



1256

---

LEASE AGREEMENT

---

By and between

THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE TOWN OF PELHAM

and

VALLEYDALE BUSINESS CENTER

Dated as of October 1, 1988

BOOK 218 PAGE 672

---

The interest of The Industrial Development Board of the Town of Pelham in any rents, revenues and receipts derived by it under this Lease Agreement has been assigned to AmSouth Bank N.A., under the Mortgage and Indenture, dated as of October 1, 1988 from The Industrial Development Board of the Town of Pelham.

---

This Lease Agreement was prepared by Robert H. Walston of Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1900 First National-Southern Natural Building, Pelham, Alabama 35203.

LEASE AGREEMENT

TABLE OF CONTENTS

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

PAGE

ARTICLE I

DEFINITIONS, REPRESENTATIONS AND DEMISE CLAUSE

Section 1.1	Definitions.....	1
Section 1.2	Representations by the Lessor.....	3
Section 1.3	Representations by the Lessee.....	5
Section 1.4	Demise of the Project.....	6

ARTICLE II

ACQUISITION OF THE PROJECT

Section 2.1	Agreement to Acquire.....	6
Section 2.2	No Warranty of Suitability by Lessor; Lessee Required to Complete Project in Certain Events.....	8
Section 2.3	Lessor to Pursue Remedies Against Vendors, Contractors and Subcontractors and Their Sureties.....	9
Section 2.4	Investment of Construction Fund Moneys.....	9
Section 2.5	Completion of the Project.....	9

ARTICLE III

DURATION OF LEASE TERM  
AND RENTAL PROVISIONS

Section 3.1	Duration of Term.....	10
Section 3.2	Rental Provisions.....	10
Section 3.3	Obligations of Lessee Unconditional...	12

ARTICLE IV

MAINTENANCE, ALTERATIONS, REPLACEMENTS,  
TAXES AND INSURANCE

Section 4.1	Maintenance and Repairs, Alterations and Improvements to Buildings, Party Walls, and Liens.....	13
-------------	---	----

General Provisions  
1. Definitions  
2. Term  
3. Assignment and Subleasing  
4. Taxes, Other Governmental Charges and Utility Charges  
5. Insurance Required  
6. Advances by Lessor or Mortgagee  
7. Indemnity of Lessor

**PAGE**

Section 4.2	Taxes, Other Governmental Charges and Utility Charges.....	14
Section 4.3	Insurance Required.....	15
Section 4.4	Advances by Lessor or Mortgagee.....	16
Section 4.5	Indemnity of Lessor.....	17

**ARTICLE V**

**PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 5.1	Damage and Destruction.....	18
Section 5.2	Condemnation.....	18
Section 5.3	Condemnation of Lessee-Owned Property.	19

**ARTICLE VI**

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

Section 6.1	Provisions Relating to Assignment and Subleasing.....	19
Section 6.2	Assignment of Lease Agreement and Rents by the Lessor.....	20
Section 6.3	Restrictions on Mortgage or Sale of Project by Lessor; Consolidation or Merger of, or Transfer of Assets by, Lessor.....	21
Section 6.4	Prepayment of Bond.....	21
Section 6.5	References to Bond Ineffective After Bond Paid.....	22

**ARTICLE VII**

**PARTICULAR COVENANTS OF THE LESSEE**

Section 7.1	General Covenants.....	22
Section 7.2	Inspection of Project.....	23
Section 7.3	Special Covenants.....	23
Section 7.4	Financing and Continuation Statements.	24

**ARTICLE VIII**

**EVENTS OF DEFAULT AND REMEDIES**

Section 8.1	Events of Default Defined.....	24
Section 8.2	Remedies on Default.....	26
Section 8.3	No Remedy Exclusive.....	27

	PAGE
Section 8.4 Agreement to Pay Attorneys' Fees and Expenses.....	27
Section 8.5 No Additional Waiver Implied by One Waiver.....	28
Section 8.6 Remedies Subject to Applicable Law....	28

#### ARTICLE IX

##### OPTIONS

Section 9.1 Options to Terminate.....	28
Section 9.2 Option to Purchase Project Prior to Payment of the Bond.....	27
Section 9.3 Option to Purchase Project After Payment of the Bond.....	30
Section 9.4 Conveyance on Exercise of Option to Purchase.....	30

#### ARTICLE X

##### MISCELLANEOUS

Section 10.1 Covenant of Quiet Enjoyment.....	30
Section 10.2 This Lease a Net Lease.....	31
Section 10.3 Lessor's Liabilities Limited.....	31
Section 10.4 Prior Agreements Cancelled.....	31
Section 10.5 Execution Counterparts.....	31
Section 10.6 Binding Effect; Governing Law.....	31
Section 10.7 Severability.....	32
Section 10.8 Article and Section Captions.....	32
Section 10.9 Notices.....	32
Section 10.10 Municipal Public Service Payment.....	32
Testimonium.....	33
Signatures.....	33
Acknowledgments.....	35

STATE OF ALABAMA

SHELBY COUNTY

LEASE AGREEMENT dated as of October 1, 1988, between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM, a public corporation and instrumentality under the laws of the State of Alabama, party of the first part, and VALLEYDALE BUSINESS CENTER, an Alabama general partnership, party of the second part.

W I T N E S S E T H:

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

ARTICLE I

DEFINITIONS, REPRESENTATIONS AND DEMISE CLAUSE

Section 1.1 Definitions. The following words, terms or phrases, when used in this Lease Agreement, have the following meanings, unless the context clearly indicates a different meaning:

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

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

"Bond" means the Industrial Development Revenue Bond (Valleydale Business Center Project) of the Lessor issued pursuant to the Indenture in the principal amount of \$4,200,000.

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

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

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

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

"Escrow Agent" means the Corporate Trust Department of AmSouth Bank N.A., as depository for the Construction Fund.

"Guarantors" means collectively Charles H. Stephens, David Bunkin, Marvin R. Engel and Marc A. Eason, and their respective heirs, executors, administrators and assigns.

