

1043

MORTGAGE AND INDENTURE OF TRUST

THE INDUSTRIAL DEVELOPMENT BOARD OF
SHELBY COUNTY

To
FIRST AMERICAN NATIONAL BANK OF NASHVILLE
As Trustee

Dated as of September 1, 1983

(L. M. Berry Project)

BOOK 436 PAGE 854

This Mortgage and Indenture of Trust was prepared by Charles
Hayes of Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1900
First National-Southern Natural Building, Birmingham, Alabama
35203

Cabana Title

MORTGAGE AND INDENTURE OF TRUST

TABLE OF CONTENTS

(This Table of Contents is not a part of this Indenture
and is only for convenience of reference)

	<u>PAGE</u>
PARTIES.....	1
RECITALS.....	1
GRANTING CLAUSES.....	9

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS
OF GENERAL APPLICATION

Section 1.1	Definitions.....	11
Section 1.2	Use of Words and Phrases.....	14
Section 1.3	Date of Indenture.....	14
Section 1.4	Applicable Provisions of Law.....	14
Section 1.5	Captions.....	14
Section 1.6	Successors and Assigns of Parties Hereto.	15
Section 1.7	Limitation of Rights.....	15

ARTICLE II

THE BOND

Section 2.1	Source of Payment of Bonds; Munici- pality not Liable.....	15
Section 2.2	Authorization of Bond.....	16
Section 2.3	Authentication of Bond.....	16
Section 2.4	Registration of Bond; Persons Treated as Owner.....	16
Section 2.5	Trustee as Paying Agent and Registrar....	17

ARTICLE III

DELIVERY OF THE BOND
CUSTODY AND APPLICATION OF PROCEEDS OF BOND

Section 3.1	Delivery of Bond.....	17
Section 3.2	Construction Fund; Disbursements.....	18
Section 3.3	Completion of the Project.....	20
Section 3.4	Title Insurance.....	20

ARTICLE IV

BOND FUND; INVESTMENT
OF AND SECURITY FOR BOND FUND
AND CONSTRUCTION FUND

Section 4.1	The Bond Fund.....	21
Section 4.2	Payments into the Bond Fund.....	21
Section 4.3	Custody of the Bond Fund.....	21
Section 4.4	Security for Funds.....	21
Section 4.5	Investment of Construction Fund Moneys...	22
Section 4.6	Investment of Bond Fund Moneys.....	22
Section 4.7	Trustee's Responsibility; Arbitrage Bonds.....	23
Section 4.8	Money Held In Trust.....	23

ARTICLE V

COVENANTS BY THE BORROWER

Section 5.1	Construction and Acquisition of Project; Application of Proceeds of Bond....	23
Section 5.2	Cooperation with Lessee.....	23
Section 5.3	Collection and Disposition of Revenues and Receipts; Deposits in Bond Fund.....	23
Section 5.4	Borrower to Keep Project Leased.....	24
Section 5.5	Insurance, Repairs and Taxes.....	24
Section 5.6	Performance of Covenants by Borrower and Lessee; Defaults by Lessee.....	25
Section 5.7	Inspection of Project Books.....	25
Section 5.8	No Vacancy in Office of Trustee.....	25
Section 5.9	Title to Project.....	25
Section 5.10	Title to Pledged Revenues.....	26
Section 5.11	Further Assurances; Recording Indenture and Lease Agreement.....	26
Section 5.12	Taxation.....	27
Section 5.13	Covenants and Representations Regarding Section 103 of the Code.....	27
Section 5.14	Borrower Will Not Extend Time of Payment of Bond Without Consent of Bondholder.....	27

ARTICLE VI

POSSESSION, USE, DESTRUCTION, CONDEMNATION
SALE AND PARTIAL RELEASE OF MORTGAGED PROPERTY

Section 6.1	Lessee's Right to Possession of the Project.....	27
-------------	---	----

	<u>PAGE</u>
Section 6.2 Condemnation or Destruction of or Damage to Project.....	28
Section 6.3 Prohibition of Mortgages and Pledges.....	28
Section 6.4 Sale of Project Prohibited Except Under Certain Conditions; Con- solidation or Merger of, or Transfer of Assets by, Borrower....	28
Section 6.5 Improvements, Alterations, Fixtures and Personal Property.....	29
Section 6.6 Release of Mortgaged Property.....	29

ARTICLE VII

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDER

Section 7.1 Events of Default.....	30
Section 7.2 Remedies on Default.....	30
Section 7.3 Sale of Project.....	32
Section 7.4 Rights and Remedies of Trustee on Default under Lease.....	34
Section 7.5 Rights and Remedies of Trustee in the Event of Bankruptcy, Etc. of a Lessee or Guarantor.....	34
Section 7.6 Rights of Lessee in Event of Default by Borrower under this Indenture...	35
Section 7.7 Application of Money Collected.....	35
Section 7.8 Bondholder Need Not be Joined.....	36
Section 7.9 Right of Bondholder to Direct Proceedings.....	36
Section 7.10 Limitation on Suits by Bondholder.....	36
Section 7.11 Remedies Cumulative.....	37
Section 7.12 Delay or Omission Not a Waiver.....	37
Section 7.13 Remedies Subject to Applicable Law.....	37

ARTICLE VIII

THE TRUSTEE

Section 8.1 Certain Duties and Responsibilities.....	37
Section 8.2 Notice of Defaults.....	39
Section 8.3 Certain Rights of Trustee.....	39
Section 8.4 Trustee not Responsible for Certain Matters of Bond or Security.....	40
Section 8.5 May Hold Bond.....	41
Section 8.6 Right of Trustee to Perform Certain Acts on Failure of Borrower.....	41
Section 8.7 Compensation of Trustee; Lien.....	41
Section 8.8 Resignation and Removal; Appointment of Successor.....	42

	<u>PAGE</u>
Section 8.9 Acceptance of Appointment by Successor...	43
Section 8.10 Merger or Consolidation.....	43

ARTICLE IX

PAYMENT OF BOND: SATISFACTION OF LIEN OF INDENTURE

Section 9.1 Discharge of Indenture; Bond Deemed No Longer Outstanding.....	44
---	----

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices.....	45
Section 10.2 Release of Funds Upon Payment of Bond...	45
Section 10.3 Consent of Guarantors to Amendment to Lease Agreement or Indenture.....	46
Section 10.4 Counterparts.....	46
Section 10.5 Severability Clause.....	46
Testimonium.....	46
Signatures.....	46
Acknowledgments.....	47

STATE OF ALABAMA
SHELBY COUNTY

THIS MORTGAGE AND INDENTURE OF TRUST made and entered into as of September 1, 1983, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF SHELBY COUNTY, a public corporation duly organized and existing under the laws of the State of Alabama (hereinafter called the "Borrower"), as party of the first part, and FIRST AMERICAN NATIONAL BANK OF NASHVILLE, a national banking association authorized to accept and execute trusts of the character herein set out with its principal office in the City of Nashville, Tennessee (hereinafter called the "Trustee"), party of the second part;

W I T N E S S E T H:

WHEREAS, the Borrower has been heretofore organized under the laws of Alabama and is authorized by Article 2 of Chapter 20 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-20-30 et seq.) to acquire, own, lease and dispose of the properties hereinafter described for the purposes set forth in said Article 2; and

WHEREAS, the Borrower has made the necessary arrangements with L. M. Berry Services, Inc., as Lessee, for the acquisition of the Project, hereinafter defined, and the Borrower has further entered into a Lease Agreement dated as of the date hereof with the Lessee specifying the terms and conditions of the acquisition of the Project and the leasing of the same to the Lessee (hereinafter called the "Lease Agreement"); and

WHEREAS, the Lease Agreement has been authorized by resolution duly adopted and approved by the Borrower, has been assigned and pledged to the Trustee as hereinafter provided and an executed copy thereof delivered to the Trustee; and

WHEREAS, the Lease Agreement will be duly recorded in the office of the Judge of Probate of the County in which the Project is situated, simultaneously with placing this Mortgage and Indenture of Trust on record with said Judge of Probate, to which Lease Agreement reference is hereby made for the rental, terms, conditions and obligations of the parties thereto; and

WHEREAS, it has been determined that the estimated amount necessary to finance the cost of the Project, including expenses incidental thereto, will require the

BOOK 436 PAGE 859

issuance, sale and delivery of the Bond as hereinafter provided; and

WHEREAS, the Bond to be issued hereunder and the Trustee's authentication certificate are to be substantially in the following forms, respectively, with appropriate omissions, insertions and variations permitted or authorized as hereinafter provided:

UNITED STATES OF AMERICA
STATE OF ALABAMA
THE INDUSTRIAL DEVELOPMENT BOARD
OF SHELBY COUNTY
INDUSTRIAL DEVELOPMENT REVENUE BOND
(L. M. BERRY PROJECT)

KNOW ALL MEN BY THESE PRESENTS that The Industrial Development Board of Shelby County, a public corporation created and existing under the laws of the State of Alabama (herein called the "Board"), for value received, hereby promises to pay from the source and as hereinafter provided to First American National Bank of Nashville, or its registered assigns, the principal sum of

FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS

and in like manner to pay interest on the unpaid principal balance hereof from the date hereof at the applicable rate of interest hereinafter set forth, such principal and interest being payable in installments as follows:

(a) on each April 1 and October 1 beginning April 1, 1984 and ending October 1, 1988, the sum of \$334,793.26, each such installment being applied first to the payment of interest accrued on the unpaid principal balance hereof and then to the reduction of such principal balance;

(b) on each April 1 and October 1 beginning April 1, 1989 and ending April 1, 1993, the sum of \$345,173.34, or such greater amount as may be required to pay in full interest accrued, each such installment being applied first to the payment of interest accrued on the unpaid principal balance hereof and then to the reduction of such principal balance; and

(c) on October 1, 1993, unless sooner paid, an amount equal to the entire unpaid principal balance hereof plus the interest accrued hereon to the date of payment.

