, construct and equip the Project in accordance with the directions of the Lessee, proposes to lease the Project to the Lessee and proposes to sell the Project to the Lessee at the expiration or sooner termination of the Lease Term, all for the purpose of promoting industry, developing trade, and furthering the use of the natural and human resources of the State of Alabama.

(c) To provide the permanent financing of the cost of the Project, the Board will issue its Bond in the principal amount of \$325,000 on the terms set forth in the Financing Agreement.

(d) The Bond is to be issued under and secured by the Financing Agreement, pursuant to which the Board's interest in this Lease and the rents and other revenues derived by the Board from its ownership, leasing and sale of the Project will be assigned and pledged to the Bond Owner, and the Project will be mortgaged to the Bond Owner, all as security for the payment of the principal of, premium, if any, and interest on the Bond.

(e) All of the Project will be located within the City of Pelham, Alabama.

SECTION 2.2. Representations by the Lessee. The Lessee makes the following representations as the basis for the undertakings on his part herein contained:

(a) Conflicting Agreements. The Lessee hereby warrants that he is not subject to any contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Lessee from entering into this Lease or performing any of his obligations hereunder and covenants that, anything in this Lease to the contrary notwithstanding, so long as the Bond is outstanding there shall be no abatement or reduction of the rent payable by the Lessee except as otherwise provided herein.

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(b) Governmental Consents. Neither the business or property of the Lessee, nor any relationship between the Lessee and any other person nor any circumstance in connection with the offering, sale, issuance or delivery of the Bond is such as to require on the part of the Lessee any consent, approval, permit, exemption, action, order or authorization of, or filing, registration or qualification with, or with respect to, any court, regulatory agency or other governmental body in connection with the execution and delivery of this Lease or the offering, sale, issuance or delivery of the Bond (other than those already obtained, taken or made and which continue in full force and effect).

(c) Litigation. There is no action, suit, inquiry, investigation or proceeding pending or overtly threatened against or affecting the Lessee at law or in equity or before or by any court or governmental body (nor, to the best knowledge and belief of the Lessee is there any basis therefor) which might result in any material adverse change in the business, prospects, operations, properties or assets or in the condition (financial or otherwise) of the Lessee, or which might materially and adversely affect the transactions contemplated by this Lease, or which might impair the ability of the Lessee to comply with his obligations hereunder.

(d) No Defaults. No event has occurred and no condition exists which, upon the issuance of the Bond, would constitute an event of default under this Lease or which would become such an event of default with the passage of time or with the giving of notice or both. The Lessee is not in default in any respect under any agreement or other instrument to which he is a party or by which he is bound, on any judgment, order, rule or regulation of any court or other governmental body applicable to him, to the extent in any such case that the default in question would materially and adversely affect the transactions contemplated by this Lease or would impair the ability of the Lessee to comply with his obligations hereunder.

(e) Licenses, Permits, Etc. All licenses, permits or other approvals required in connection with the acquisition and construction of the Project have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals (i) which are not yet required and which will be duly obtained not later than the time required or (ii) the failure to obtain which will not materially and adversely affect the acquisition and construction of the Project.

(f) Project's Compliance with Statutes and Regulations. The operation of the Project for the purpose for which it was designed and acquired will not conflict with any zoning, planning or similar regulations applicable thereto and will comply in all material respects with all applicable statutes, regulations, orders and restrictions.

(g) Public Purpose. The financing, acquisition and completion of the Project, as provided under this Lease, will contribute to the promotion

of industry, the development of trade, and the furtherance of the use of the natural and human resources of the State of Alabama.

(h) Use of Bond Proceeds. Substantially all of the proceeds of the Bond will be used to pay costs of acquiring, constructing and equipping the Project, which constitutes and will constitute either land or property of a character subject to the allowance for depreciation under Section 167 of the Code.

(i) No Previously Issued Tax Exempt Obligations. There are no bonds or other obligations outstanding, the interest on which is exempt from Federal income taxation by virtue of Section 103 of the Code and the proceeds of which were used to finance the Project or any portion thereof, or any other facilities located in Pelham, Alabama, the "principal user" (as used in Section 103(b)(9) of the Code) of which is the Lessee or any "related person" (as defined in Section 103(b)(6)(C) of the Code).

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ARTICLE III.

DEMISING CLAUSES AND WARRANTY OF TITLE

SECTION 3.1. Demise of the Project. The Board hereby demises and leases to the Lessee, and the Lessee hereby leases from the Board, the Project at the rental set forth in Section 5.3 hereof and in accordance with the provisions of this Lease, subject to Permitted Encumbrances.

SECTION 3.2. Quiet Enjoyment. The Board covenants and agrees that it will warrant and defend the Lessee in the quiet enjoyment and peaceable possession of the Project free from all claims of all persons whomsoever with respect to the Board's title to the Leased Land, throughout the Lease Term, so long as the Lessee shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not have expired.

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ARTICLE IV.

COMMENCEMENT AND COMPLETION OF THE PROJECT;
ISSUANCE OF THE BOND

SECTION 4.1. Agreement to Construct and Equip the Project. Subject to the provisions of Section 4.4 hereof, the Board agrees that it will cause the Project to be acquired, constructed, installed and equipped substantially in accordance with directions to be given by the Lessee. The Board and the Lessee agree that the Lessee may supplement, amend, omit from and add to such directions, and that the Lessee is authorized to omit or make substitutions for components of the Project, provided that no such change shall result in any part of the Project not being a "project" within the meaning of the Act.

The Board will enter into such contracts for the construction, acquisition, installation and equipping of the Project and shall appoint such agents to act on its behalf with respect to the construction, acquisition, installation and equipping of the Project, as shall be acceptable to the Lessee. The Board hereby makes, constitutes and appoints the Lessee as one such agent, with power of substitution, to act and do all things on behalf of the Board, to perform all acts and agreements of the Board hereinbefore provided in this Section 4.1, and to bring any actions or proceedings against any person which the Board might bring with respect thereto as the Lessee shall deem proper. The Board hereby ratifies and confirms all lawful and proper actions of, and assumes and adopts all such contracts entered into by, the Lessee with respect to the Project prior to the effective date hereof, and agrees that the Board will not enter into any contract or give any order regarding the acquisition, construction or installation of the Project unless and until the Lessee shall have approved the same in writing. This appointment of the Lessee to act as agent and all authority hereby conferred are granted and conferred to the Completion Date and thereafter until all activities in connection with the construction, acquisition, installation and equipping of the Project shall have been completed, and shall not be terminated prior thereto by act of the Board or the Lessee. Upon the Completion Date or at any time prior thereto upon the request of the Lessee, so long as it is not in default hereunder, the Board will assign to the Lessee all warranties and guaranties of all contractors, subcontractors, suppliers, architects and engineers for the furnishing of labor, materials or equipment or supervision or design in connection with the Project and any rights or causes of action arising from or against any of the foregoing.