"Guaranty Agreement" means the Bond Guaranty Agreement dated as of October 1, 1988, between the Guarantors and the Mortgagee.

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

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

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

"Inducement Agreement" means the agreement between the Lessor and Lessee dated August 25, 1988, whereby the Lessor agreed to issue the Bond to finance the cost of the Project.

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

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

"Leased Realty" means the real estate described in Section 1.4 hereof less any such real estate, interests in real estate and other rights as may be released from this Lease Agreement pursuant to the provisions hereof or taken by the exercise of the power of eminent domain.

BOOK 218 PAGE 677



"Lessee" means the party of the second part hereto and its successors and assigns.

"Lessor" means the party of the first part hereto, and its successors and assigns.

"Mortgagee" means the mortgagee under the Indenture.

"Municipality" means the City of Pelham, Alabama.

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

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

"Project Costs" means (i) the costs incurred in connection with the issuance and sale of the Bond and (ii) all costs of acquiring and constructing the Project, as provided in Article II hereof.

"Project Supervisor" means the agent of the Lessee who at the time shall have been designated by the Lessee as Project Supervisor pursuant to Section 2.1 hereof.

"State" means the State of Alabama.

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

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

(b) The execution and delivery of this Lease Agreement by the Lessor, the consummation of the transactions herein contemplated and the fulfillment of the terms hereof will not conflict with, be in violation



of, or constitute a default under any indenture, mortgage, deed of trust or other contract, agreement or instrument or any statute or rule of law to which the Lessor is now a party or is subject, or the certificate of incorporation or by-laws of the Lessor, or any resolution, order, rule or regulation, writ, injunction, decree or judgment of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Lessor.

(c) All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, which are required to be obtained by the Lessor as conditions precedent to the issuance of the Bond and the execution and delivery by the Lessor of this Lease Agreement and the Indenture have been obtained.

(d) The Lessor has determined that the issuance of the Bond, the acquisition, improvement and construction of the Project and the leasing of the Project to the Lessee will promote industry, develop trade and further the use of agricultural products and natural and human resources of the State and the development and preservation of the said resources by inducing manufacturing, industrial, commercial and research enterprises to locate in the State or to enlarge, expand and improve existing operations in the State, including the Lessee and those which will sublease the Project or portions thereof from the Lessee.

(e) The Project will constitute a "project" within the meaning of the Enabling Law.

(f) The Indenture will be delivered by the parties thereto and the Bond will be issued and delivered by the Lessor contemporaneously with the delivery of this Lease Agreement.

(g) The Inducement Agreement was authorized by the Board of Directors of the Lessor by resolution adopted on August 25, 1988 at a meeting of the directors duly called and held in compliance with the provisions of the Enabling Law and the Lessor's certificate of incorporation and bylaws.

(h) The Project is located wholly within 25 miles of the corporate limits of the Municipality.

(i) 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.

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

(a) The Lessee is duly organized as a general partnership under the laws of the State and the Guarantors constitute all of the partners of the Lessee. All partners of the Lessee have consented to and authorized the execution and delivery of this Lease Agreement.

(b) The execution and delivery of this Lease Agreement by the Lessee, the consummation of the transactions herein contemplated and the fulfillment of the terms hereof will not conflict with, be in violation of, or constitute a default under any indenture, mortgage, deed of trust or other contract, agreement or instrument or any statute or rule of law to which the Lessee is now a party or is subject, or the partnership agreement of the Lessee, or any resolution, order, rule or regulation, writ, injunction, decree or judgment of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Lessee.

(c) All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, which are required to be obtained by the Lessee as conditions precedent to the execution and delivery by the Lessee of this Lease Agreement have been obtained.

(d) The financing of the Project through the issuance of the Bond, the leasing of the Project to the Lessee, and the subleasing of the Project to the sublessees thereof, will induce such sublessees to locate in the Municipality or to expand existing facilities in the Municipality.

(e) The Lessee intends to sublease the Project only to one or more tenants and only for uses of the type described in the definition of "project" in Section 11-54-80 of the Code of Alabama 1975.

(f) The Project will constitute a "project" within the meaning of the Enabling Law.

(g) The Project is located wholly within the corporate limits of the Municipality.

(h) As of the date of delivery of this Lease Agreement, the Lessee does not have any plans and is not a party to any arrangement which, if consummated, would result in the Project being used by any person other than the Lessee and sublessees described above.

(i) 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.

(j) The Lessee has received an executed counterpart of the Indenture, and is familiar with its terms and provisions.

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

## ARTICLE II

### ACQUISITION OF THE PROJECT

Section 2.1 Agreement to Acquire. From the principal proceeds derived from the sale of the Bond, the Lessor will: (a) pay the costs incurred in connection with the issuance of the Bond; (b) pay the costs of acquiring the Leased Realty; and (c) pay the costs (including interest on the Bond during the period of construction) of constructing on the Leased Realty buildings with a combined area of approximately 142,000 square feet, and other structures and fixtures on the Leased Realty in accordance with plans and specifications therefor furnished to the Lessor by the Lessee.

Pursuant to the Inducement Agreement the Lessor agreed to issue the Bond to finance the cost of the Project, to proceed, or permit the Lessee to proceed, pending the issuance of the Bond, with the acquisition and construction of the Project with funds advanced by the Lessee, and to reimburse the Lessee for funds so advanced from the proceeds of the Bond when issued. In accordance with the Inducement Agreement, the Lessee and the Lessor have proceeded with the acquisition and construction of the Project. The Lessor (i) shall cause withdrawals to be made from the Construction Fund to reimburse the Lessee

for funds advanced to the Lessor on behalf of the Lessee or expended by the Lessee for such purpose, subject to the requirements of the Indenture with respect to withdrawals from the Construction Fund, and (ii) will assume or accept the assignment of such contracts and purchase orders entered into by the Lessee prior to the execution and delivery of this Lease Agreement for the acquisition and construction of the Project as the Lessee may request.