BOOK 436 PAGE 861

This bond shall bear interest on the unpaid principal balance hereof from the date hereof, payable as hereinabove set forth, at the applicable rate set forth below:

(a) During the period commencing on the date on which this bond is issued and ending on October 1, 1988, the outstanding principal balance owing hereunder shall bear interest at the rate of 8.25 percent per annum.

(b) During the period commencing on October 1, 1988 and ending on October 1, 1993, or on the date when all amounts owing hereunder are paid in full, the outstanding principal balance owing hereunder shall bear interest at an annual rate equal to 73% of First American Bank's External Prime Rate (as hereinafter defined), such interest rate to be adjusted automatically on and as of the effective date of any change in the First American Bank's External Prime Rate. The term "First American Bank's External Prime Rate" shall mean that rate of interest per annum periodically established and announced by First American National Bank of Nashville, Nashville, Tennessee, as its external prime rate, it being understood that said Bank's external prime rate is one of its bases upon which effective rates of interest are calculated for loans making reference thereto.

Both the principal of and interest on this bond shall be payable at par, without discount, exchange, deduction or charge therefor, by check or draft mailed or otherwise delivered by the Trustee (First American National Bank of Nashville, in the City of Nashville, Tennessee) or of its successor in trust, to the registered owner hereof, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

This bond is issued for the purpose of acquiring real property, constructing thereon and equipping a building, facilities and improvements, and paying necessary expenses incidental thereto (such real property, building, improvements, equipment and facilities as they may at any time exist being herein called the "Project"). The Project is leased to L. M. Berry Services, Inc., an Ohio corporation (herein called the "Lessee") under a Lease Agreement dated as of September 1, 1983 (herein called the "Lease Agreement"). This bond is issued under and is secured and entitled to the protection given by a Mortgage and Indenture of Trust dated as of August 1, 1983 (herein called

the "Indenture") duly executed and delivered by the Board to First American National Bank of Nashville, as trustee (herein called the "Trustee", which term also includes any successor trustee under the Indenture). Reference is hereby made to the Indenture and to all indentures supplemental thereto for a statement of the respective rights thereunder of the Board, the Trustee and the registered owner of this bond, and the terms upon which this bond is authenticated and delivered.

This bond is registered as to principal and interest in the name of the owner on the book of registration maintained for that purpose by the Board in the principal office of the Trustee, as Bond Registrar. The person in whose name this bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the installments of principal and interest on this bond shall be made by check or draft of the Trustee only to or upon the order of the registered holder hereof or his legal representative, and neither the Board, the Trustee, nor any agent of the Board shall be affected by any notice to the contrary. All such payments of principal or interest shall be valid and effectual to satisfy and discharge the liability of the Board upon this bond to the extent of the sum or sums so paid.

BOOK 436 PAGE 862
This bond may be transferred only upon the written request of the registered owner or his legal representative addressed to the Bond Registrar, such transfer to be recorded on said book of registration and endorsed hereon by the Bond Registrar. Upon presentation of this bond to the Bond Registrar for transfer, this bond must be accompanied by a written instrument or instruments of transfer satisfactory to the Board and Trustee, duly executed by the registered owner or his attorney duly authorized in writing, and the Trustee shall endorse on the schedule attached hereto for such purpose the principal amount of this bond unpaid and the interest accrued hereon to the date of transfer. No charge shall be made for the privilege of transfer, but the holder of this bond requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

This bond is subject to prepayment as follows:

(1) The principal of this bond is subject to prepayment (without premium or penalty) in whole or in part in multiples of not less than \$100,000, on October 1, 1984 or at any time thereafter with money remaining in the Construction Fund (established under the Indenture) upon completion of the Project, as provided in Section 3.3 of the Indenture.

BOOK 436 PAGE 863

(2) The principal of this bond is subject to prepayment (without premium or penalty) in whole or in part in multiples of not less than \$100,000, on October 1, 1984 or at any time thereafter in the event of (a) damage to or condemnation of the Project, as provided in Article V of the Lease Agreement, or (b) exercise by the Lessee of its option to purchase the Project, or parts thereof, as provided in Sections 9.3 and 9.5 of the Lease Agreement.

(3) The entire unpaid principal balance of this bond, or any lesser portion thereof in multiples of not less than \$100,000, is subject to prepayment (without premium or penalty) at the option of the Board on October 1, 1984, or at any time thereafter.

(4) The Board shall, at the option of the registered owner of this bond, be required to prepay this bond in whole if interest on this bond is determined to be subject to Federal income taxation, as provided in Article X of the Lease Agreement. In such event, this bond shall be prepaid upon written notice from the registered owner hereof to the Board and Lessee at a prepayment price equal to the entire unpaid principal balance of this bond, plus interest accrued hereon to the date of payment, plus a premium equal to the total amount of interest payable on this bond from the date on which interest hereon became taxable until the date of prepayment.

Written notice of any intended prepayment under paragraphs (1) through (3) above shall be given by registered mail to the registered owner hereof at the address of such owner as shown on the Bond Registrar's books.

Any partial prepayment of principal shall be applied to the then last maturing installment of principal and shall not postpone the due date nor change the amount of any other subsequent semiannual installments coming due hereunder prior to the payment in full of the principal and interest on this bond.

This bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Alabama, particularly Article 2 of Chapter 20 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-20-30 et seq.) and pursuant to a resolution adopted and approved by the Board, which resolution authorizes the execution and delivery of the Indenture. This bond is a limited obligation of the Board and is payable solely out of the revenues and receipts derived from the leasing or sale of the Project.

Rental payments under the Lease Agreement sufficient for the prompt payment when due of the installments on this bond are to be paid to the Trustee for the account created by the Board under the Indenture and have been duly pledged for that purpose, and in addition the Project has been mortgaged under the Indenture to secure the payment of this bond. Shelby County, Alabama (herein called the "County") shall not in any event be liable for the payment of this bond or any other bonds of the Board, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Board, and none of the bonds of the Board or any of its agreements or obligations shall be construed to constitute an indebtedness of the County within the meaning of any constitutional or statutory provision whatsoever.

BOOK 436 PAGE 864
No recourse shall be had for the payment of the principal of, premium, if any, or interest on this bond or for any claim based hereon or upon any obligation, covenant or agreement in the Indenture contained, against any incorporator of the Board, or against any past, present or future officer, employee or member of the board of directors of the Board or of any successor corporation, as such, either directly or through the Board or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, officers, employees, or members of the board of directors as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of this bond.

The registered owner of this bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default, as defined in the Indenture, shall occur, the entire principal balance of this bond may be declared due and payable in the manner and with the effect provided in the Indenture.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the Lease Agreement and the issuance of this bond do exist, have happened and have been performed in due time, form and manner as required by law; that the issuance of this bond and the issue of which it

forms a part, together with all other obligations of the Board, do not exceed or violate any constitutional or statutory limitation; and that the lease rentals, revenues and receipts pledged to the payment of the principal of and interest on this bond will be sufficient in amount for that purpose.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been executed by a duly authorized officer of the Trustee.

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

IN WITNESS WHEREOF, The Industrial Development Board of Shelby County has caused this bond to be executed in its name by the Chairman of its Board of Directors and attested by its Secretary, and has caused its corporate seal to be hereunto imprinted, all as of the _____ day of _____, 1983.

THE INDUSTRIAL DEVELOPMENT BOARD OF
SHELBY COUNTY

By _____
Chairman of its Board of Directors

S E A L

Attest: _____
Secretary

BOOK 436 PAGE 865

(Form of)

TRUSTEE'S AUTHENTICATION CERTIFICATE

This bond is the bond referred to in the within-mentioned Mortgage and Indenture of Trust.

FIRST AMERICAN NATIONAL BANK OF
NASHVILLE
As Trustee

By _____
Its Authorized Officer

(Form of)

CERTIFICATE OF REGISTRATION

This bond is registered on the registry books of The Industrial Development Board of Shelby County at the office of the Bond Registrar (the Trustee) in the name of the last owner named below. The principal of and interest on this bond shall be payable only to or upon the order of such registered owner.

BOOK 436 PAGE 866

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Authorized Officer of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Form of)

ENDORSEMENT BY TRUSTEE OF UNPAID
PRINCIPAL AND ACCRUED INTEREST
ON DATE OF TRANSFER

<u>Date of Transfer</u>	<u>Principal Unpaid</u>	<u>Accrued Inter- est on Date of Transfer</u>	<u>Signature of Authorized Officer of Trustee</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

BOOK 436 PAGE 867

WHEREAS, all things necessary to make the Bond, when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligation of the Borrower according to the import thereof, and to make this Indenture a valid agreement of the Borrower, in accordance with its terms, and a lien on the properties mortgaged and a valid pledge of the lease rentals, revenues and receipts herein made to the payment of the installments of principal and interest on the Bond, have been done and performed, and the creation, execution and issuance of the Bond, subject to the terms hereof, have in all respects been duly authorized; and

WHEREAS, the Trustee has duly accepted the trusts created by this Indenture and as evidence thereof has joined in the execution hereof.