The Board agrees to use its best efforts to complete the acquisition, construction, installation and equipping of the Project as promptly as practicable after receipt of the proceeds from the sale of the Bond, delays incident to strikes, riots, acts of God or the public enemy beyond the reasonable control of the Board only excepted; but if such acquisition, construction and installation is not completed there shall be no resulting liability on the part of the Board and no diminution in the rental payments required in Section 5.3 hereof to be paid by the Lessee.

The Board is entering into this Lease pursuant to the authority conferred upon it by the Act. It is hereby expressly made a condition of this Lease that any agreements, covenants or representations herein contained or contained in the Bond do not and shall never constitute or give rise to any personal or pecuniary liability or charge against the general credit of the Board, and in the event of a breach of any such agreement, covenant or representation, no personal

or pecuniary liability or charge payable directly or indirectly from the general revenues of the Board shall arise therefrom. Nothing contained in this Section, however, shall relieve the Board from the observance and performance of the several covenants and agreements on its part herein contained or relieve any director, officer, employee or agent of the Board from performing all duties of their respective offices that may be necessary to enable the Board to perform the covenants and agreements on its part herein contained.

SECTION 4.2. Agreement to Issue the Bond; Application of Bond Proceeds. In order to provide funds for payment of the Project Development Costs, the Board agrees that it will sell, issue and deliver the Bond to the Bond Owner at 100% of the principal amount thereof and that upon receipt of the proceeds derived from the sale of the Bond, it will deposit the proceeds received upon said sale in the construction bank account at SouthTrust Bank of Alabama, N.A., under the name of The Industrial Development Board of the Town of Pelham - Jernigan Project, which account has two authorized agents, to wit, W. C. Jernigan and Henry Gordon.

SECTION 4.3. Establishment of Completion Date. The Completion Date shall be evidenced to the Bond Owner by a certificate signed by an Authorized Board Representative and endorsed by an Authorized Lessee Representative stating that, (i) the acquisition, construction, installation and equipping of the Project have been completed in accordance with the plans and specifications of the Lessee and the Sublessee, and all labor, services, materials, supplies and equipment used in such acquisitions, construction and equipping have been paid for, (ii) the Project and all facilities in connection therewith have been acquired, constructed, installed and equipped to their satisfaction, and (iii) substantially all of the proceeds of the Bond have been used to provide either land or property subject to the allowance for depreciation within the meaning of Section 103(b)(6)(A) of the Code. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights of the Board or the Lessee against third parties which exist on the date of such certificate or which may subsequently come into being. The Board and the Lessee agree to cooperate in causing such certificate to be furnished to the Bond Owner.

SECTION 4.4. Lessee Required to Pay Construction and Equipment Costs in Certain Events. In the event the moneys in the construction bank account described hereinabove in Section 4.2 available for payment of the Project Development Costs should not be sufficient to pay such costs in full, the Lessee agrees to complete the Project and to pay or cause to be paid all that portion of the costs of the Project as may be in excess of the moneys available therefor in the said construction bank account by making payments directly to the construction contractor or contractors or the suppliers of materials and equipment as the same shall become due or by paying into the said construction bank account the moneys necessary to complete the Project, in which case the Board will proceed to complete the Project and the cost thereof will be paid from the said construction bank account. The Board does not make any warranty, either express or implied, that the moneys which will be paid into the said construction bank account and which, under the provisions of this Lease, will be available for payment of the Project Development Costs will be sufficient to pay all such Project Development Costs. The Lessee agrees that if, after exhaustion of the moneys in the said construction bank account, the Lessee should pay or cause to be paid any

portion of the Project Development Costs pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Board or from the Bond Owner nor shall it be entitled to any diminution of the rents payable under Section 5.3 hereof.

SECTION 4.5. Board to Pursue Remedies Against Contractors and Subcontractors and Their Sureties. In the event of any default of any supplier, contractor or subcontractor under any contract made by it in connection with the Project or in the event of breach of warranty with respect to any materials, workmanship or performance guaranty, the Board will promptly proceed (at the direction and sole cost of the Lessee and subject to the Lessee's advice to the contrary), either separately or in conjunction with others, to exhaust the remedies of the Board against any defaulting supplier, contractor or subcontractor and against any surety therefor, for the performance of any contract made in connection with the Project. Unless the Lessee shall request the Board to proceed in another manner, the Board shall proceed, in connection with any such default, only through the Lessee as agent for the Board; and the Lessee, as such agent and in the name of the Board, shall prosecute, defend or settle any action or proceeding or take any other action involving any such supplier, contractor, subcontractor or surety which the Lessee deems reasonably necessary. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing prior to the Completion Date shall be paid into the construction bank account described hereinabove in Section 4.2.

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ARTICLE V.

EFFECTIVE DATE OF THIS LEASE; DURATION OF
LEASE TERM; RENTAL PROVISIONS

SECTION 5.1. Effective Date of This Lease; Duration of Lease Term. This Lease shall become effective upon its delivery and the leasehold estate created in this Lease shall then begin, and, unless sooner terminated, shall expire at midnight, July 31, 1998, or if the Bond has not been fully paid and retired (or provision for such payment made as provided in the Financing Agreement), on such date as such payment or provision for payment shall have been made.

SECTION 5.2. Delivery and Acceptance of Possession. The Board agrees to deliver sole and exclusive possession of the Project to the Lessee upon the effective date of this Lease; provided, however, that the Board and its agents shall be permitted such access to the Project during the Construction Period as shall be necessary or desirable to permit construction of the Project, and thereafter as provided in Section 8.2 hereof.

SECTION 5.3. Rents and Other Amounts Payable. On or before December 1, 1983, and on or before the first day of each March, the first day of each June, the first day of each September and the first day of each December, thereafter until the principal of, premium, if any, and interest on the Bond shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Financing Agreement, the Lessee shall pay, as rent for the Project, an amount (in funds which will be immediately available on the date when payment is due) equal to the amount payable on such date as principal, premium, if any, and interest upon the Bond, as provided in the Financing Agreement. Each rental payment shall be sufficient to pay the total amount of principal, premium, if any, and interest payable on the Bond on the quarterly payment date for which such rental payment is made. On the fifth business day following written notice from the Bond Owner or the Board to the Lessee, the Lessee shall also pay as rent for the Project an amount equal to the principal of and interest accrued to the date of such payment on the Bond by reason of any declaration of the Bond Owner pursuant to Section 902 of the Financing Agreement.