The Lessor will continue such acquisition, construction and installation with all reasonable dispatch and due diligence and will cause the Project to be completed as promptly as practicable. The Lessee will promptly give its written instructions with respect to, and will request the Lessor to enter into, such construction contracts and purchase orders for material, supplies, and equipment, and will take whatever other action may be provided for in this Lease Agreement, as shall be necessary to complete the Project. The Lessor will not execute any construction contract or purchase orders for the Project without the prior written consent of the Lessee.

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

If after the exercise of due diligence by the Lessor, it is impossible for the Lessor to construct or install any part of the buildings, structures or fixtures which the Lessee requests the Lessor so to construct, the Lessor will notify the Lessee and the Mortgagee in writing and the Lessee (a) will withdraw the request in question, or (b) will itself effect the construction or installation so requested, for and in the name and on behalf of the Lessor, in which case the Lessee shall be entitled to reimbursement from the Construction Fund for the costs incurred by it in effecting such construction or installation.

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

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

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

**Section 2.2 No Warranty of Suitability by Lessor: Lessee Required to Complete Project in Certain Events.**  
The Lessee recognizes that since the plans and specifications for constructing and installing such buildings, structures and fixtures are furnished by it, the Lessor makes no warranty, either express or implied, nor offers any assurances that the Project will be suitable for the Lessee's purposes or needs or that the proceeds derived from the sale of the Bond will be sufficient to pay in full all Project Costs. In the event the proceeds derived from the sale of the Bond are insufficient to pay in full all Project Costs, the Lessee shall be obligated to complete the acquisition and construction of the Project at its own expense and the Lessee shall pay any such deficiency and shall save the Lessor whole and harmless from any obligation to pay such deficiency. The Lessee shall not by reason of the payment



of such deficiency from its own funds be entitled to any diminution in the payment of the rents hereunder.

**Section 2.3 Lessor to Pursue Remedies Against Vendors, Contractors and Subcontractors and Their Sureties.** In the event of default of any vendor, contractor or subcontractor under any contract or purchase order made by it for acquisition, construction or installation of the Project, the Lessor will promptly proceed (subject to the Lessee's advice to the contrary), either separately or in conjunction with others, to exhaust the remedies of the Lessor against the vendor, contractor or subcontractor so in default and against his surety (if any) for the performance of such contract or purchase order. The Lessor will advise the Lessee of the steps it intends to take in connection with any such default and the Lessee will pay all costs, fees and expenses incurred which are not paid from the Construction Fund. If the Lessee shall so notify the Lessor, the Lessee may, in its own name or in the name of the Lessor, prosecute or defend any action or proceeding or take any other action involving any such vendor, contractor, subcontractor or surety which the Lessee deems reasonably necessary, and in such event the Lessor will cooperate fully with the Lessee and will take all action necessary to effect the substitution of the Lessee for the Lessor in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid into the Construction Fund.

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

**Section 2.5 Completion of the Project.** The completion of the Project shall be evidenced to the Mortgagee by a certificate signed by the Lessor and by the Project Supervisor on behalf of the Lessee stating that (i) construction and installation of the buildings, structures and fixtures has been completed in accordance with the plans and specifications approved by the Lessee, (ii) all labor, services, materials and supplies in connection with such construction, acquisition and

installation have been paid for, and (iii) all facilities necessary in connection with the Project have been constructed, acquired and installed and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against any vendor, contractor, subcontractor or other person not a party to this Lease Agreement which exist at the date of such certificate or which may subsequently come into being. The Lessor and the Lessee will cooperate with each other in causing such certificate to be furnished to the Mortgagee.

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

### ARTICLE III

#### DURATION OF LEASE TERM AND RENTAL PROVISIONS

Section 3.1 Duration of Term. The term of this Lease Agreement and of the lease herein made shall begin on the date of the delivery of this Lease Agreement and, subject to the provisions of this Lease Agreement, shall continue until midnight of November 15, 2003; provided, that if the Lessee delivers to the Lessor on or before November 15, 2003 a written agreement to pay to the City of Pelham on each October 1 thereafter one-half of the total ad valorem taxes that would otherwise be payable with respect to the Project, based on the appraised value thereof, as such taxes shall be computed from year to year, rather than and in substitution for the payment required by Section 10.10 hereof, the term of this Lease Agreement shall be extended until November 15, 2010. The Lessor will deliver to the Lessee possession of the Project (or such portion or portions thereof as are then in existence) on the commencement date of the Lease Term, subject to the inspection and other rights reserved in this Lease Agreement, and the Lessee will accept possession thereof at such time; provided, however, the Lessor will be permitted such possession of the Project as shall be necessary and convenient for it to comply with the provisions of Section 2.1 hereof; and provided further, the Lessor will be permitted such possession of the Project as shall be necessary and convenient for it to construct or install any additions or improvements and to make any repairs or restorations required or permitted to be constructed, installed or made by the Lessor pursuant to the provisions hereof.

BOOK 218 PAGE 685



Section 3.2 Rental Provisions. (a) Basic Rent. As Basic Rent for the use and occupancy of the Project, the Lessee does hereby covenant and agree to pay to the Lessor as Basic Rent on December 1, 1988, and on the first day of each month thereafter, through and including the date of final maturity of the Bond, until the Bond is paid in full, the amount coming due on each such date as principal of and interest on the Bond.

In the event the Bondholder gives notice of its election to cause the Bond to be paid in full on an anniversary date thereof pursuant to its right so to do referred to in the face of the Bond, the Lessee will provide to the Lessor on such anniversary date the amount necessary to pay in full the principal of and interest on the Bond.

BOOK 218 PAGE 686 All Basic Rent payments shall be made directly to the Mortgagee for the account of the Lessor and shall be applied to debt service on the Bond. The Lessee recognizes, understands and acknowledges that it is the intention hereof that this Lease Agreement be a net lease and that until the Bond is fully paid Basic Rent shall be in such amounts and shall be due at such times as shall be required to pay the installments of principal and interest on the Bond as the same become due and payable. This Lease Agreement shall be construed to effectuate such intent. Any installment of Basic Rent not paid on the due date thereof shall bear interest until paid at the Prime Rate, as defined in the Bond, plus 4% per annum, or the maximum rate of interest allowed by law, whichever is less.