NOW, THEREFORE, THIS MORTGAGE AND INDENTURE OF TRUST WITNESSETH:

GRANTING CLAUSES

For and in consideration of the premises, the mutual covenants of the Borrower and the Trustee and the purchase of the Bond by the original registered owner thereof and in order to secure the payment of the installments of principal and interest on the Bond according to its tenor and effect and the performance and observance by the Borrower of all the covenants expressed or implied herein and in the Bond, the Borrower does hereby grant, bargain, sell, convey, assign, mortgage and pledge unto the Trustee and unto its successors in trust, and to it and its assigns forever:

I.

The following described real estate and premises located in Shelby County, Alabama, together with all buildings, structures and fixtures now or hereafter located thereon or therein, with the tenements, hereditaments, appurtenances, easements, rights, privileges and immunities thereunto belonging or appertaining, to wit: Lot 2 according to the Meadows-Business Center, First Sector, as recorded in Map Book 8, page 115, in the Probate Office of Shelby County.

II.

All machinery, equipment and personal property acquired and installed in or about the Buildings or on the

Mortgaged Realty pursuant to Article II of the Lease 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 A attached hereto and made a part hereof, and any machinery, equipment and personal property acquired in substitution therefor or as a renewal or replacement thereof pursuant to the terms of the Lease Agreement and this Indenture.

III.

The rights of the Borrower under and pursuant to the Lease Agreement, all lease rentals, revenues and receipts derived by the Borrower from the leasing or sale of the Project, including without limitation all rentals, revenues and receipts to be received by the Borrower under and pursuant to the Lease Agreement.

IV.

All funds and accounts held by the Trustee under the Indenture and all moneys, investments or other assets held therein or for the account thereof.

V.

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

SUBJECT, HOWEVER, to Permitted Encumbrances;

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

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the benefit, security and protection of the present and any future registered owner of the Bond;

PROVIDED, HOWEVER, that if the Borrower, its successors or assigns, shall well and truly pay, or cause to be paid, the installments of principal and interest on the

Bond due or to become due thereon, at the times and in the manner mentioned in the Bond, and shall well and truly keep, perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture to be and remain in full force and effect.

The terms and conditions upon which the Bond is to be issued, authenticated, delivered, secured and accepted by all persons who from time to time shall be or become the registered owner thereof, and the trust and conditions upon which the Mortgaged Property is to be held and disposed of, which said trusts and conditions the Trustee hereby accepts, and the terms and conditions to which the respective parties hereto covenant and agree, are as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Authorized Investments" means (i) Government Obligations, (ii) certificates of deposit issued by the Trustee or by any bank organized under the laws of the United States of America or any state thereof having at the time of issuance of such certificate of deposit combined capital, surplus and undivided profits of not less than \$100,000,000, (iii) repurchase agreements with First American National Bank of Nashville having securities described in (i) pledged as collateral and subject to repurchase, or (iv) any other investment, to the extent then permitted by law.

"Bond" means the Bond of the Borrower to be issued hereunder.

"Bond Counsel" means Cabaniss, Johnston, Gardner, Dumas & O'Neal, Attorneys, Birmingham, Alabama, or such other firm of attorneys experienced in the field of municipal financing as shall be designated by the Borrower with the approval of the Trustee.

"Bond Fund" means the fund established under Section 4.1 hereof.

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

"Borrower" means the party of the first part hereto and, subject to the provisions of Section 6.4 hereof, includes its successors and assigns and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

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

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

"Construction Fund" means the fund established under Section 3.2 hereof.

"County" means Shelby County, Alabama.

"Enabling Law" means Article 2 of Chapter 20 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-20-30 et seq.).

"Equipment" means the machinery, equipment and personal property described in granting clause II hereof.

"Event of Default" means those events specified in and defined by Section 7.1 hereof.

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

"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.

BOOK 436 PAGE 871

"Indenture" means these presents as supplemented and amended by any supplemental indentures executed by the Borrower and the Trustee.

"Independent Counsel" means an attorney duly admitted to practice law in any state of the United States of America and not regularly employed by either the Borrower or the Lessee, or a firm of such attorneys.

"Lease Agreement" means the Lease Agreement executed by and between the Borrower and the Lessee of even date herewith, as such Lease Agreement may hereafter be supplemented or amended.

"Lessee" means L. M. Berry Services, Inc., an Ohio corporation, and, subject to the provisions of Section 7.3 of the Lease Agreement, includes its successors and assigns and any surviving, resulting or transferee corporation.

"Mortgaged Property" means (i) the Project, (ii) the rights of the Borrower under and pursuant to the Lease Agreement, (iii) all lease rentals, revenues and receipts derived by the Borrower from the leasing or sale of the Project, including without limitation all rentals, revenues and receipts derived by the Borrower under and pursuant to the Lease Agreement, and (iv) all properties which, under the terms hereof, are or subsequently become subject to the lien of this Indenture.

"Mortgaged Realty" means the real property described in granting clause I hereof.

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

"Permitted Encumbrances" means, as of any particular time, (i) the Lease Agreement, (ii) liens for taxes, assessments or other governmental charges or levies not due and payable or which are currently being contested in good faith by appropriate proceedings as permitted in the Lease Agreement, (iii) utility, access and other easements and rights of way, party walls, restrictions and exceptions that may be granted or are permitted under the Lease Agreement, (iv) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right or purchase money security interest if payment is not yet due and payable under the contract in question, and (v) such minor defects, irregularities, encumbrances, easements, rights

of way, and clouds on title as do not, in the opinion of an Independent Counsel, materially impair the Project for the purpose for which it was acquired or is held by the Borrower.

"Project" means the Mortgaged 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 granting clauses I and II hereof.

"Project Costs" shall have the meaning ascribed in the Lease Agreement.

"State" means the State of Alabama.

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

"Trustee" means the party of the second part hereto, any corporation or association resulting from or surviving any consolidation, merger or conversion to which it or its successors may be a party and any successor trustee appointed pursuant to Sections 8.8 and 8.9 hereof at the time serving as successor trustee hereunder.

Section 1.2 Use of Words and Phrases. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Indenture as a whole and not solely to the particular portion thereof in which any such word is used. "Person" includes natural persons, firms, associations, corporations and public bodies. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

Section 1.3 Date of Indenture. The date of this Indenture is intended as and for a date for the convenient identification of this Indenture and is not intended to indicate that this instrument was executed and delivered on said date.

Section 1.4 Applicable Provisions of Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 1.5 Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this instrument.

Section 1.6 Successors and Assigns of Parties
Hereto. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Borrower or the Trustee or either of them shall inure to the benefit of and bind their respective successors and assigns.

Section 1.7 Limitation of Rights. Nothing expressed or mentioned in or to be implied from this Indenture or the Bond is intended or shall be construed to give any person other than the parties hereto and their successors hereunder and the registered owner of the Bond and the Lessee any benefit or any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and their successors hereunder, the Lessee and the registered owner of the Bond as herein provided.

No recourse shall be had for the payment of the principal of, premium (if any), or interest on the Bond or for any claims based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any incorporator of the Borrower, or against any past, present or future officer, employee or member of the board of directors of the Borrower or any successor corporation, as such, either directly or through the Borrower or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, officers, employees or directors of the Borrower as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bond.

ARTICLE II

THE BOND

Section 2.1 Source of Payment of Bond; County not Liable. The Bond herein authorized and all payments by the Borrower hereunder are limited obligations payable solely from revenues and receipts derived from the leasing or sale of the Project and as authorized by the Enabling Law and provided herein. No covenant or agreement contained in this Indenture or the Bond nor any obligation herein or therein imposed upon the Borrower, or the breach thereof, shall constitute or give rise to or impose upon

the Borrower a pecuniary liability or a charge upon its general credit or property other than the Mortgaged Property. All obligations for the payment of money incurred by the Borrower are payable solely from and are limited to the proper application of the proceeds of the sale of the Bond, the rentals, revenues and receipts derived from or in connection with the Project and the moneys received under the Lease Agreement, and nothing in the Bond or in this Indenture shall be considered as pledging any other funds or assets of the Borrower. The County is not liable for payment of the Bond or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Borrower. Neither the Bond nor any agreement of the Borrower shall be construed to constitute an indebtedness of the County within the meaning of any constitutional or statutory provision whatever.

BOOK 436 PAGE 874
Section 2.2 Authorization of Bond. A single, fully registered bond shall be issued hereunder in the principal amount of \$4,500,000. The Bond shall be in such form, shall bear interest at such rate or rates, shall be payable as to principal and interest at such time or times and in such amounts, shall be subject to prepayment at such times and under such circumstances, and shall contain such other terms as set forth in the form of the Bond in the recitals to this Indenture. The Bond shall be executed by the Chairman of the Board and shall be attested by the Secretary, and the official corporate seal of the Board shall be affixed thereto. The Bond shall be dated as of the date of delivery and payment therefor. No bonds other than the Bond shall be issued under or secured by this Indenture.

Section 2.3 Authentication of Bond. The Bond shall have endorsed thereon a certificate of authentication substantially in the form hereinabove set forth, duly executed by the Trustee. The Bond shall not be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon the Bond shall be conclusive evidence that the Bond has been authenticated and delivered under this Indenture.