In the event the Lessee should fail to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon at the rate per annum borne by the Bond, until paid. The provisions of this Section shall be subject to the provisions of Section 9.6 hereof.

SECTION 5.4. Place of Rental Payments. The rent provided for in Section 5.3 hereof shall be paid directly to the Bond Owner for the account of the Board.

SECTION 5.5. Obligations of Lessee Hereunder Unconditional. Subject to the provisions of Section 9.6 hereof, the obligations of the Lessee to make the payments required in Section 5.3 hereof and to perform and observe the other agreements on his part contained herein shall be absolute and unconditional and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise. Until such time as the principal of, premium, if any, and

interest on the Bond shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Financing Agreement, the Lessee (i) will not suspend or discontinue any payments provided for in Section 5.3 hereof except to the extent the same have been prepaid, (ii) will perform and observe all of his other agreements contained in this Lease and (iii) except as provided in Sections 11.1, 11.2 and 11.6 hereof, will not terminate the Lease Term for any cause, including, without limiting the generality of the foregoing, failure of the Board to complete the Project, failure of the Board's title to the Project or any part thereof, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Alabama or any political subdivision of either thereof or any failure of the Board to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Lease. Nothing contained in this Section shall be construed to release the Board from the performance of any of the agreements on its part herein contained; and in the event the Board should fail to perform any such agreement on its part, the Lessee may institute such action against the Board as the Lessee may deem necessary to compel performance or recover his damages for nonperformance so long as such action shall not do violence to the agreements on the part of the Lessee contained in the preceding sentence. The Lessee may, however, at his own cost and expenses and in his own name or in the name of the Board, prosecute or defend any action or proceeding or take any other action involving third persons which the Lessee deems reasonably necessary in or to secure or protect his right of possession, occupancy and use hereunder, and in such event the Board hereby agrees to cooperate fully with the Lessee and to take all action necessary to effect the substitution of the Lessee for the Board in any such action or proceeding if the Lessee shall so request.

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ARTICLE VI.

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. Maintenance and Modifications of Project by Lessee. (a) The Lessee agrees that during the Lease Term he will at his own expense (i) keep the Project in as reasonably safe condition as his operations shall permit and (ii) keep the Building and the Leased Equipment and all other facilities and improvements forming a part of the Project in good repair and in good operating condition, reasonable wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

(b) The Lessee may from time to time, in his sole discretion and at his own expense, make any additions, modifications or improvements to the Project, including additional real property and the installation of additional machinery, equipment and other tangible personal property that do not materially impair the effective use of the Project. Except as otherwise provided in this subsection (b), all such additions, modifications and improvements shall become a part of the Project and shall be covered by the Financing Agreement; provided, however, that any machinery, equipment, furniture, or fixtures installed by the Lessee at the Project without expense to the Board and not constituting Leased Equipment substituted under Section 6.2(a) hereof, and any discrete additions or improvements to the Building or fixtures thereon made or installed by the Lessee without expense to the Board which are capable of being physically removed and separately mortgaged without adversely affecting the utility or integrity of the Project and without causing irreparable damage thereto, shall not constitute a part of the Project and shall not be covered by the Financing Agreement, and may be removed by the Lessee at any time and from time to time under the terms of this Lease; and provided further, that any damage to the Project occasioned by such removal shall be repaired by the Lessee at his own expense.

Nothing contained in the preceding provisions of this Section shall prevent the Lessee from purchasing and installing at the Project, after delivery of the Indenture, machinery, equipment or other tangible personal property by conditional sale contract or lease sale contract, or subject to vendor's lien or purchase money mortgage, as security for the unpaid portion of the purchase price thereof, and each such conditional sale contract, lease sale contract, vendor's lien or purchase money mortgage made by the Lessee with respect to machinery, equipment and other tangible personal property purchased by it under the provisions of this Section after the delivery of the Financing Agreement shall, if appropriate financing statements are duly filed for record in the manner, at the times and in the places required by the Alabama Uniform Commercial Code, be prior and superior to any other lien on such machinery and equipment and other tangible personal property.

(c) The Lessee will not permit any mechanics' or other liens to be established or remain against the Project for labor or materials furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it; provided, that if the Lessee shall give the Bond Owner at least five days' written notice of his intention so to do, the Lessee may in good faith contest any mechanics' or other liens filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless, by nonpayment of any such items, the lien of the Financing Agreement as to any part of the Project will be materially

endangered or the Project or any part thereof will be subject to loss or forfeiture and the Board or the Bond Owner shall have demanded in writing satisfaction of such lien, in which event the Lessee shall, within five days of such written demand, either pay and cause to be satisfied and discharged all such unpaid items or post an adequate bond for the payment of such items in the event that the contest of such items is finally resolved adversely to the Lessee. The Board will, at the expense of the Lessee, cooperate fully with the Lessee in any such contest.

SECTION 6.2. Removal of Leased Equipment. The Board shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Leased Equipment. In any instance where the Lessee in his sole discretion determines that any items of Leased Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Lessee may remove such items of Leased Equipment and (on behalf of the Board), sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Board or the Bond Owner therefor, provided that the Lessee shall substitute (either by direct payment of the costs thereof or by advancing to the Board the funds necessary therefor) and install other machinery or equipment having equal or greater utility (but not necessarily having the same function) in the operation of the Project (provided such removal and substitution shall not impair the operation of the Project), all of which substituted machinery or equipment shall be free of all liens and encumbrances (other than Permitted Encumbrances) but shall become a part of the Leased Equipment.

In the event that prior to such removal of items of Leased Equipment, the Lessee has acquired and installed machinery or equipment with his own funds which he has contributed to the Project and which has become part of the Leased Equipment, the Lessee may take credit to the extent of the amount so spent against the requirement that it substitute and install other machinery and equipment having equal or greater value, providing that the provisions of this sentence shall not relieve the Lessee of his obligations under the first sentence of Section 6.1 hereof.

The removal from the Project of any portion of the Leased Equipment pursuant to the provisions of this Section shall not entitle the Lessee to any abatement or diminution in amount of the rents payable under Section 5.3 hereof.

The Lessee will promptly report to the Bond Owner each such removal and substitution. The Lessee will pay any costs (including reasonable counsel fees) incurred in subjecting to the lien of the Financing Agreement any items of machinery or equipment that under the provisions of this Section, are to become part of the Leased Equipment. The Lessee will not remove or permit the removal of any of the Leased Equipment except in accordance with the provisions of this Section.