The Lessor shall cause all moneys paid as Basic Rent to be forthwith applied to the payment of principal of or interest on the Bond.

(b) Additional Rent. The Lessee shall pay as additional rent to the Mortgagee (i) an amount equal to the fee of the Escrow Agent for the ordinary services of the Escrow Agent rendered and its ordinary expenses incurred under the Indenture, as and when the same becomes due, (ii) the reasonable fees and charges of the Mortgagee as bond registrar and paying agent as provided in the Indenture, as and when the same become due, and (iii) the reasonable fees, charges and expenses of the Mortgagee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, as and when the same become due; provided, that the Lessee may, without creating a default hereunder, contest in good faith the necessity for any such extraordinary services and extraordinary expenses and the reasonableness of any such fees, charges or expenses.

The Lessee further agrees to indemnify the Escrow Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the duties under the Indenture, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers and duties under the Indenture.

(c) Collateral for Obligations. As security for payment of its rental obligations hereunder, the Lessee hereby transfers and assigns to the Lessor all rights of the Lessee under any architects, engineers, or construction contracts or documents with respect to the Project, including, but not limited to, the plans and specifications therefor, the construction contract and the payment and performance bonds and all rights of the Lessee under any sublease of the Project or any part thereof hereafter made.

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

BOOK 218 PAGE 687

take any other action involving third persons which the Lessee deems reasonably necessary in order to secure or protect its rights of use and occupancy and the other rights hereunder. The provisions of the first and second sentences of this Section shall apply only so long as any part of the principal of and the interest on the Bond remains outstanding and unpaid.

#### ARTICLE IV

##### MAINTENANCE, ALTERATIONS, REPLACEMENTS, TAXES AND INSURANCE

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

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

(c) The Lessee may connect or "tie-in" walls of the Buildings and utility and other facilities located on the Leased Realty to other structures and facilities owned or leased by it on real property adjacent to the Leased Realty. The Lessee may use as a party wall any wall of the Buildings which is on or contiguous to the boundary

line of real property owned or leased by it, and in the event of such use, each party hereto hereby grants to the other a ten-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying in of new construction. If the Lessee utilizes any wall of the Buildings as a party wall for the purpose of tying in new construction that will be utilized under common control with the Project, the Lessee may also remove any non-loadbearing wall panel in the party wall; provided, however, if the adjacent property ceases to be operated under common control with the Project, the Lessee will at its expense, install wall panels similar in quality to those that have been removed. Prior to the exercise of any one or more of the rights granted by this subsection (c), the Lessee shall furnish the Lessor and Mortgagee a certificate of an Independent Engineer or an Independent Architect that the utility of the Project will not be adversely affected by the exercise of such rights.

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

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

**Section 4.2 Taxes, Other Governmental Charges and Utility Charges.** The Lessor and the Lessee acknowledge (a) that under present law the Project is exempt from ad valorem taxation by the State or by the political or taxing subdivisions thereof, and that under present law the income and profits (if any) of the Lessor from the Project are not subject to either Federal or State taxation, and (b) these factors, among others, have induced the Lessee to enter into this Lease Agreement. However, the Lessee will pay, as the same respectively

BOOK 218 PAGE 689



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

BOOK 218 PAGE 690  
The Lessee may, at its own expense and in its own name and behalf or in the name and behalf of the Lessor, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed. The Lessor, at the expense of the Lessee, will cooperate fully with the Lessee in any such contest.

Section 4.3 Insurance Required. (a) Until the Bond is paid in full, the Lessee will at all times keep the Project insured as provided in the Indenture.

(b) The Lessee will at all times maintain insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Leased Realty or in any way related to the condition or operation of the Project, in the minimum amounts of \$500,000 for death of or bodily injury to any one person, \$1,000,000 for all death and bodily injury claims resulting from any one accident, and \$100,000 for property damage. Such insurance shall insure the Lessor, as well as the Lessee, against such liability.

(c) All insurance required by subsection (b) of this Section shall be effected with responsible insurance carriers. All policies or other contracts evidencing such insurance or a certificate of the respective insurers attesting the fact that such insurance is in force and effect, shall be deposited with the Lessor. Prior to the expiration of such insurance, the Lessee shall furnish to the Lessor evidence that such insurance has been renewed or replaced. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the Lessor for at least 10 days after written notice to the Lessor of cancellation.

(d) The Lessee shall furnish to the Mortgagee insurance certificates, in form and substance satisfactory to the Mortgagee, evidencing compliance by the Lessee with the terms of this Section and, upon the request of the Mortgagee at any time, the Lessee shall furnish the Mortgagee with photostatic copies of the policies required by the terms of this Section. The Lessee will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Mortgagee) to give the Mortgagee at least 10 days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Lessee agrees that it will not take any action or fail to take any action which action or inaction would result in the invalidation of any insurance policy required hereunder. At least 10 days prior to the date the premiums on each such policy or policies shall become due and payable, the Lessee shall furnish to the Mortgagee evidence of the payment of such premiums.

Section 4.4 Advances by Lessor or Mortgagee. In the event that the Lessee fails to take out or maintain the full insurance coverage required by this Lease Agreement, fails to pay the taxes or other charges required to be paid by the Lessee at or prior to the time they are required to be paid, fails to make any payments secured by the Town Mortgage, or fails to keep the Project in good order and repair and in as reasonably safe condition as its operations permit, the Lessor or the Mortgagee, after first notifying the Lessee of any such failure on its part, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same, pay such taxes or other charges, make such payment, or make such repairs, renewals or replacements as may be necessary to maintain the Project in as reasonably safe condition as the Lessee's operations permit and to keep

the Project in good order and repair. All amounts so advanced therefor by the Lessor or the Mortgagee, together with interest thereon from the date of advancement at the Prime Rate, as defined in the Bond, plus 4% per annum, or the maximum rate of interest allowed by law, whichever is less, shall become an additional obligation payable by the Lessee to the Lessor or to the Mortgagee, as the case may be. Any remedy herein vested in the Lessor or the Mortgagee for the collection of the rental payments shall also be available to the Lessor and the Mortgagee for the collection of all such additional obligations for amounts so advanced.