Section 2.4 Registration of Bond; Persons Treated as Owner. The Bond shall be registered in the name of the owner on the book of registration to be maintained for that purpose by the Borrower in the principal office of the Trustee as Bond Registrar. The person in whose name the Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of the

installments of principal and interest on the Bond shall be made by check or draft of the Trustee only to or upon the order of the registered owner thereof, or his legal representative, and neither the Borrower, the Trustee, nor any agent of the Borrower shall be affected by any notice to the contrary. All such payments of installments on the Bond shall be valid and effectual to satisfy and discharge the liability of the Borrower or the Trustee upon the Bond to the extent of the sum or sums so paid.

BOOK 436 PAGE 873
The Bond may be transferred only upon the written request of the registered owner or his legal representative addressed to the Bond Registrar, such transfer to be recorded on said book of registration and endorsed on the Bond by the Bond Registrar. Upon presentation of the Bond for transfer, the Bond must be accompanied by a written instrument or instruments of transfer satisfactory to the Borrower and Trustee, duly executed by the registered owner or his attorney duly authorized in writing. Upon presentation of the Bond for transfer, the Trustee shall endorse thereon in the schedule attached to the Bond for such purpose, the principal amount of the Bond unpaid and interest accrued thereon to the date of transfer. No charge shall be made for the privilege of transfer, but the holder of the Bond requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

Section 2.5 Trustee as Paying Agent and Registrar.
The Trustee is hereby designated and agrees to act as paying agent and as Bond Registrar for and in respect to the Bond.

ARTICLE III

DELIVERY OF THE BOND CUSTODY AND APPLICATION OF PROCEEDS OF BOND

Section 3.1 Delivery of Bond. The Borrower shall execute and deliver the Bond to the Trustee for authentication. The Trustee shall authenticate the Bond and deliver it upon the order of the Borrower to the purchaser thereof upon the payment by such purchaser to the Borrower of the purchase price thereof. The Bond may be executed by the Borrower and authenticated by the Trustee and delivered prior to any recordation of the Indenture. The receipt of the Treasurer of the Borrower shall be full acquittal to the purchaser for the purchase price of the Bond, and such purchaser shall be under no obligation to see to the application thereof. The proceeds of the sale of the Bond shall, however, be held in trust and disposed of only as hereinafter provided.

Section 3.2 Construction Fund; Disbursements. There is hereby established with the Trustee a trust fund in the name of the Borrower to be designated the "Construction Fund". The proceeds of the Bond shall be deposited in the Construction Fund. The money in the Construction Fund shall be paid out by the Trustee from time to time for the purpose of paying the Project Costs, but only upon receipt of

(a) A requisition or payment request signed by any duly authorized officer, employee or agent of the Borrower and stating with respect to each such payment, the amount requested to be paid and the name and address of the person to whom such payment is to be made,

(b) An endorsement on such requisition or payment request signed by the Lessee in which the Lessee shall (i) approve the payment thereby requested to be made, (ii) describe in reasonable detail the particular Project Cost, (iii) state that the purpose for which such payment is to be made is one for which Construction Fund moneys are authorized under the Lease Agreement to be expended, (iv) certify that such payment is for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation or for paying expenses incurred in connection with the issuance, sale and delivery of the Bond, (v) certify that any property for which payment is to be made has been installed or is located on the Mortgaged Realty, (vi) certify that the payment will not result in the proceeds of the Bond being used for the acquisition, construction, reconstruction or improvement of any property which would cause the average maturity of the Bond to exceed 120 percent of the average reasonably expected economic life of the facilities financed with the proceeds of the Bond, within the meaning of Section 103(b)(14) of the Code, (vii) certify that it is in compliance with all of the terms and provisions set forth in the Lease Agreement and no event of default as specified therein has happened and is continuing nor has any event happened which is continuing and which upon notice or lapse of time or both would constitute an event of default as specified therein, and (viii) certify that such payment is not for the cost of acquiring any real or personal property the commitment to obtain which was made prior to March 22, 1983. If the payment requested to be made is for the cost of acquiring real or personal property the commitment to obtain which was made prior to March 22, 1983, the Lessee may, in lieu of the certification required by clause (vii) of this paragraph (b), file with the Trustee an opinion of Bond Counsel stating that such payment will not cause or result

BOOK 436 PAGE 876.

in the loss of exemption of interest on the Bond from Federal income taxation.

(c) With respect to any withdrawal to pay for construction of the Buildings, a certificate by an architect (i) stating that the amount requested to be withdrawn is justly due to vendors, contractors, subcontractors, materialmen, architects or other persons (whose names and addresses shall be stated) who have performed necessary and appropriate work or services or furnished necessary and appropriate materials in the construction of the Buildings in accordance with plans and specifications approved by the Lessee, (ii) giving a brief description of such work and materials and the amount due to each such person in respect thereof, (iii) stating that the fair market value of such work, services or materials is not exceeded by the amount requested to be withdrawn, and (iv) with respect to any payments under any contract, that the amount is due and owing in accordance with the provisions thereof.

(d) An invoice or invoices from the payee named in such requisition or payment request (or, if the Lessee is requesting reimbursement for Project Costs, from the person to whom the Lessee made payments for Project Costs) showing that the amount requested to be paid is (or, if the Lessee is requesting reimbursement for Project Costs, was) due and payable for the purpose stated.

The provisions of the preceding paragraph to the contrary notwithstanding, if with respect to payment of any item of Project Cost from the Construction Fund the Lessee shall furnish the Trustee a certificate signed by the Project Supervisor (as defined in the Lease Agreement) stating that the Borrower has failed or refused, after reasonable request therefor made by the Lessee, to issue a payment requisition for payment of such item, the payment requisition therefor may be signed in the name of the Borrower by the Project Supervisor, and the Trustee shall be fully protected in making the payment ordered made by such payment requisition as fully and completely as if it were signed by an authorized officer or other agent of the Borrower, provided that such payment requisition is accompanied by the endorsement and other documentation required by the provisions of the preceding paragraphs (b), (c) and (d) of this Section.

In addition to the documents required by this Section, the Trustee may require as a condition precedent to any payment or withdrawal further evidence with respect thereto or with respect to the application of any moneys

previously disbursed or as to the correctness of any statement made in any requisition, payment request or endorsement. Upon the written request of the registered owner of the Bond, the Trustee shall require such evidence. The Trustee shall, however, be under no duty to require such evidence unless so requested. The Trustee shall not be liable for any misapplication of moneys in the Construction Fund if disbursed pursuant to the provisions of this Section of the Indenture and without knowledge or reason to believe that such disbursement constitutes a misapplication of funds.

Section 3.3 Completion of the Project. The completion of the Project and the payment of all costs and expenses incidental thereto shall be evidenced by the filing with the Trustee of the certificate of the Borrower and of the Project Supervisor as required by the provisions of the Lease Agreement. Upon receipt of such certificate by the Trustee, any balance remaining in the Construction Fund shall be held in escrow by the Trustee and shall be applied to the prepayment of the principal of the Bond on the next ensuing installment payment date for which the required notice of prepayment may be given. Pending such application, the money so held in escrow by the Trustee may be invested in Government Obligations, provided that the yield on such investments may not exceed the yield on the Bond, computed in accordance with Section 103(c) of the Code.

Section 3.4 Title Insurance. The Borrower shall pay the cost of obtaining a title insurance policy in an amount equal to the principal amount of the Bond insuring the first mortgage in the Mortgaged Realty created by the Indenture. Such policy of insurance shall be taken out in a generally recognized responsible insurance company, qualified under the laws of the State of Alabama to assume the risks undertaken. Such policy shall name as the insured the Trustee. Any proceeds of such title insurance shall be deposited with the Trustee and shall be applied (together with the moneys in the Bond Fund available for such purpose) to the prepayment of the Bond on the earliest practicable date for which the required notice may be given or, if such proceeds, together with the moneys in the Bond Fund available for such purpose, are not sufficient to prepay the Bond, shall be held in trust as additional security for the benefit of the Bondholder until such prepayment of the Bond may be effected.

ARTICLE IV

BOND FUND; INVESTMENT OF AND SECURITY FOR BOND FUND AND CONSTRUCTION FUND

Section 4.1 The Bond Fund. There is hereby established with the Trustee a trust fund in the name of the Borrower to be designated the "Bond Fund". The Bond Fund shall be maintained until the principal of (and premium, if any) and interest on the Bond shall have been paid in full. Money in the Bond Fund shall be used solely for the payment of the principal of (and premium, if any) and interest on the Bond.

Section 4.2 Payments into the Bond Fund. There shall be deposited into the Bond Fund, as and when received, and the Borrower shall cause to be deposited into the Bond Fund, (a) all Basic Rent payments payable under the Lease Agreement; (b) all moneys required to be deposited in the Bond Fund pursuant to any of the provisions of the Lease Agreement; (c) all moneys required by Section 5.3 hereof to be deposited therein; and (d) all payments required to be made pursuant to the Guaranty Agreement dated as of September 1, 1983, by and among L.M. Berry and Company, the Lessee and the Trustee for the payment of the principal of, premium, if any, and interest on, the Bond.

Section 4.3 Custody of the Bond Fund. The Bond Fund shall be in the custody of the Trustee but in the name of the Borrower, and the Borrower hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of (and premium, if any) and interest on the Bond as the same become due and payable, which authorization and direction the Trustee hereby accepts.