SECTION 6.3 Taxes, Other Governmental Charges and Utility Charges. The Board and the Lessee acknowledge that under present law no part of the Project owned by the Board will be subject to ad valorem taxation by the State of Alabama or by any political or taxing subdivision thereof, and that under present law the income and profits (if any) of the Board from the Project are not subject to either Federal or Alabama taxation. However, the Lessee will pay or cause to be paid, as the same respectively become lawfully due and payable (i) all taxes and governmental charges of any kind whatsoever upon or with respect to the Lessee's

interest in this Lease, (ii) all taxes and governmental charges of any kind whatsoever upon or with respect to the Project or any machinery, equipment or other property installed or brought by the Lessee therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or profits of the Board from the Project which, if not paid, will become a lien on the Project prior to or on a parity with the lien of the Financing Agreement or a charge on the revenues and receipts therefrom prior to or on a parity with the lien of the Financing Agreement or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created and made in the Financing Agreement), (iii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iv) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by 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 or cause to be paid only such installments as are required to be paid during the Lease Term.

The Lessee may, at his own expense and in his own name and behalf or in the name and behalf of the Board, 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 unless, by nonpayment of any such items, the lien of the Financing Agreement as to any part of the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture and the Board or the Bank shall have demanded payment of such items, in which event such taxes, assessments or charges shall be paid promptly. The Board will cooperate fully with the Lessee in any such contest. In the event that the Lessee shall fail to pay any of the foregoing items required by this Section to be paid by the Lessee, the Board or the Bond Owner may (but shall be under no obligation to) pay the same upon five days' prior written notice to the Lessee, and any amounts so advanced therefor by the Board or the Bond Owner shall become an additional obligation of the Lessee to the one making the advancement, which amounts together with interest thereon at the rate per annum borne by the Bond, from the date thereof, the Lessee agrees to pay.

SECTION 6.4. Insurance and Indemnity. During the construction of the Project and throughout the Lease Term, the Lessee shall take out and continuously maintain or cause to be taken out and maintained in effect the following insurance with respect to the Project, paying as the same become due all premiums with respect thereto:

(a) Insurance to the extent of the full insurable value of the Project against loss or damage by fire, with uniform standard extended coverage endorsement covering losses from windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke;

(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 from the United States government or an agency thereof against loss or damage by the risks and hazards of war; and

(c) Insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project or in any way related to the condition or operation of the Project, in the minimum amounts of \$500,000 for death of or bodily injury to any one person, \$1,000,000 for all death and bodily injury claims resulting from any one accident, and \$100,000 for property damage.

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 of Alabama to assume the respective risks undertaken; provided that any policy or policies evidencing the insurance required in clause (b) 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 Board, the Bank and the Lessee (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder in excess of \$25,000 to be paid to the Bank; 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 Bank. The Lessee may insure under a blanket policy or policies. All policies evidencing the insurance required to be carried by this Section shall be deposited with the Bank; provided, however, that in lieu thereof the Lessee may deposit with the Bank 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 Bond Owner evidence reasonably satisfactory to the Bank that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease.

The Lessee shall also indemnify the Board against liability for any loss or damage to property of others or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; provided, however, that the indemnification required by this Section 6.4 shall not include indemnification for liabilities resulting from wanton negligence or intentional acts by the Board, and provided further that the indemnity provided in this Section shall be effective only to the extent of any loss that may be sustained by the Board in excess of the Net Proceeds of any insurance carried with respect to the loss sustained. Unless the Lessee shall request the Board to proceed in another manner, the Board shall proceed in connection with any claim against which the Lessee herein indemnifies the Board, only through the Lessee as agent for the Board; and the Lessee, as such agent and in the name of the Board, shall defend or settle any such claim, action or proceeding or take any other action with respect thereto as the Lessee shall deem reasonably necessary and appropriate.

SECTION 6.5. Advances by Board or Bond Owner. In the event the Lessee shall fail to maintain the insurance coverage required by Section 6.4 hereof or shall fail to keep the Project in as reasonably safe condition as its operating conditions will permit, or shall fail to keep the Project in good repair and good operating condition, the Board or the Bond Owner may (but unless satisfactorily indemnified shall be under no obligation to), upon thirty days' prior written notice to the Lessee, take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements; and all amounts so advanced therefor, by the Board or

the Bond Owner shall become an additional obligation of the Lessee to the one making the advance, which amounts, together with interest thereon at the rate per annum borne by the Bond, from the date thereof, the Lessee agrees to pay.

SECTION 6.6. Payment for Police and Fire Protection. Annually throughout the Lease Term so long as the Project is exempt from ad valorem taxes, the Company shall pay to or for the benefit of the City of Pelham, Alabama, the sum of \$1,430 as a payment that is calculated to defray the costs incurred by said City in providing police and fire protection to the Project and any Improvements. The Company shall pay said sum on or before the last Business Day of November of each year during the term of this Agreement beginning in November, 1984, by mailing its check in said amount to the Treasurer of the City of Pelham, City Hall, Pelham, Alabama 35124.

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ARTICLE VII.

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. Damage and Destruction. Unless the Lessee shall elect to exercise his option to purchase the Project pursuant to the provisions of Section 11.2(a) hereof, if prior to full payment of the Bond (or provision for payment thereof having been made in accordance with the provisions of the Financing Agreement) the Project is destroyed or damaged by fire or other casualty, the Lessee, or the Board at the Lessee's direction, (i) will promptly repair, rebuild or restore the property damaged to substantially the same condition as it existed prior to the event causing such damage, 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 utility of the Project 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. All Net Proceeds of insurance received by the Board, the Lessee, the Bond Owner or any of them, resulting from claims for such losses shall be paid to the Lessee.

SECTION 7.2. Condemnation. Unless the Lessee shall elect to exercise his option to purchase the Project pursuant to the provisions of Section 11.2(b) hereof, 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 by any governmental body or by any person, firm or corporation acting under governmental authority, the Lessee shall be obligated to continue to make the rental payments specified in Section 5.3 hereof. The Board, the Lessee and the Bond Owner will cause the Net Proceeds received by them or any of them, from any award made in such eminent domain proceedings, to be applied in one or more of the following ways as shall be directed in writing by the Lessee:

(a) The restoration of the improvements of the Project to substantially the same condition as they existed prior to the exercise of the said power of eminent domain, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and will not impair the utility of the Project;

(b) The acquisition, by construction or otherwise, by the Board of other improvements suitable for the Lessee's operation of the Project (which 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 herein provided to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements shall be acquired by the Board subject to no liens or encumbrances prior to the lien of the Financing Agreement, other than Permitted Encumbrances;

Unless the Lessee shall elect to exercise his option to purchase the Project pursuant to the provisions of

Section 11.2(b) hereof, within ninety days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Lessee shall direct the Board and the Bond Owner in writing as to which of the ways specified in this Section the Lessee elects to have the condemnation award applied.

The Board 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 Board. In no event will the Board voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of the Lessee.