Section 4.5 Indemnity of Lessor. The Lessee agrees to pay, and to indemnify and hold the Lessor harmless against, any and all liabilities, losses, damages, claims or actions (including all reasonable attorneys' fees and expenses of the Lessor), of any nature whatsoever incurred by the Lessor without gross negligence on its part arising from or in connection with its performance or observance of any covenant or condition on its part to be observed or performed under this Lease Agreement or the Indenture, including without limitation, (i) any injury to, or the death of, any person or any damage to property at the Project, or in any manner growing out of or connected with the use, nonuse, condition or occupation of the Project or any part thereof, (ii) any damage, injury, loss or destruction of the Project, (iii) any other act or event occurring upon, or affecting, any part of the Project, (iv) violation by the Lessee of any contract, agreement or restriction affecting the Project or the use thereof of which the Lessee has notice and which shall have existed at the commencement of the term hereof or shall have been approved by the Lessee, or of any law, ordinance or regulation affecting the Project or any part thereof or the ownership, occupancy or use thereof, and (v) liabilities, losses, damages, claims or actions arising out of the offer and sale of the Bond or a subsequent sale of the Bond or any interest therein, unless the same resulted from a representation or warranty of the Lessor in the Lease Agreement or any certificate delivered by the Lessor pursuant thereto being false or misleading in a material respect and such representation or warranty was not based upon a similar representation or warranty of the Lessee furnished to the Lessor in connection therewith. The covenants of indemnity by the Lessee contained in this Section shall survive the termination of this Lease Agreement.

The Lessee hereby agrees that the Lessor shall not incur any liability to the Lessee, and shall be



indemnified against all liabilities, in exercising or refraining from asserting, maintaining or exercising any right, privilege or power of the Lessor under the Indenture if the Lessor is acting in good faith and without gross negligence or in reliance upon a written request by the Lessee.

#### ARTICLE V

##### PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 5.1 Damage and Destruction.** (a) If the Project or any part thereof is damaged or destroyed by fire or other casualty, the Lessee shall, as promptly as practicable, repair, rebuild, restore or replace the property damaged or destroyed (herein referred to as the "Restoration Work"). If the amount of loss proceeds of insurance on the Project available to pay the costs of such Restoration Work is not sufficient for such purpose, the Lessee shall complete the Restoration Work at its own expense. At the request of the Lessee, the Lessor shall enter into contracts and purchase orders necessary for the Restoration Work.

(b) If the Bond has been fully paid, loss proceeds from any insurance payable with respect to such casualty shall be paid to the Lessee and shall be applied by the Lessee to pay the costs of the Restoration Work.

(c) If the Bond has not been fully paid, loss proceeds from any insurance payable with respect to such casualty shall be applied as follows:

(i) If the loss proceeds from insurance payable with respect to any casualty are not greater than 15% of the principal amount of the Bond then outstanding, such loss proceeds shall be payable to the Lessee and shall be applied by it either to pay the costs of the Restoration Work or to redeem principal of the Bond.

(ii) If the loss proceeds from insurance payable with respect to any casualty are greater than 15% of the principal amount of the Bond then outstanding, such loss proceeds shall be paid to the Mortgagee and, after first applying such loss proceeds to the payment of all costs and expenses (including attorneys' fees) reasonably incurred by the Mortgagee in obtaining such loss proceeds, shall, at the option of the Mortgagee, be applied to pay the costs of the Restoration Work, or held as a reserve against the Bond.

Section 5.2 Condemnation. (a) If title to, or the use of, the Project or any part thereof shall be taken by the exercise of the power of eminent domain and the Bond has not been fully paid, the entire proceeds of any award referable thereto shall be paid to the Mortgagee and shall be applied as provided in the Indenture.

(b) If the Bond has been fully paid, the entire proceeds of any award referred to in subsection (a) of this Section shall be paid to the Lessee and applied to the cost of acquiring, constructing and equipping additional facilities in accordance with the instructions of the Lessee, which additional facilities shall forthwith become, without further action, property of the Lessor and a part of the Project subject to this Lease Agreement.

(c) The Lessor shall cooperate in good faith with the Lessee in the conduct of any condemnation proceeding with respect to the Project and will, to the extent it may lawfully do so, permit the Lessee to appear in such proceeding in the name and on behalf of the Lessor. The Lessor will not settle, or consent to the settlement of, any condemnation proceeding without the prior written consent of the Lessee.

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

#### ARTICLE VI

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

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

(a) No such mortgage, assignment or subleasing and no dealings or transactions between the Lessor or the Mortgagee and any mortgagee, assignee or sublessee shall in any way relieve the Lessee from primary

BOOK 218 PAGE 695

liability for any of its obligations hereunder. In the event of any such mortgage, assignment or subleasing the Lessee shall continue to remain primarily liable for the payment of all rentals herein provided to be paid by it and for the performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

(b) The Lessee will not assign the leasehold interest created hereby nor sublease the Project to any person unless the operations of such assignee or sublessee are consistent with, and in furtherance of, the purpose of the Enabling Law. The Lessee shall, prior to any such assignment or sublease, demonstrate to the reasonable satisfaction of the Mortgagee that the operations of such assignee or sublessee will preserve the character of the Project as a "project" under the Enabling Law.

(c) The Lessee will not assign the leasehold interest created hereby nor sublease the Project or any part thereof to any person if the result of such assignment or sublease would be to cause the interest on the Bond to be subject to state income tax.

(d) The Lessee shall within thirty days after the delivery thereof furnish to the Lessor and the Mortgagee a true and complete copy of each such assignment or sublease and assign its rights thereunder to the Lessor as additional security for the obligations of the Lessee hereunder.