Section 4.4 Security for Funds. The moneys at any time on deposit in the Construction Fund and the Bond Fund shall be and at all times remain public funds impressed with a trust for the purpose for which each of said funds was created. The Trustee shall at all times keep the moneys on deposit in each of such funds continuously secured for the benefit of the Borrower and the holder of the Bond, either (i) by holding on deposit, as collateral security, Government Obligations or other marketable securities eligible as security for the deposit of public trust funds under regulations of the Comptroller of the Currency, United States Treasury, having a market value (exclusive of accrued interest) not less than the amount of moneys on deposit in the fund being secured, or (ii) if

the furnishing of security in the manner provided by the foregoing clause (i) is not permitted by the then applicable law and regulations, then in such other manner as may be required or permitted by the then applicable state and federal laws and regulations respecting the security for, or granting a preference in the case of, the deposit of public trust funds; provided, however, that it shall not be necessary for the Trustee to secure any portion of the money on deposit in any of said funds that may be secured by the Federal Deposit Insurance Corporation or by any agency of the United States of America that may succeed to its functions, or to secure any portion of such moneys that is invested as hereinafter provided.

436 PAGE 880
BOOK

Section 4.5 Investment of Construction Fund Moneys. Any money held as part of the Construction Fund shall be invested or reinvested by the Trustee in Authorized Investments in accordance with the instructions of the Lessee, as provided in the Lease Agreement. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Construction Fund and the interest accruing thereon and any profit realized from such investments shall be credited to such Fund, and any loss resulting from such investments shall be charged to such Fund. The Trustee is directed to sell and reduce to cash funds a sufficient amount of such investments whenever the cash balance in the Construction Fund is insufficient to pay a requisition when presented.

Section 4.6 Investment of Bond Fund Moneys. Any money held as part of the Bond Fund shall be invested or reinvested by the Trustee in Authorized Investments in accordance with the instructions of the Lessee, as provided in the Lease Agreement, to the extent that such investment is, in the opinion of the Trustee, feasible and consistent with the required payment of the installments of principal and interest on the Bond. Any such investments shall be held by or under control of the Trustee and shall be deemed at all times a part of the Bond Fund, and the interest accruing thereon and any profit realized therefrom shall be credited to such Fund and any loss resulting from such investments shall be charged to such Fund. The Trustee shall sell and reduce to cash funds a sufficient portion of investments under the provisions of this Section whenever the cash balance in the Bond Fund is insufficient to pay the current installments of principal and interest on the Bond at the maturity or due dates thereof.

Section 4.7 Trustee's Responsibility; Arbitrage Bonds. The Trustee shall have no liability or responsibility for any loss resulting from investments made pursuant to this Article except liability for its own negligence. The Trustee, to the extent that it has any discretion over the investments being made, will make no investment which, if made, would constitute the Bond an "arbitrage bond" within the meaning of Section 103(c) of the Code.

Section 4.8 Money Held In Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Borrower or the Lessee.

ARTICLE V

COVENANTS BY THE BORROWER

The Borrower, for itself, its successors and assigns, covenants and agrees with the Trustee and the holders from time to time of the Bond, as follows:

Section 5.1 Construction and Acquisition of Project; Application of Proceeds of Bond. The Borrower will cause the construction and acquisition of the Project to be begun and to be continued to final completion with due diligence. All moneys derived from the sale of the Bond shall be used solely for the purposes for which the same is authorized under this Indenture and not otherwise. The Borrower shall cause substantially all of the proceeds of the Bond to be used for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation, within the meaning of Section 103(b)(6) of the Code.

Section 5.2 Cooperation with Lessee. The Borrower will cooperate with the Lessee to the end that the Project may be placed in operation at the earliest possible time and thereafter operated by the Lessee in the most successful and productive manner possible.

Section 5.3 Collection and Disposition of Revenues and Receipts; Deposits in Bond Fund. The Borrower will promptly collect or cause to be collected all revenues and receipts derived from the leasing or sale of the Project as the same become due and will cause all such revenues and receipts as collected to be paid over to and deposited with the Trustee for disposition in accordance with and as

provided in this Indenture. The Borrower will deposit, or cause to be deposited, in the Bond Fund sufficient sums from revenues and receipts derived from the Project (whether or not under and pursuant to the Lease Agreement) promptly to meet and pay the installments of principal and interest on the Bond as the same become due and payable.

Section 5.4 Borrower to Keep Project Leased. The Borrower will keep the Project leased at all times for a rent sufficient to pay the installments of principal and interest on the Bond as the same mature and come due, and also, unless leased under an agreement requiring the lessee to take out, maintain and pay for adequate and proper insurance of the Project and requiring the lessee to keep and maintain the Project in good repair and operating condition, sufficient also to pay the cost of such insurance and such maintenance and repair. Should there be a default under the Lease Agreement with the result that the right of possession of the leased premises under the Lease Agreement is returned to the Borrower, the Borrower shall fully cooperate with the Trustee and with the Bondholder and shall diligently proceed in good faith and use its best efforts to secure another tenant for the Project to the end that at all times sufficient revenues and receipts will be derived from the Project promptly to meet and pay the installments of principal and interest on the Bond as the same become due and payable, as well as covering the cost of maintaining and insuring the Project. Nothing herein, however, shall be construed as requiring the Borrower to operate the Project. All leases except the Lease Agreement shall be subject to the prior written approval by the Trustee and all such leases shall be assigned to the Trustee as security for the Bond.

Section 5.5 Insurance, Repairs and Taxes. The Borrower shall cause the Lessee at its cost and expense to insure the Project, to keep the Project in good order and repair and to pay all lawful taxes, assessments and charges at any time levied or assessed upon or against the Project or any part thereof which might impair or prejudice the lien or priority of this Indenture, all as provided in the Lease Agreement. The Borrower shall also cause the Lessee to deposit with the Trustee all policies of insurance required to be maintained by the Lessee under the Lease Agreement or a certificate or certificates of the respective insurers attesting the fact that such insurance is in full force and effect. Prior to the expiration and cancellation of any such policy, the Borrower shall cause the Lessee to furnish to the Trustee satisfactory evidence that such policy has been renewed or replaced by another policy.

Section 5.6 Performance of Covenants by Borrower and Lessee; Defaults by Lessee. The Borrower will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bond and in all proceedings of its Board of Directors pertaining thereto.

The Borrower will require the Lessee faithfully to perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Lease Agreement. The Borrower will promptly notify the Trustee and Bondholder in writing if, to the knowledge of the Borrower, the Lessee fails to perform or observe any of the agreements or covenants on its part contained in the Lease Agreement. The Borrower will promptly comply with the instructions or directions of the Trustee with respect to the giving of notice of default to the Lessee and the exercise of rights and remedies in the event of default under the Lease Agreement. Unless so instructed or directed the Borrower will not give the Lessee a notice of default or exercise any right or remedy under the Lease Agreement.

Section 5.7 Inspection of Project Books. All books and documents in the Borrower's possession relating to the Project and the revenues and receipts derived from the Project including any financial statement or other report by the Lessee shall at all times be open to inspection by such accountants or other agents as the Trustee or the registered owner of the Bond may from time to time designate.

Section 5.8 No Vacancy in Office of Trustee. The Borrower, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.8 hereof, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.9 Title to Project. The Borrower has title in fee simple to and the beneficial interest in and is lawfully possessed of the Mortgaged Realty and such portions of the Equipment as are now located thereon, and has the rightful power and lawful authority to mortgage the same, subject only to Permitted Encumbrances. The Borrower will warrant and defend the title thereto and every part thereof to the Trustee, its successor and assigns, for the benefit of the holder of the Bond, against the claims and demands of all persons whomsoever, except those claiming under Permitted Encumbrances. All of the Project is free and clear of and from all and any liens and encumbrances of every nature and kind, except Permitted Encum-

branches, and will be so kept except as herein otherwise permitted, and the Borrower will at all times maintain and preserve the lien and rank of this Indenture as herein provided.

Section 5.10 Title to Pledged Revenues. The Borrower has legal title to and the beneficial interest in the revenues and receipts from the Project herein pledged and in the Lease Agreement assigned and pledged and the right-ful power and the lawful authority to pledge and assign the same. The Borrower will warrant and defend such pledge and assignment to the Trustee, its successors and assigns, for the benefit of the holder of the Bond, against the claims and demands of all persons whomsoever. The revenues, receipts and the Lease Agreement so pledged and assigned are now and will be kept free and clear of and from any and all liens and encumbrances of every nature and kind except as herein otherwise provided. The Borrower will at all times maintain and preserve the lien and rank of this Indenture as a first and prior lien upon revenues, receipts and the Lease Agreement so pledged and assigned.

Section 5.11 Further Assurances; Recording Indenture and Lease Agreement. The Borrower will at any time or times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, assignments, pledges, transfers and assurances in law as the Trustee shall reasonably require for the better assuring, assigning, transferring, pledging and confirming unto the Trustee, all and singular, the property and rights herein assigned, transferred and pledged or intended so to be. The Borrower will cause this Indenture, any and all additional instruments executed pursuant to the provisions hereof and all financing statements and other security instruments relative thereto at all times to be recorded and filed and kept recorded and filed in such public offices as may be required by any present or future law in order fully to preserve, continue and protect the security of the Bond and the rights and remedies of the Trustee and to perfect the security interest created by the Lease Agreement. The Borrower will fully comply with all the requirements of any and every recording law or any other law affecting the due recording and filing of this Indenture or of any such additional instruments. The Borrower will also cause the Lease Agreement, all supplements thereto and all other leases of the Project to be filed and recorded in the office of the Judge of Probate of the county in which the Project is situated and will cause all financing statements and other security instruments relative thereto to

BOOK 436 PAGE 884.

be filed and recorded in such manner and in such places as may be required by any present or future law to protect the validity thereof and the lien of this Indenture.