SECTION 7.3. Condemnation of Lessee-Owned Property. The Lessee shall also be entitled to the Net Proceeds of any condemnation award or portion thereof made for damages to or takings of his own property or for damages on account of the taking of or interference with the Lessee's rights to possessions, use or occupancy of the Project.

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ARTICLE VIII.

SPECIAL COVENANTS

SECTION 8.1. No Warranty of Condition or Suitability by the Board. THE BOARD MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROJECT OR THAT IT WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS.

SECTION 8.2. Inspection of the Project. The Lessee agrees that the Board, the Bond Owner and their duly authorized agents shall have the right at all reasonable times during business hours, subject to the Lessee's usual safety and security requirements of persons on the Leased Land, to enter upon the Leased Land and to examine and inspect the Project without interference or prejudice to the Lessee's operations. The Lessee further agrees that the Board and its duly authorized agents who are acceptable to the Lessee shall have such rights of access to the Project as may be reasonably necessary to cause to be completed the construction and installation provided for in Section 4.1 hereof. The Board and the Bond Owner shall be permitted, at all reasonable times, to examine the books and records of the Lessee with respect to the Project.

SECTION 8.3. Granting of Easements. If no event of default shall have happened and be continuing, the Lessee may at any time or times cause to be granted easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project and such grant will be free from the lien of the Financing Agreement, or the Lessee may cause to be released existing easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project with or without consideration and the Board agrees that it shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant or release; (ii) a written application signed on behalf of the Lessee and by a licensed engineer (who may be an employee of the Lessee) requesting such instrument and stating (1) that such grant or release is not detrimental to the proper conduct of the business of the Lessee, and (2) that such grant or release will not impair the effective use or interfere with the operation of the Project and will not weaken, diminish or impair the security intended to be given by or under the Financing Agreement.

SECTION 8.4. Authorized Board Representatives. Unless otherwise specified herein, whenever under the provisions hereof the approval of the Board is required or the Board is required to take some action at the request of the Lessee, such approval shall be made or such action shall be taken by an Authorized Board Representative; and the Lessee shall be authorized to act on any such approval or action and the Board shall have no complaint against the Lessee as a result of any such action taken.

SECTION 8.5. Authorized Lessee Representatives. Unless otherwise specified herein, whenever under the provisions hereof the approval of the Lessee is required or the Lessee is required to take some action at the request of the Board, such approval shall be made or such action shall be taken by an Authorized Lessee Representative; and the Board shall be authorized to act on any such approval or action and the Lessee shall have no complaint against the Board as a result of any such action taken in accordance with the direction so given.

SECTION 8.6. Tax Exemption. It is the intention of the parties hereto that the Bond shall be and remain at all times an obligation the interest on which is excluded from gross income for Federal income tax purposes by reason of the provisions of Section 103(a)(1) of the Code, or any substantially similar successor provision hereafter enacted, and that substantially all the proceeds of the Bond shall be used for the acquisition, construction and installation of either land or property of a character subject to the allowance for depreciation within the meaning of Section 103(b)(6)(A) of the Code. To that end, the Lessee and the Board each covenant that all proceeds received from the sale of the Bond shall be applied for such purposes. Without limiting the foregoing, the Lessee and the Board covenant that they shall take no action whereby the proceeds of the Bond shall be invested or used in such manner that the Bond would be an "arbitrage bond" within the meaning of Section 103(c) of the Code and the applicable regulations promulgated thereunder as they may be in force and applicable, at the time of such investment or use, to such Bond.

SECTION 8.7. Obligations of Lessee in the Event of Taxability. Upon receiving notification in writing from the holder of the Bond of the occurrence of a Determination of Taxability, the Lessee shall be obligated to pay or cause to be paid sufficient moneys to the Bond Owner to provide for the redemption of the Bond at the time and redemption price specified in Section 301 of the Financing Agreement.

In his sole discretion and at his own expense, the Lessee may contest any Determination of Taxability by appropriate administrative proceedings within the Internal Revenue Service in his own name or in the name of the holder of the Bond, and may continue such contest in any court having jurisdiction over the subject matter of such contest; provided, however, that the appropriate court for the pursuit of such contest shall be chosen by the holder of the Bond. The Lessee may delay making the payments required in the first paragraph of this Section 8.7 during the pendency of any administrative proceeding within the Internal Revenue Service or any judicial proceeding before the the lowest level court having jurisdiction over such matters and specified by the holder of the Bond, and if such judicial proceeding is determined favorably to the Lessee, the Lessee may continue to delay such payments during any subsequent appeal so long as the Lessee shall take out and file with the Bond Owner an appropriate bond for payment of the amounts required by this Section in the event that the judicial proceedings (including appeals) are ultimately determined adversely to the Lessee.

SECTION 8.8. Life Insurance on Life of Lessee. The Lessee will maintain a life insurance policy on the life of W. C. Jernigan in the amount of the outstanding principal balance from time to time of the Bond, with an insurance company that is approved by the Bond Owner. Said policy

shall be payable to the Bond Owner. Any proceeds paid to the Bond Owner shall be credited under this Lease as a prepayment of rent and under the Financing Agreement in accordance with Section 503 thereof. Any surplus of proceeds of such policy over and above the outstanding principal balance and accrued interest on the Bond shall be paid by the Bond Owner to the Estate of the Lessee.

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ARTICLE IX.

ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING;
REDEMPTION; RENT PREPAYMENT AND ABATEMENT

SECTION 9.1. Assignment and Subleasing. This Lease may be assigned in whole or in part, and the Project may be subleased as a whole or in part, by the Lessee without the necessity of obtaining the consent of either the Board or the Bank, subject, however, to each of the following conditions:

(a) No assignment or sublease shall relieve the Lessee from primary liability for any of his obligations hereunder, and in the event of any such assignment or sublease the Lessee shall remain primarily liable for payment of the rents specified in Section 5.3 hereof and for performance and observance of the other agreements on his part herein provided to be performed and observed by him.

(b) The assignee or sublessee shall assume the obligations of the Lessee hereunder to the extent of the interest assigned or subleased.

(c) The Lessee shall, within thirty days after delivery thereof, furnish or cause to be furnished to the Board and to the Bond Owner a true and complete copy of each such assignment or sublease, as the case may be.

(d) No such assignment or sublease shall be made to any person if the effect thereof would be to change the character of the Project to such an extent that any part thereof would no longer constitute a "project" within the meaning of the Act.

SECTION 9.2. Mortgaging of Project by Board. The Board shall mortgage the Project to the Bank under the Financing Agreement and shall assign its interest in and pledge any moneys receivable under this Lease to the Bank pursuant to the Financing Agreement as security for the payment of the principal of, premium, if any, and interest on the Bond, but each such mortgage, assignment or pledge shall be subject and subordinate to this Lease. The Board will not further mortgage or otherwise encumber title to the Project except at the request of the Lessee.