Section 6.2 Assignment of Lease Agreement and Rents by the Lessor. The Lessor has, simultaneously with the delivery of this Lease Agreement, assigned its interest in and pledged any money receivable under this Lease Agreement to the Mortgagee as security for payment of the Bond, and the Lessee hereby consents to such assignment and pledge. The Lessor has in the Indenture obligated itself to follow the instructions of the Mortgagee in the election or pursuit of any remedies herein vested in it. The Mortgagee shall have all rights and remedies herein accorded to the Lessor and any reference herein to the Lessor shall be deemed, with the necessary changes in detail, to include the Mortgagee, and the Mortgagee is deemed to be a third party beneficiary of the covenants, agreements and representations of the Lessee herein contained. Prior to the payment in full of the Bond, the Lessor and the Lessee shall have no power to modify, alter, amend or terminate this Lease Agreement without the

prior written consent of the Mortgagee and then only as provided in the Indenture. The Lessor will not amend the Indenture or any indenture supplemental thereto without the prior written consent of the Lessee. Neither the Lessor nor the Lessee will unreasonably withhold any consent herein or in the Indenture required of either of them. The Lessee shall not be deemed to be a party to the Indenture or the Bond and reference in this Lease Agreement to the Indenture and the Bond shall not impose any liability or obligation upon the Lessee other than its specific obligations and liabilities undertaken in this Lease Agreement.

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

Section 6.4 Prepayment of Bond. The amount necessary to prepay the entire principal balance of the Bond shall be deemed to include, in addition to the unpaid principal amount of the Bond, all interest on the Bond to the date on which prepayment is to be made and all other obligations under the Indenture that shall become due and payable on or prior to the prepayment date, including the Escrow Agent's and the Mortgagee's fees, charges and expenses.

The Lessee may, at its election and at any time while it is not in default hereunder, pay to the Mortgagee such amount as shall be sufficient to enable the Lessor to prepay, in accordance with its terms, the entire unpaid

principal balance of the Bond or any lesser portion thereof not less than \$1,000. If less than the entire unpaid principal balance of the Bond is prepaid, the Lessee shall continue to pay Basic Rent each month in the full amount of each installment provided in Section 3.2 hereof until the principal of and interest on the Bond have been paid in full, it being intended that any partial prepayment of principal shall not serve to postpone the due date of any subsequent monthly installments nor change the amount of such installments coming due before the principal and interest on the Bond have been paid in full.

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

**Section 6.5 References to Bond Ineffective After Bond Paid.** Upon payment in full of the Bond and of all fees and charges of the Mortgagee and the Escrow Agent, all references in this Lease Agreement to the Bond, the Indenture and the Mortgagee shall be ineffective and the Mortgagee shall not thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested.

In the event the Bond is fully paid prior to the termination of this Lease Agreement, the Lessee shall be entitled to the use and occupancy of the Project from the date of such payment until the expiration of the term provided for in Section 3.1 hereof without the payment of any further Basic Rent or additional rent under Section 3.2 hereof but otherwise on all of the terms and conditions hereof, except that the provisions of Sections 5.1, 5.2, 5.3 and 7.2 hereof shall not apply and except further that the Lessee shall not be required to carry any insurance for the benefit of the Mortgagee, but shall be required to carry insurance under Section 4.3 hereof for the benefit of the Lessor as its interest may appear. If, after full payment of the Bond, there is any surplus remaining in the Construction Fund, the Lessor will promptly pay such surplus to the Lessee.



BOOK 218 PAGE 698

## ARTICLE VII

### PARTICULAR COVENANTS OF THE LESSEE

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

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

Section 7.3 Special Covenants. Until the Bond is fully paid:

(a) The Lessee will maintain proper books of record and account, in which full and correct entries will be made in accordance with a standard system of accounting for cash basis taxpayers, consistently applied and consistent with the tax reporting and tax returns of the Lessee, of all its business and affairs and will provide to the Bondholder such sworn financial statements of the Guarantors and such financial reports as the Bondholder may reasonably request.

(b) The Lessee will duly pay and discharge all taxes, assessments and other governmental charges and liens lawfully imposed on the Lessee and upon the properties of the Lessee, provided, however, the Lessee shall not be required to pay any taxes, assessments or other governmental charges so long as in good faith it shall contest the validity thereof by appropriate legal proceedings.

(c) The Lessee will maintain and preserve its existence as a general partnership under the laws of the State and will not voluntarily dissolve without first discharging its obligations under this Lease Agreement and will comply with all valid laws, ordinances, regulations and requirements applicable to it or its property and the Project.

Section 7.4 Financing and Continuation Statements.  
The Lessee hereby grants to the Lessor a security interest under the Alabama Uniform Commercial Code in the items described in Exhibit A attached hereto and made a part hereof by this reference. The Lessee shall file with the Mortgagee not less than thirty days nor more than six months prior to each date on which continuation statements are required to be filed under Section 7-9-403 of the CODE OF ALABAMA 1975 (or successor statute or law), an opinion of counsel (who may also be counsel for the Lessee) stating that:

(a) all action has been taken with respect to the filing, recording, refiling and rerecording of financing statements, continuation statements, documents or other notices as is necessary to perfect and to maintain the Lessor's title to and interest in the fixtures constituting a part of the Project and to perfect and maintain the security interest of the Mortgagee in such property for the benefit of the Bondholder under the Indenture, and

(b) all actions similar to those described in (a), if any, required or appropriate to be taken during the next succeeding twelve-month period, based on then existing law, have been taken.

The Lessee shall file, record, refile and rerecord all financing statements, continuation statements, documents and notices necessary to accomplish the aforesaid and to enable counsel to render such opinion.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

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



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

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) of this Section, for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Lessor or the Mortgagee, unless the Mortgagee shall agree in writing to an extension of such time prior to its expiration, which agreement shall not be unreasonably withheld if corrective action is instituted by the Lessee promptly upon receipt of the written notice and is diligently pursued until the default is corrected.

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

(d) Any warranty or representation of the Lessee herein or in any certificate or application signed in connection herewith or the issuance or purchase of the Bond shall prove to have been false or incorrect in any material respect.