Section 5.12 Taxation. As provided in the Enabling Law, the Bond and the income therefrom and also the Project and any revenues derived from any lease thereof, shall be exempt from all taxation in the State.

Section 5.13 Covenants and Representations Regarding Section 103 of the Code. The Borrower recognizes that the Bond is being sold on the basis that the interest payable on the Bond is excludable from gross income of the holder thereof under Section 103 of the Code. The Borrower accordingly hereby covenants and agrees with the Trustee and the holder of the Bond that (i) the proceeds of the Bond shall not be used or applied by it in such manner as to constitute the Bond an "arbitrage bond" as that term is defined in Section 103(c) of the Code, (ii) substantially all of the proceeds of the Bond will be used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, within the meaning of Section 103(b)(6) of the Code and (iii) the proceeds of the Bond shall not be used for the acquisition, construction, reconstruction or improvement of any property which would cause the average maturity of the Bond to exceed 120 percent of the average reasonably expected economic life of the facilities financed with the proceeds of the Bond, within the meaning of Section 103(b)(14) of the Code.

The Borrower has made all necessary filings to effect an election under Section 103(b)(6)(D) of the Code. The Borrower hereby covenants and agrees that it will not permit any violation of the capital expenditure limitation set forth in said Section 103(b)(6)(D).

Section 5.14 Borrower Will Not Extend Time of Payment of Bond Without Consent of Bondholder. The Borrower will not directly or indirectly extend or consent to the extension of the time of payment of the Bond, unless consented to by the owner of the Bond.

ARTICLE VI

POSSESSION, USE, DESTRUCTION, CONDEMNATION SALE AND PARTIAL RELEASE OF MORTGAGED PROPERTY

Section 6.1 Lessee's Right to Possession of the Project. So long as the Lessee of the Project is not in default under the provisions of the Lease Agreement, the

Lessee shall be entitled to possession of the Project and all other rights granted to the Lessee under the Lease Agreement.

Section 6.2 Condemnation or Destruction of or Damage to Project. In the event of condemnation or destruction of or damage to the Project, provision is made in the Lease Agreement for the application of the Net Proceeds (as therein defined) of insurance or condemnation awards. All such proceeds shall be held and applied as provided in the Lease Agreement. Any such proceeds held by the Trustee for the purpose of repairing, rebuilding or restoring the Project shall be deposited in the Construction Fund and withdrawals shall be made therefrom upon compliance with the provisions of this Indenture with reference to disbursements from said Fund.

Section 6.3 Prohibition of Mortgages and Pledges. The Borrower will not mortgage, pledge or otherwise encumber the Mortgaged Property or any part thereof unless such mortgage, pledge or other encumbrance is subordinate, junior and secondary in all respects to the pledge and lien of this Indenture and to all obligations set forth herein. The Borrower shall not incur any obligations nor issue any bonds or other securities payable from the revenues and receipts herein pledged which will have priority to or equality with the Bond herein authorized with respect to payment from said revenues and receipts or from any moneys in the funds established hereunder.

Section 6.4 Sale of Project Prohibited Except Under Certain Conditions; Consolidation or Merger of, or Transfer of Assets by, Borrower. The Borrower shall not sell or in any manner dispose of any part of the Project necessary to the continued leasing thereof at a rent sufficient to pay the principal of and interest on the Bond as they mature and come due and to pay the expenses of maintaining the Project in good repair and keeping it properly insured, except as may be permitted by this Section and the following two Sections of this Indenture.

The Borrower may sell the Project or any part thereof to the Lessee as a result of the Lessee's exercise of an option to purchase granted it in the Lease Agreement.

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 Borrower with, or merger of the Borrower into, or the transfer by the Borrower of the Project as an entirety to the County or to another public corporation whose property and income are

BOOK 436 PAGE 886

not subject to Federal or Alabama taxation if the County or such public corporation has the 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 and interest on the Bond according to its tenor and the due and punctual performance and observance of all the agreements and conditions of the Indenture to be kept and performed by the Borrower shall be expressly assumed in writing by the County or the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety; and provided further, that such consolidation, merger or transfer shall not cause or result in any mortgage on or other lien being affixed to or imposed on or becoming a lien on the Project or the revenues and receipts therefrom that will be prior to the lien of the Indenture and of the pledge herein made for the benefit of the Bond or in the interest income on the Bond becoming subject to Federal or State income taxation.

Section 6.5 Improvements, Alterations, Fixtures and Personal Property. While the Borrower is not in default hereunder, the Borrower, without procuring the consent of the Trustee, may construct or install additional buildings, structures and fixtures on the Mortgaged Realty and may alter, repair, replace, change or add to the buildings, structures and fixtures constituting a part of the Buildings or permit a lessee of the Project so to do, provided that such action does not materially impair either the value of the Project or its utility for the purpose intended, and provided further that such buildings, structures and fixtures shall be deemed a part of the Project covered by this Indenture. If the Borrower shall not be in default hereunder, either the Borrower or its lessee may dispose of, free from the lien hereof, any machinery, equipment or other personal property constituting a part of the Equipment, but only as and to the extent permitted by the Lease Agreement. Nothing contained herein is intended to limit or restrict any right or privilege granted to the Lessee under the Lease Agreement.

Section 6.6 Release of Mortgaged Property. Parts of the Mortgaged Realty may be released from the lien of this Indenture as provided in, and upon compliance with, the provisions of Section 9.5 of the Lease Agreement and, upon compliance with said provisions, the Trustee shall execute and deliver to the Borrower and the Lessee any and all instruments that may be necessary to effect such release.

ARTICLE VII

DEFAULT PROVISIONS AND REMEDIES
OF TRUSTEE AND BONDHOLDER

Section 7.1 Events of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay any installment of principal or interest on the Bond as and when the same becomes due as therein and herein provided, whether such shall become due by maturity or otherwise, and such failure continues for a period of three days after such installment becomes due and payable;

(b) Failure by the Borrower to perform any of the agreements on its part herein contained (other than its agreement to pay the principal and interest on the Bond) after thirty days' written notice of such failure (which notice must state that it is a "Notice of Default" hereunder) made by the Trustee to the Borrower or made to the Borrower and the Trustee by the holder of the Bond, unless during such period or any extension thereof the Borrower has taken steps reasonably calculated to remedy such default;

(c) appointment by a court having jurisdiction of a receiver for the Borrower or approval by a court of competent jurisdiction of any petition for reorganization of the Borrower or rearrangement or readjustment of the obligations of the Borrower under any provisions of the bankruptcy laws of the United States and the continuation of such appointment or approval unstayed and in effect for a period of sixty consecutive days;

(d) Failure of the Borrower to obtain a new tenant for the Project within ninety days after an event of default by the Lessee, as defined in Section 8.1 of the Lease Agreement; or

(e) An event of default under the Lease Agreement.

Section 7.2 Remedies on Default. Whenever any Event of Default shall have happened and be subsisting:

(a) The Trustee may, and upon written request of the holder of the Bond shall, by notice in writing delivered to the Borrower, declare the entire principal balance of the Bond and the interest accrued thereon

BOOK 436 PAGE 888

immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable, anything in this Indenture or the Bond to the contrary notwithstanding; subject, however, to the discretionary right of the Trustee, and upon written direction to the Trustee by the holder of the Bond, the duty of the Trustee, to annul such declaration and destroy its effect at any time before the Project shall have been sold pursuant to any provision of the Indenture, if all covenants with respect to which default shall have been made shall be fully performed, and all arrears of principal and interest upon the Bond and the reasonable expenses and charges of the Trustee, its agents and attorneys, and all other payments required by this Indenture shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto.

(b) The Trustee may proceed to protect and enforce its rights and the rights of the holder of the Bond hereunder and under the Bond, by a suit or suits, whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power granted herein or for the enforcement of any other proper, legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce its rights and the rights of the holder of the Bond hereunder.

(c) The Trustee shall be entitled upon or at any time after the commencement of any proceedings instituted in the Event of Default, as a matter of strict right, upon the order of any court of competent jurisdiction, to the appointment of a receiver of the Project and of the rent, revenues and income from the Project, with power to lease the Project. Any such receiver shall, except as herein otherwise provided, have all the usual powers and duties of receivers in similar cases, with full power upon the order of such court to lease the Project, or any part thereof, upon any terms approved by the Court.

(d) The Trustee may, in its discretion, with or without declaring the entire principal balance of the Bond due and payable, enter upon and take possession of the Project and lease the same in the name and as the agent of the Borrower and from time to time maintain and restore and insure and keep insured the same, in the manner and to the same extent as is usual with like properties and likewise, from time to time, make all necessary repairs, renewals, replacements, altera-

tions, additions and improvements thereto and thereon as may seem judicious and lease the same or any part thereof, as effectually as the Borrower could do, and the Trustee shall be entitled to collect and receive all rents, revenues and income of the Project and every part thereof and, after paying the expense of leasing the same, including the expenses of maintenance, repairs and insurance or other charges thereon, as well as just and reasonable compensation for the services of the Trustee and its agents, attorneys, receivers, or counsel, the Trustee shall apply the moneys arising as aforesaid as provided in Section 7.7 hereof.