SECTION 9.3. Restrictions on Sale of Project by Board. The Board agrees that, except as otherwise permitted under the terms of this Lease or the Financing Agreement, it will not sell, assign, transfer or convey the Project during the Lease Term and that it will not take any other action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Project or on the Lessee's leasehold interest in the Project. If the laws of Alabama at the time shall permit such action to be taken, nothing contained in this Section shall prevent the consolidation of the Board with, or merger of the Board into, or transfer of the Project as an entirety to, any public 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, that upon any such consolidation, merger or transfer, the due and punctual payment of the principal of, premium, if any, and interest on the Bond according to their tenor, and the due and punctual performance and observance of all the agreements and conditions of this Lease to be kept and performed by the Board, 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.

SECTION 9.4. Redemption of Bond. The Board, at the request at any time of the Lessee and if the same is then redeemable, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Financing Agreement to effect redemption of all or part of the then outstanding balance of the Bond, as may be specified by the Lessee, on the earliest redemption date on which such redemption may be made under such provisions or upon the date set for the redemption by the Lessee pursuant to Sections 7.1, 7.2, 8.7, 11.1 or 11.2 hereof.

SECTION 9.5. Prepayment of Rents. There is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted at any time he may choose, to prepay all or any part of the rents payable under Section 5.3 hereof, and the Board agrees that the Bond Owner may accept such prepayment of rents when the same are tendered by the Lessee. All rents so prepaid shall be credited against the basic rental payments specified in Section 5.3 hereof, in the order of their due dates and, at the election and direction of the Lessee, shall be used toward the redemption of the Bond in the manner and to the extent provided in the Financing Agreement.

SECTION 9.6. Reference to Bond Ineffective After Bond Paid. Upon payment in full of the Bond (or provision for payment thereof having been made in accordance with the provisions of the Financing Agreement) all references in this Lease to the Bond and the Bank shall be ineffective and the Bank shall not thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested. For purposes of this Lease, the Bond shall be deemed fully paid when so paid according to the provisions of Article IX of the Financing Agreement.

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ARTICLE X.

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. Events of Default Defined. The following shall be "events of default" under this Lease and the terms "event of default" or "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Failure by the Lessee to pay or cause to be paid when due the portion of the rents required to be paid under Section 5.3 hereof representing payment of the principal of, and premium, if any, on the Bond, and continuance of such default for a period of five days after written notice thereof to the Lessee by the Bond Owner;

(b) Failure by the Lessee to pay or cause to be paid when due the portion of the rents required to be paid under Section 5.3 hereof representing payments of interest on the Bond, and continuance of such default for a period of five days after written notice thereof to the Lessee by the Bond Owner;

(c) Failure by the Lessee to observe and perform any covenant, condition or agreement on his part to be observed or performed, other than as referred to in subsections (a), (b) and (d) 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 Board or the Bond Owner, unless the Board and the Bank shall agree in writing to an extension of such time prior to its expiration. If a failure under this Section 10.1(c) be such that it can be corrected but not within the applicable period, it shall not be an event of default if the Lessee is taking appropriate corrective measures as permitted in Section 1010 of the Financing Agreement;

(d) The filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequence as will materially impair his ability to carry on his business, or the commission by the Lessee of any act of bankruptcy, or adjudication of the Lessee as a bankrupt and in the case of an adjudication resulting from the filing of an involuntary petition such adjudication shall have remained undischarged or unstayed for a period of 120 days, or assignment by the Lessee for the benefit of his creditors, or the entry by the Lessee into an agreement of composition with his creditors.

The foregoing provisions of this Section are subject to the following limitations: If by reason of force majeure the Lessee is unable in whole or in part to carry out the agreements on his part herein contained, other than the obligations on the part of the Lessee contained in Article V and Sections 6.3, 6.4, 8.4, 8.7 and 8.8 hereof, the Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State of Alabama or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests;

restraint of government and people; civil disturbance; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; inability of the Lessee to obtain materials necessary to the operation and maintenance of the Project; or any other cause or event not reasonably within the control of the Lessee. The Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Lessee from carrying out his agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Lessee, and the Lessee shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Lessee unfavorable.

SECTION 10.2. Remedies on Default. Whenever any event of default referred to in Section 10.1 hereof shall have happened and be subsisting, the Board, subject to the limitations of Section 1003 of the Financing Agreement, or the Bond Owner where so provided, may take any one or more of the following remedial steps:

(a) The Board, with the prior written consent of the Bond Owner, or the Bond Owner, may declare all installments of rent payable under Section 5.3 hereof for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Board or the Bond Owner elects to exercise the remedy afforded in this Section 10.2(a) and accelerates all rents payable under Section 5.3 hereof for the remainder of the Lease Term, the amount then due and payable by the Lessee as accelerated rents shall be the sum of (1) the aggregate principal amount outstanding on the Bond, and (2) all interest and redemption premium, if any, on the Bond accruing to the date of such acceleration. Such sums as may then become payable shall be paid into the Bond Fund and after the Bond and accrued interest thereon have been fully paid and any costs occasioned by such default have been satisfied, any excess moneys shall be returned to the Lessee as an overpayment of rents.

(b) The Board, with the prior written consent of the Bond Owner, or the Bond Owner may re-enter and take possession of the Project without terminating this Lease, and sublease the Project for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by such sublessee in such subleasing and the rents and other amounts payable by the Lessee hereunder.

(c) The Board, with the prior written consent of the Bond Owner, or the Bond Owner may terminate the Lease Term, exclude the Lessee from possession of the Project and use his best efforts to lease the Project to another for the account of the Board, holding the Lessee liable for all rent and other payments due up to the effective date of such leasing.

(d) In the event any portion of the principal of the Bond shall at the time be outstanding and unpaid, the Board or the Bond Owner may have access to and inspect, examine and make copies of all books and records of the Lessee pertaining to the Project.

(e) The Board, with the prior written consent of the Bond Owner, or the Bond Owner may take whatever action at law or in equity may appear necessary or

desirable to collect the rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

Any amounts collected pursuant to action taken under this Section shall be paid to the Bond Owner and applied in accordance with the provisions of the Financing Agreement or, if the Bond has been fully paid (or provision for payment thereof has been made in accordance with the provisions of the Financing Agreement), to the Lessee.

SECTION 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Board or the Bond Owner 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 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 and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Board or the Bond Owner to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given to the Board hereunder shall also extend to the Bank and the Bond Owner shall be deemed third party beneficiaries of all covenants and agreements herein contained.