(e) A judgment for the payment of money shall be entered against the Lessee and remain unsatisfied for thirty days without a stay of execution.

(f) A default under any other indebtedness of the Lessee of more than \$50,000 or under any instrument

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

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

securing any such indebtedness and the expiration of any applicable period of grace.

(g) Failure by the Guarantors to observe and perform any covenant, condition or agreement on their part to be observed or performed for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee and Guarantors by the Lessor or the Mortgagee, unless the Mortgagee shall agree in writing to an extension of such time prior to its expiration, which agreement shall not be unreasonably withheld if corrective action is instituted by the Guarantors promptly upon receipt of the written notice and is diligently pursued until the default is corrected.

(h) The death of a Guarantor; provided that such event shall not be an event of default if the estate of the Guarantor shall be kept open until the Bond is paid in full, or provision therefor satisfactory to the Bondholder has been made.

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

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

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

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

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

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

**Section 8.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor or the Mortgagee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

**Section 8.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Lessee should default under any of the provisions of this Lease Agreement and the

Lessor or the Mortgagee (in its own name or in the name and on behalf of the Lessor) should employ attorneys or incur other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee will on demand therefor pay to the Lessor or the Mortgagee (as the case may be) the reasonable fee of such attorneys and such other expenses so incurred.

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

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

## ARTICLE IX

### OPTIONS

Section 9.1 Options to Terminate. The Lessee shall have, if it is not in default hereunder, the following options to cancel or terminate the term of this Lease Agreement:

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

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

Section 9.2 Option to Purchase Project Prior to Payment of the Bond. The Lessee, if not in default hereunder, shall have the option to purchase the Project at any time prior to the full payment of the Bond if any of the following shall have occurred:

(a) The Project or any part thereof shall have been damaged or destroyed (i) to such extent that, in the opinion of the Lessee, it cannot be reasonably restored within a period of four consecutive months substantially to the condition thereof immediately preceding such damage or destruction, or (ii) to such extent that, in the opinion of the Lessee, the Lessee is thereby prevented from carrying on the normal subleasing of the Project for a period of four consecutive months or (iii) to such extent that the cost of restoration thereof would exceed by more than \$50,000 the Net Proceeds of insurance carried thereon pursuant to the requirements of this Lease Agreement; or

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

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

To exercise such option, the Lessee shall, within thirty days following the event authorizing the exercise of such option, give written notice to the Lessor and to the Mortgagee and shall specify therein the date of closing such purchase, which date shall be not less than forty-five nor more than ninety days from the date such notice is mailed, and shall make arrangements satisfactory to the Mortgagee for the giving of the required notice of prepayment of the Bond. The purchase price payable by the Lessee in the event of its exercise of the option granted



in this Section shall be such an amount determined as specified in Section 6.4 hereof as shall be required to prepay the entire unpaid principal balance of the Bond. The purchase price shall be paid by the Lessee to the Mortgagee.

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

Section 9.3 Option to Purchase Project After Payment of the Bond. The Lessee, if not in default hereunder, shall also have the option to purchase the Project at any time during the 180 days following the end of the Lease Term following full payment of the Bond for a purchase price of one dollar. To exercise the option granted in this Section, the Lessee shall notify the Lessor of its intention so to exercise such option not less than forty-five days nor more than ninety days prior to the proposed date of purchase and shall on the date of purchase pay such purchase price to the Lessor.

If the option granted in this Section shall for any reason be held invalid upon the attempted exercise thereof by the Lessee following full payment of the Bond, the Lessor shall be obligated to sell the Project to the Lessee for a price of \$100. The date of closing such purchase shall be thirty days from the date of such holding.

Section 9.4 Conveyance on Exercise of Option to Purchase. At the closing of the purchase pursuant to the exercise of any option to purchase granted herein, the Lessor will upon receipt of the purchase price deliver to the Lessee documents conveying to the Lessee the property with respect to which such option was exercised, as such property then exists, subject to the following: (i) all easements or other rights, if any, required to be reserved by the Lessor under the terms and provisions of the option being exercised by the Lessee; (ii) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Lessor; (iii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; and (iv) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease Agreement. The Lessor shall also deliver to Lessee an opinion of counsel to the effect that the deed of conveyance is valid and binding on the Lessor and that the Lessor has legal authority to convey the property for less than full and adequate consideration to the Lessee.

## ARTICLE X

### MISCELLANEOUS

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

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

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

Section 10.4 Prior Agreements Cancelled. This Lease Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the Lessor and the Lessee relating to the acquisition of the Leased Realty, the construction of the Buildings, the leasing of the Project and any options to renew or to purchase; excepting however the Inducement Agreement and any deed or other instrument by which the Project, any part thereof, or any interest therein has been transferred and conveyed by the Lessee to the Lessor. Neither the Lessor nor the Lessee shall hereafter have any rights under such prior agreements but shall look solely to this Lease Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the Project.

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

Section 10.6 Binding Effect: Governing Law. This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee and their respective successors and assigns. This Lease Agreement



shall be governed exclusively by the applicable laws of the State.

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

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

**Section 10.9 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: if to the Lessor, at City Hall, Pelham, Alabama 35124, Attention: City Clerk; if to the Lessee, at P. O. Box 967, Birmingham, Alabama 35201, Attention: Charles Stephens; if to the Mortgagee at P. O. Box 11077, Pelham, Alabama 35288, Attention: Real Estate Loan Department Officer; and if to the registered owner of the Bond at the address of such owner shown on the Bond Register maintained by the Lessor at the principal office of the Mortgagee. A duplicate copy of each notice, certificate or other communication given hereunder by either the Lessor or the Lessee to the other shall also be given to the Mortgagee and the registered owner of the Bond. The Lessor, the Lessee and the Mortgagee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 10.10 Municipal Public Service Payment.** The Lessee and the Lessor acknowledge that under present law the Project is exempt from all taxation in the State, including, without limitation ad valorem taxes levied by the Municipality. The Lessee further acknowledges that public services provided by the Municipality (including, without limitation, fire and police protection) benefit the Lessee in the operation of the Project and enhance the value of the interest of the Lessee in the Project.