(e) The Trustee, with or without entry, personally or by attorney, may in its discretion either

(1) sell, or cause to be sold, all and singular the Project, and all the estate, right, title and interest, claim and demand therein, such sale or sales to be made at public outcry at the main door of the County Courthouse of the County in which the Project is situated, at such time or times and upon such terms as may be required by law or as the Trustee may determine after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) consecutive weeks prior to said sale in any newspaper then published in said County, or

(2) institute such suit or proceeding for the foreclosure of this Indenture, with or without further, other or incidental relief, such as the appointment of a receiver, the specific enforcement of covenants or obligations or an injunction to prevent violations or threatened violations of any covenant, obligation or agreement provided by the Indenture.

Section 7.3 Sale of Project. On any sale of the Project or any part thereof by the Trustee pursuant to any of the foregoing powers or pursuant to judicial authority,

(a) The entire principal balance of the Bond shall forthwith become due, anything therein or herein to the contrary notwithstanding.

(b) The whole of the Project shall be sold in one parcel and as an entirety, unless the Trustee shall deem such sale as an entirety to be illegal or impracticable or inadvisable by reason of some statute or other cause.

BOOK 436 PAGE 890

(c) Any machinery, equipment or personal property constituting a part of the Equipment may be sold without having such property at the place of sale, and the Borrower, for itself, its successors and assigns and for all persons hereafter claiming through or under it hereby expressly waives and releases all right to have the Equipment or any part thereof at the place of sale upon any foreclosure sale thereof.

(d) The Trustee may adjourn, or cause to be adjourned, from time to time, any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by law, such sale may be made, without further notice or publication, at the time and place to which the same shall be so adjourned.

(e) If no cash bid be received in an amount sufficient to pay all amounts then owing to the Trustee and the Bondholder, the Trustee may, with the consent of the Bondholder, sell such property for an amount less than sufficient to pay all amounts then owing to the Trustee and the Bondholder or for a consideration consisting of part cash and part purchase money mortgage, or both.

(f) The Bondholder or the Trustee, or either of them, may bid for and purchase the Project, or the portion thereof to be sold, at such sale.

(g) The Trustee is hereby appointed, empowered and directed by the Borrower as its irrevocable attorney to convey, assign, transfer and deliver to the purchaser the property sold and make all necessary conveyances and transfers thereof, all of which the Borrower hereby ratifies. The entire right, title, interest, claim and demand, legal and equitable, of the Borrower in the property sold shall be completely divested by such sale and the same shall be a perpetual legal and equitable bar to any claim by the Borrower thereto. The Borrower, however, if and when requested, will execute and deliver to the purchaser such instruments as may be requested by the purchaser in further assurance of the title so acquired.

(h) The purchaser upon paying the purchase money to the Trustee and receiving its receipt therefor need not inquire into the authorization, necessity, expediency or regularity of the sale and need not see to or

in any way be responsible for the application by the Trustee of any part of the purchase money.

Section 7.4 Rights and Remedies of Trustee on Default under Lease. The Trustee shall have the right in the name of the Borrower to declare any default and exercise any remedy or remedies under the Lease Agreement or any other lease of the Project, including the right to declare the entire rent reserved under such lease immediately due and payable and to take any available proceedings against any party liable upon any such lease for the payment thereof, including any guarantor, if any, of the Lessee's obligations. In the event of a default by the Lessee, as defined in Section 8.1 of the Lease Agreement, or in the event of a default of any other lessee of the Project in the punctual payment of rent sufficient to pay the installments of principal and interest on the Bond as such installments become due, the Trustee may, and upon the written request of the holder of the Bond shall, declare such lease in default and, upon being indemnified to its reasonable satisfaction, shall pursue such proper remedies as may be directed by the holder of the Bond for the enforcement of the provisions of such lease and guaranty, if any, and the exercise of any remedies available to the Borrower or the Trustee in the event of such default under such lease and such guaranty; subject, however, to the discretionary right of the Trustee, and upon written notice to the Trustee by the holder of the Bond, the duty of the Trustee, to annul such declaration and destroy its effect at any time before action at law or in equity to enforce such right shall have been instituted.

Section 7.5 Rights and Remedies of Trustee in the Event of Bankruptcy, Etc. of a Lessee or Guarantor. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, composition or other judicial proceeding relative to any lessee, guarantor or other person obligated for rent on the Project or for payment of the Bond, the Trustee (irrespective of whether there has been a default under this Indenture) shall be entitled and empowered to intervene in such proceedings on behalf of the Bondholder, to file and prove a claim or claims for the whole amount owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the Bondholder allowed in any such judicial proceed-

BOOK 436 PAGE 892

ings, to collect and receive any moneys or other property payable or deliverable on any such claims, and to take such other action therein as the Trustee may deem necessary or appropriate to protect the interest of the Bondholder, and any receiver, assignee or trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by the Bondholder to make payments to the Trustee.

Section 7.6 Rights of Lessee in Event of Default by Borrower under this Indenture. If the Lessee is not in default under the Lease Agreement and an Event of Default should occur under this Indenture, the Trustee shall notify the Lessee in writing of the occurrence of such default and the Lessee shall have the right to remedy such default hereunder within thirty days after such written notice, provided the Lessee shall pay all expenses of remedying such default. The exercise of the remedies set forth in Section 7.2 hereof is subject to the right of the Lessee under this Section to remedy a default as in this Section provided and limited.

Section 7.7 Application of Money Collected. Any money collected by the Trustee pursuant to this Article or pursuant to any right given to it or action taken by it under the provisions of this Article, together with all other funds of the Borrower then held by it or the Trustee hereunder, shall, after payment of all amounts for which the Trustee has a lien under Section 8.7 hereof, be applied in the following order:

(a) Unless the entire principal balance of the Bond shall have been declared due and payable, all such moneys shall be applied:

First. To the payment of interest then due on the Bond, with interest on overdue installments of such interest.

Second. To the payment of the unpaid principal of the Bond which shall have matured, with interest on overdue installments of principal from the respective dates upon which they became due.

Third. The surplus, if any, to the Bond Fund.

(b) If the entire principal balance of the Bond shall have become or been declared due and payable, all such moneys shall be applied as follows:

First. To the payment of the principal and interest then due and unpaid upon the Bond, with interest on overdue principal and interest.

Second. The surplus, if any, to the Borrower or to whomsoever may be entitled thereto.

Section 7.8 Bondholder Need Not be Joined. All rights of action (including the right to file proof of claims) under this Indenture or under the Bond may be prosecuted and enforced by the Trustee in its name as trustee of an express trust without the necessity of joining as plaintiff or defendant the holder of the Bond, and any recovery shall (after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) be for the benefit of the holder of the Bond.

Section 7.9 Right of Bondholder to Direct Proceedings. The holder of the Bond shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, provided that (1) such direction shall not be in conflict with any rule of law or this Indenture, (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 7.10 Limitation on Suits by Bondholder. The Bondholder shall not have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (1) the Bondholder has previously given written notice to the Trustee of a continuing Event of Default; (2) the Bondholder shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder; (3) the Bondholder has offered to the Trustee indemnity in the manner provided in Section 8.3(f) hereof; and (4) the Trustee for ten days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding.

Notwithstanding any other provision hereof, the right of the holder of the Bond, which is absolute and unconditional, to receive payment of the installments of principal and interest on the Bond on or after the due date thereof, but solely from the revenues and receipts from the leasing or sale of the Project, as therein and herein expressed, or to institute suit for the enforcement of such payment on or after such due date, or the obligation

of the Borrower, which is also absolute and unconditional, to pay, but solely from said revenues and receipts, the installments of principal and interest on the Bond to the holder thereof at the time and place in said Bond expressed, shall not be impaired or affected without the consent of such holder.

Section 7.11 Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the holder of the Bond 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 hereunder or now or hereafter existing at law or in equity or by statute.

Section 7.12 Delay or Omission Not a Waiver. No delay or omission of the Trustee or of the holder of the Bond to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the holder of the Bond may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the holder of the Bond.

Section 7.13 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article VII 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 VII 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 Indenture invalid or unenforceable.

ARTICLE VIII

THE TRUSTEE

Section 8.1 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read in this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holder of the Bond relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

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

BOOK 436 PAGE 896

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 8.2 Notice of Defaults. Within ten days after the occurrence of any Event of Default hereunder the Trustee shall transmit, by mail to the holder of the Bond, notice of such Event of Default known to the Trustee; provided, however, that except in the case of a default in the payment of an installment of principal or interest on the Bond, the Trustee shall be protected in withholding such notice if and so long as a responsible officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Bondholder.

Section 8.3 Certain Rights of Trustee. Except as otherwise provided in Section 8.1 hereof:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, election, order or demand of the Borrower shall be sufficiently evidenced by an instrument signed in the name of the Borrower by the Chairman or Vice Chairman of its Board of Directors (unless otherwise in this Indenture specifically prescribed), and any resolution of the Borrower may be evidenced to the Trustee by a copy thereof certified by the Secretary or Assistant Secretary of the Borrower;

(c) any request, direction, election, order or demand of a lessee of the Project shall be sufficiently evidenced by an instrument signed in the name of the lessee by its President or Vice President (unless otherwise in this Indenture specifically prescribed), and any resolution of the lessee may be evidenced to the Trustee by a copy thereof certified by the Secretary or Assistant Secretary of the lessee;

(d) the Trustee may consult with counsel including Bond Counsel and the written advice or opinion of such Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

BOOK 436 PAGE 897

(e) whenever, in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a certificate of the Borrower, and such certificate of the Borrower shall, in the absence of negligence or bad faith on the part of the Trustee, be full warranty to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(f) the Trustee shall be under no obligation to exercise any of the rights, powers or remedies vested in it by this Indenture at the request or direction of the Bondholder pursuant to this Indenture, unless the Bondholder shall have furnished to the Trustee a satisfactory indemnity bond for the reimbursements of all expenses to which it may be put and to protect it against all liability which might be incurred by it in compliance with such request or direction;

(g) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and

(h) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 8.4 Trustee not Responsible for Certain Matters of Bond or Security. The recitals contained herein and in the Bond, except the Trustee's certificate of authentication, shall be taken as the statements of the Borrower, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Bond. The Trustee is not responsible for the filing or recording of this Indenture or the Lease Agreement or any financing statement or for the payment of taxes, charges, assessments and liens upon the trust estate, or for insuring the trust estate or the maintenance thereof,

or for the sufficiency of the security for the Bond issued hereunder or intended to be secured hereby, or for the value or title of any of the trust estate, or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the trust estate pursuant to any provision of this Indenture, it shall use due diligence in preserving such property.