SECTION 10.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Lease and the Board or the Bond Owner 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 agrees that he will on demand therefor pay to the Board or the Bank the reasonable fee of such attorneys and such other reasonable expenses so incurred by the Board or the Bond Owner.

SECTION 10.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease 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.

* * * * *

ARTICLE XI.

OPTIONS IN FAVOR OF LESSEE

SECTION 11.1. General Option to Purchase Project.

The Lessee shall have, and is hereby granted, the option to purchase the Project at any time during the Lease Term. To exercise such option, the Lessee shall give written notice to the Board (and to the Bond Owner if the Bond shall then be unpaid or provision for its payment shall not have been made in accordance with the provisions of the Financing Agreement) and shall specify in said notice 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, in case of redemption of the Bond in accordance with the provisions of the Financing Agreement, the Lessee shall make arrangements for the giving of the required notice of redemption. The purchase price payable by the Lessee in the event of his exercise of the option granted in this Section shall be the sum of such moneys or Government Obligations as are sufficient to constitute payment in full of the Bond as provided in Article IX of the Financing Agreement, plus the sum of \$1.00. If this option has not been exercised prior to the termination of the Lease Term, then it shall automatically be considered to be exercised at such time.

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SECTION 11.2. Option to Purchase Project in Certain Events. The Lessee shall have, and is hereby granted, the option to purchase the Project prior to the full payment of the Bond (or provision for payment thereof having been made in accordance with the provisions of the Financing Agreement), if any of the following events shall have occurred:

(a) The Project shall have been damaged or destroyed as set forth in Section 7.1 hereof to such an extent that in the judgment of the Lessee (i) the Project cannot be reasonably restored within a period of six months to a condition suitable for the operation thereof, or (ii) the Lessee is thereby prevented or will likely be prevented from carrying on his normal operations at the Project for a period of six months, or (iii) the restoration and repair of the Project would not be economically practicable or desirable to the Lessee.

(b) Title to, or the temporary use of, all or any substantial part of the Project 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 resulting in the Lessee being thereby prevented from carrying on his normal operations at the Project for a period of six months or the Project being economically impracticable or undesirable to operate.

(c) As a result of any changes in the Constitution of Alabama or the Constitution of the United States of America or by 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), this Lease shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in this Lease, or unreasonable burdens or excessive liabilities with respect to the Project shall have been imposed on the Board or the Lessee including without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Lease.

(d) Changes in the economic availability of raw materials, operating supplies (including, without limitation, fuel), or facilities necessary for the efficient operation of the Project shall have occurred, or technological, legal or other changes shall have occurred, any of which, in the judgment of the Lessee, render the Project or the operation thereof impracticable or uneconomic.

To exercise such option, the Lessee shall, within 180 days following the event authorizing the exercise of such option, give written notice to the Board and to the Bond Owner, if the Bond shall then be unpaid, 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. The purchase price which shall be paid to the Bond Owner by the Lessee in the event of his exercise of the option granted in this Section shall be the sum of the following:

(1) An amount of money which will be sufficient to pay the interest on the Bond until the earliest permissible redemption date following the closing of such purchase and to pay the principal of and interest on the Bond on such redemption date, plus

(2) the sum of \$1.00 which shall be paid by the Bank to the Board.

In the event of the exercise of the option granted in this Section, any Net Proceeds of insurance or condemnation shall be paid to the Lessee.

SECTION 11.3. Option to Purchase Unimproved Land.

The Lessee shall have and is hereby granted an option to purchase any unimproved part of the Leased Land (on which neither the Building nor any Leased Equipment is located but on which parking, transportation or utility facilities may be located) at any time and from time to time at a purchase price equal to the pro rata cost thereof to the Board, provided that it furnishes the Board with the following:

(a) A notice in writing containing (i) an adequate legal description of that portion of the Leased Land with respect to which such option is to be exercised, (ii) a statement that the Lessee intends to exercise his option to purchase such portion of the Leased Land on a date stated, which shall not be less than forty-five nor more than ninety days from the date of such notice and (iii) a statement that the use to which it is intended that such portion of the Leased Land is to be devoted will promote the continued industrial development of the State of Alabama.

(b) A certificate of an Authorized Lessee Representative, dated not more than ninety days prior to the date of the purchase and stating that, in the opinion of the person signing such certificate, (i) the portion of the Leased Land with respect to which the option is exercised is not needed for the operation of the Project or that sufficient right and title is reserved to the Board to fulfill said needs, and (ii) the purchase will not impair the usefulness of the Project and will not destroy the means of ingress thereto and egress therefrom.

(c) An amount of money equal to the purchase price specified in this Section.

(d) If the Bond or any portion thereof remains outstanding, the written consent of the Bond Owner to such purchase.

The Board agrees that upon receipt of the items required in this Section to be furnished to it by the Lessee, the Board will promptly deliver the said purchase price to the Bond Owner and will secure from the Bond Owner a release from the lien of the Financing Agreement of such portion of the Leased Land with respect to which the Lessee shall have exercised the option granted in this Section. In the event the Lessee shall exercise the option granted to it under this Section the purchase price paid shall be credited to the Lessee as a payment of rent under Section 5.3 hereof in inverse order of the rental installments.

If the Lessee purchases any unimproved part of the Leased Land pursuant to the provisions of the preceding paragraph, the Lessee and the Board agree that all walls presently standing or hereafter erected on or contiguous to the boundary line of the land so purchased by the Lessee shall be party walls and each party grants the other a 10-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 utilizes any party wall for the purpose of tying-in new construction that will be utilized under common control with the Project, the Lessee may also tie in to the utility facilities on the Leased Land for the purpose of serving the new construction and may remove any non-loadbearing wall panels in the party wall; provided, however, that if the property so purchased ceases to be operated under common control with the Project, the Lessee covenants that it will install non-loadbearing wall panels similar in quality to those that have been removed and will provide separate utility services for the new construction. No wall may be so utilized by the Lessee unless prior thereto the Board has been furnished with a certificate of an Authorized Lessee Representative stating that the proposed utilization will not impair the usefulness of the Project for the purposes for which it was designed to be used.

SECTION 11.4. Conveyance on Purchase. At the closing of the purchase pursuant to the exercise of any option to purchase granted in this Article, the Board will, upon receipt of the purchase price, deliver to the Lessee the following:

(a) If the Financing Agreement shall not at the time have been satisfied in full, a release by the Bond Owner from the lien of the Financing Agreement of the property with respect to which such option was exercised.

(b) A statutory warranty deed conveying to the Lessee good and marketable title to the property with respect to which such option was exercised, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to said property was subject when conveyed to the Board; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented in writing; (iii) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on his part contained in this Lease; (iv) such other Permitted Encumbrances, other than the Financing Agreement and this Lease, created or consented to by the Lessee or resulting from the failure of the Lessee to perform or observe any of the agreements on his part contained in this Lease; and (v) if the option is exercised pursuant to the provisions of Section 11.2(b) hereof, the rights and title of the condemning authority.