In order to compensate the Municipality for providing the aforesaid services, the Lessee shall pay directly to the Municipality as a third party beneficiary to this Lease Agreement (and not to the Lessor or the Mortgagee) the following amounts (the "Service Payments") during the Lease Term:

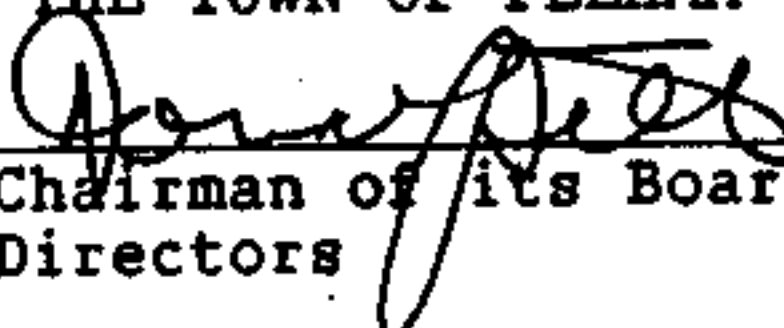
(a) On October 1, 1990, and on the first day of each October thereafter during the Lease Term, the sum of \$19,740; and

(b) On the day on which this Lease Agreement is terminated, an amount equal to the Service Payment due on the preceding October 1 multiplied by a fraction, the numerator of which is the number of days which have elapsed since the preceding October 1 and the denominator of which is 365; provided, however, that no such installment under clause (b) shall be payable if the Lease Agreement is terminated on any October 1.

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

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Agreement to be executed in their respective names, the Lessor has caused its corporate seal to be hereunto affixed and attested, all by their duly authorized officers or partners, and the parties have caused this Lease Agreement to be dated as of October 1, 1988.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

By   
Chairman of its Board of  
Directors

SEAL

Attest: 

Its Secretary

[Signature continued on next page]

VALLEYDALE BUSINESS CENTER, an  
Alabama general partnership

By

  
A General Partner

By

  
A General Partner

By

  
A General Partner

By

  
A General Partner

BOOK 218 PAGE 709

STATE OF ALABAMA  
JEFFERSON COUNTY

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

Given under my hand this the 14<sup>th</sup> day of December, 1988.

Carol S. Crenshaw  
Notary Public

NOTARIAL SEAL

My commission expires: 2-10-92

STATE OF ALABAMA  
JEFFERSON COUNTY

I, Linda Dail Ashe, a Notary Public in and for said County in said State, hereby certify that Charles H. Stephens, whose name as general partner in Valleydale Business Center, an Alabama general partnership, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand this the 12<sup>th</sup> day of December, 1988.

Linda Dail Ashe  
Notary Public

NOTARIAL SEAL

My commission expires: 7-6-89

STATE OF ALABAMA  
JEFFERSON COUNTY

I, Carolee S. Greenhow, a Notary Public in and for said County in said State, hereby certify that Marvin R. Engel, whose name as general partner in Valleydale Business Center, an Alabama general partnership, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand this the 8<sup>th</sup> day of December, 1988.

Carolee S. Greenhow  
Notary Public

NOTARIAL SEAL

My commission expires: 2-10-92

STATE OF ALABAMA  
JEFFERSON COUNTY

I, Linda Dil Ashe, a Notary Public in and for said County in said State, hereby certify that Marc A. Eason, whose name as general partner in Valleydale Business Center, an Alabama general partnership, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand this the 12<sup>th</sup> day of December, 1988.

Linda Dil Ashe  
Notary Public

NOTARIAL SEAL

My commission expires: 7-6-89

BOOK 218 PAGE 711



STATE OF ALABAMA  
JEFFERSON COUNTY

I, Linda Paul Ashe, a Notary Public in and for said County in said State, hereby certify that David Bunkin, whose name as general partner in Valleydale Business Center, an Alabama general partnership, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand this the 12<sup>th</sup> day of December, 1988.

Linda Paul Ashe  
Notary Public

NOTARIAL SEAL

My commission expires: 7-6-89

BOOK 218 PAGE 712

EXHIBIT A  
TO  
LEASE AGREEMENT  
Dated as of October 1, 1988

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

Part of the East 1/2 of Southwest 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:  
 Begin at the Northwest corner of the East 1/2 of Southwest 1/4 of Section 30, Township 19 South, Range 2 West; thence run South along the West line of said East 1/2 of the Southwest 1/4 for 719.63 feet to a point; thence turn an angle to the left of 87 degrees 44 seconds and run 280.97 feet to point on the West right of way line of Business Center Drive, dedicated on map of Valleydale Business Center as recorded in Map Book 8, Page 170, in the Office of Probate Court, Shelby County, Alabama; thence turn an angle to the left of 92 degrees 16 minutes and run North along the West right of way line of Business Center Drive for 57.45 feet to a point on a curve to the left, said curve having a central angle of 42 degrees 50 minutes and a radius of 25 feet; thence run along the arc of said curve and right of way for 18.69 feet to the end of said curve and the beginning of a curve to the right having a radius of 50 feet and a central angle of 265 degrees 40 minutes 06 seconds; thence run along the arc of said curve and right of way for 231.83 feet to a point; thence at tangent to said curve 132 degrees 53 minutes left and run 316.61 feet to a point; thence turn an angle to the left of 90 degrees 00 minutes and run 629.76 feet to a point on the North line of said East 1/2 of Southwest 1/4; thence turn an angle to the left of 87 degrees 41 minutes and run West along the North line of said East 1/2 of said Southwest 1/4 for 663.97 feet to the point of beginning. Situated in Shelby County, Alabama.

According to survey of Miller, Triplett & Miller Engineers, Inc.

BOOK 218 PAGE 714

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

88 DEC 20 AM 8:36

*Thomas A. Sullivan, Jr.*  
 JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		_____
3. Recording Fee		107.50
4. Indexing Fee		1.00
TOTAL		108.50