Section 8.5 May Hold Bond. The Trustee, in its individual or any other capacity, may become the owner or pledgee of the Bond and may otherwise deal with the Borrower or a lessee of the Project or a guarantor of the Bond or the Lessee's obligations under the Lease Agreement with the same rights it would have if it were not Trustee.

Section 8.6 Right of Trustee to Perform Certain Acts on Failure of Borrower. In case the Borrower or a lessee of the Project shall fail seasonably to pay or to cause to be paid any tax, assessments, or governmental or other charge upon any part of the Project or the premiums on insurance on the Project or the expenses of maintaining or preserving the Project, the Trustee may pay such tax, assessment, governmental charge, premiums or expenses without prejudice, however, to any rights of the Trustee or the Bondholder hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 12% per annum or the maximum rate of interest allowed by law, whichever is less, shall be repaid by the Borrower upon demand, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over the Bond and shall be paid out of the proceeds of any sale of the trust estate if not otherwise paid by the Borrower, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the holder of the Bond and shall have been provided with adequate funds for the purpose of such payment.

Section 8.7 Compensation of Trustee; Lien. The Trustee shall have a first lien on the Mortgaged Property and the revenues and receipts pledged hereunder and all funds held or collected by the Trustee as such (except funds held in trust for the benefit of the holder of the Bond) with right of payment prior to payment on account of interest or principal (or premium, if any) of the Bond, for reasonable compensation for all services rendered by it hereunder and for all reasonable expenses, advances, disbursements and counsel fees incurred or made in and about the execution of the trusts hereby created and exer-

BOOK 436 PAGE 899

cise and performance of the powers and duties of the Trustee hereunder and the cost and expense incurred in defending against any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee).

Section 8.8 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 8.9 hereof.

(b) The Trustee may resign at any time by giving written notice thereof to the Borrower, the Bondholder and the Lessee. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by the holder of the Bond by an instrument in writing delivered to the Trustee, to the Borrower and the Lessee.

(d) If at any time the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then (i) the Borrower may remove the Trustee, or (ii) the Bondholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Borrower shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by the holder of the Bond by an instrument in writing delivered to the Borrower, the retiring Trustee and the Lessee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Borrower.

(f) The Borrower shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event to the Lessee and to the registered owner of the Bond at his address as shown in the Bond Register. Each notice shall include the name and address of the principal corporate trust office of the successor Trustee.

Section 8.9 Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Borrower and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the estate and title of the retiring Trustee to the Mortgaged Property and all the rights, powers, trusts, and duties of the retiring Trustee; but, on request of the Borrower or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the estate and title of the retiring Trustee to the Mortgaged Property and all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 8.7 hereof. Upon request of any such successor Trustee, the Borrower shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such estate, title rights, powers and trusts. All such instruments so executed shall be filed by the Borrower for record in the office of the Judge of Probate of the county in which the Project is located.

Section 8.10 Merger or Consolidation. Any corporation into which the Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case the Bond shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger or consolidation to such authenticating Trustee may adopt such authentication and deliver the Bond so authenticated with the same effect as if such successor Trustee had itself authenticated such Bond.

ARTICLE IX

PAYMENT OF BONDS; SATISFACTION OF
LIEN OF INDENTURE

Section 9.1 Discharge of Indenture; Bond Deemed No
Longer Outstanding.

(a) If (i) the Borrower shall pay or cause to be paid to the owner of the Bond the principal, premium, if any, and interest to become due thereon at the times and in the manner stipulated therein and herein, (ii) all fees and expenses of the Trustee and any alternate paying agent shall have been paid, (iii) all payments required by Section 3.4 of the Lease Agreement shall have been made and (iv) the Borrower shall keep, perform and observe all and singular the covenants and promises in the Bond and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon, the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Borrower such instruments in writing as shall be requisite to satisfy the lien hereof, and assign and deliver to the Borrower any property at the time subject to the lien of this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Lessee and except cash or securities held by the Trustee for the payment of interest on and retirement of the Bond.

(b) The Bond shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section if (i) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time and available for such purpose shall be sufficient, to pay when due the principal of (and premium, if any) and interest due and to become due on the Bond on and prior to the maturity date thereof, and (ii) the Borrower shall have given the Trustee in form satisfactory to it irrevocable instructions to give notice to the holder of the Bond that the deposit required by clause (i) of this subsection has been made with the Trustee and that the Bond is deemed to have been paid in accordance with this Section and stating such maturity or prepayment date upon which moneys are to be available for the payment of the principal (and premium, if any) on the Bond.

BOOK 436 PAGE 902

(c) Neither Government Obligations nor moneys deposited with the Trustee pursuant to this Section nor principal nor interest payments on any such Government Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest on the Bond; provided that any cash received from such principal or interest payments on such Government Obligations deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal (and premium, if any) and interest to become due on the Bond on and prior to the prepayment date or maturity date thereof, as the case may be.

(d) Anything herein to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Section for the payment of the Bond and the Bond shall be deemed to have been paid, but the Bond shall not have in fact been actually paid in full, no amendment to the provisions of this section shall be made without the consent of the owner of the Bond.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices. Any notice request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed to the Borrower, the Trustee or the Lessee as provided in the Lease Agreement, and addressed to the Bondholder at the address shown on the Bond Register. A duplicate copy of each notice required to be given hereunder by either the Borrower or the Trustee shall also be given to the Lessee and Bondholder, and a duplicate copy of each notice required to be given hereunder by the Trustee to either the Borrower or the Lessee shall also be given to the other and to the Bondholder. The Borrower, the Lessee, and the Trustee may, by notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.2 Release of Funds Upon Payment of Bond. Any amounts remaining in the Bond Fund after payment in full of the Bond, the fees, charges and expenses of the Trustee and all other amounts required to be paid hereunder shall be paid or applied as provided in the Lease Agreement if there is no default hereunder.

Section 10.3 Consent of Guarantors to Amendment to Lease Agreement or Indenture. The consent of (a) the Bondholder and (b) any guarantors of the Bond or the Lessee's obligations under the Lease Agreement shall be obtained prior to the execution of any amendments or supplements to the Lease Agreement or this Indenture.

Section 10.4 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.5 Severability Clause. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs hereof shall not affect the remaining portions of this Indenture or any part thereof, all of which are inserted conditionally on being held valid in law; and in the event that one or more of the phrases, sentences, clauses, sections or paragraphs contained herein should be invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, section or sections, paragraph or paragraphs had not been inserted.

IN WITNESS WHEREOF, the Borrower has caused this Indenture to be signed in its name and behalf by the Chairman of its Board of Directors and its corporate seal to be hereunto affixed and attested by its Secretary and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by one of its officers, its official seal to be hereunto affixed and the same to be attested by one of its officers, both of whom are thereunto duly authorized, and the Borrower and the Trustee have caused this Indenture to be dated as of September 1, 1983.

THE INDUSTRIAL DEVELOPMENT BOARD OF
SHELBY COUNTY

By MM Rogers
Chairman of its Board of Directors

SEAL

Attest: [Signature]

Secretary

FIRST AMERICAN NATIONAL BANK
OF NASHVILLE

By W. C. [Signature]

Its Vice President

SEAL

Attest: W. J. [Signature]

Its Ass't. Vice President

ACKNOWLEDGMENT OF BORROWER

STATE OF ALABAMA

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that

M. M. Argo Jr., whose name as Chairman of the Board of Directors of The Industrial Development Board of Shelby County, a public corporation, is signed to the foregoing Mortgage and Indenture of Trust and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage and Indenture of Trust, 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 22nd day of September, 1983.

Bobbie L. Ferguson
Notary Public

NOTARIAL SEAL

My commission expires: 5-19-85

ACKNOWLEDGMENT OF TRUSTEE

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Walter C. Messemer, whose name as Vice President of First American National Bank of Nashville is signed to the foregoing Mortgage and Indenture of Trust and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Mortgage and Indenture of Trust, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Bank.

Given under my hand this the 21st day of September, 1983.

Charles K. Wray
Notary Public

NOTARIAL SEAL

My commission expires: October 20, 1985

EXHIBIT A
TO
MORTGAGE AND INDENTURE OF TRUST
DATED AS OF SEPTEMBER 1, 1983
BETWEEN
THE INDUSTRIAL DEVELOPMENT BOARD
OF SHELBY COUNTY
AND
FIRST AMERICAN NATIONAL BANK OF NASHVILLE

Office Furniture and Furnishings

BOOK 436 PAGE 906

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1983 SEP 23 AM 8:35

Thomas A. Shores, Jr.
JUDGE OF PROBATE

Rec 79.50
Ind 1.00

80.50