SECTION 11.5. Relative Position of Options and Financing Agreement. The options respectively granted to the Lessee in Sections 11.1 and 11.2 hereof shall be and remain prior and superior to the Financing Agreement and may be exercised whether or not the Lessee is in default hereunder, provided that any such default which will result in the nonfulfillment of any condition to the exercise of any such option must be cured prior to the exercise of such option.

SECTION 11.6. Lessee's Option to Terminate. So long as it is not in default hereunder, the Lessee shall have the following options to terminate this Lease at any time after payment in full of the Bond within the meaning of the Financing Agreement, and particularly Article IX thereof, the Lessee may terminate the Lease Term by giving the Board notice in writing, and such termination shall become effective forthwith.

* * * * *

ARTICLE XII.

MISCELLANEOUS

SECTION 12.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the Board, at The Industrial Development Board of the Town of Pelham, City Hall, Pelham, Alabama; if to the Lessee, to Mr. W. C. Jernigan, P. O. Box 848, Pelham, Alabama 35124; and if to the Bond Owner, to Mr. O. D. Carlton, II, Carlton Company, Box 1087, Albany, Georgia 31703. A duplicate copy of each notice, certificate or other communication given hereunder by either the Board, the Lessee or the Bond Owner to any of the others, shall also be given to all of the others. The Board, the Lessee and the Bond Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 12.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Board, the Lessee and their respective successors and assigns, subject, however, to the limitations contained in Section 9.1, 9.2 and 9.3 hereof.

SECTION 12.3. Severability. In the event any provision of this Lease 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 12.4. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Financing Agreement, subsequent to the issuance of the Bond and prior to its payment in full this Lease may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Bond Owner.

SECTION 12.5. Execution Counterparts. This Lease 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 12.6. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Lease.

SECTION 12.7. Recording of Lease. This Lease and every assignment and modification hereof shall be recorded in the office of the Judge of Probate of Shelby County, Alabama, or in such other office as may be at the time provided by law as the proper place for such recordation and shall be recorded prior to the Financing Agreement.

SECTION 12.8. Law Governing Construction of Lease. This Lease shall be governed by, and construed in accordance with, the laws of the State of Alabama.

SECTION 12.9. Net Lease. This Lease shall be deemed a "net lease", and the Lessee shall pay absolutely net during the Lease Term the rent and all other payments required hereunder, without abatement, deduction or setoff other than those herein expressly provided.

IN WITNESS WHEREOF, the Board and the Lessee have caused this Lease to be executed in their respective names all as of the date first above written.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

By 
Chairman of the Board of Directors

SEAL

Attest:


Its Secretary

WITNESS:




W. C. Jernigan

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for the State of Alabama at large, do hereby certify that Daniel M. Spitler, whose name as Chairman of the Board of Directors of The Industrial Development Board of the Town of Pelham, a public corporation, is signed to the foregoing instrument, 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Board.

Given under my hand and seal of office, this 23rd day of August, 1983.

SEAL

A. Key Foster, Jr.
Notary Public

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that W. C. Jernigan, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily.

Given under my hand and official seal of office this 1st day of September, 1983.

SEAL

A. Key Foster, Jr.
Notary Public

EXHIBIT A--LEASED LAND

The Leased Land initially consists of the following described real estate and interests in real estate located in Shelby County, Alabama:

PARCEL I:

Part of the SW 1/4 of the SE 1/4 of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From the Southeast corner of said Section, run in a westerly direction along the South line of said Section for a distance of 1,971.25 feet to a point of intersection with the Southeast right-of-way line of Shelby County Highway No. 11, being the point of beginning; thence turn an angle to the right of 127 deg. 12 min. and run in a Northeasterly direction along said southeast right-of-way line for a distance of 100.00 feet; thence turn an angle to the right of 89 deg. 39 min. 13 sec. and run in a southeasterly direction for a distance of 132.81 feet to a point on the south line of said SW 1/4 of SE 1/4; thence turn an angle to the right of 143 deg. 08 min. 47 sec. and run in a westerly direction for a distance of 166.73 feet to the point of beginning; being situated in Shelby County, Alabama.

PARCEL II:

Part of the NW 1/4 of NE 1/4 of Section 30, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at the intersection of the North line of said Section and the Southeast right-of-way line of Shelby County Highway No. 11, run in an Easterly direction along said north line for a distance of 275.47 feet; thence turn an angle to the right of 105 deg. 33 min. 37 sec. and run in a southwesterly direction for a distance of 389.35 feet; thence turn an angle to the right of 111 deg. 38 min. 23 sec. and run in a northwesterly direction for a distance of 363.00 feet to a point on the Southeast right-of-way line of said Shelby County Highway No. 11; thence turn an angle to the right of 90 deg. and run in a Northeasterly direction along said Southeast right-of-way for a distance of 195.36 feet to the point of beginning.

THERE IS EXCEPTED HEREFROM the following parcel:

Part of the NW 1/4 of the NE 1/4 of Section 30, Township 20 South, Range 2 West, being more particularly described as follows: From the Northeast corner of said Section 30, run in a Westerly direction along the North line of said Section 30 for a distance of 1,971.25 feet to a point of intersection with the Southeast right-of-way line of Shelby County Highway No. 11; thence turn an angle to the right of 180 deg. and run in a easterly direction for a distance of 166.73 feet to the point of beginning; thence continue along last mentioned course for a distance of 108.74 feet; thence turn an angle to the right of 105 deg. 33 min. 37 sec. and run in a southwesterly direction for a distance of 70.00 feet; thence turn an angle to the right of 111 deg. 17 min. 36 sec. and run in a northwesterly direction for a distance of 112.43 feet to the point of beginning.

Subject to:

- (1) Taxes due October 1, 1983.
- (2) Transmission Line Permit to Alabama Power Company in Deed Book 242 Page 911 and Deed Book 30 Page 117 in Probate Office of Shelby County, Alabama.
- (3) Right of way to Shelby County recorded in Deed Book 180 Page 544 in Probate Office.
- (4) Mineral and mining rights and rights pertaining thereto to Parcel 1, as shown by instrument recorded in Deed Book 33 Page 300, and which is presently being assessed to Jerry F. Colwell.

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1983 SEP - 1 PM 2:17
SHELBY COUNTY, ALABAMA
SHELBY CO. CLERK'S OFFICE

Rec 58.5
Jud 1.0
59.5

STATE OF ALA. SHELBY CO.
CLERK'S OFFICE
1 OCTOBER 1983
THIS INSTRUMENT WAS FILED

