

STATE OF ALABAMA
SHELBY COUNTY

1400

THIS MORTGAGE made and entered into by The Industrial Development Board of the City of Pelham, 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 AmSouth Bank N.A., a national banking association with its principal office in the City of Birmingham (hereinafter called the "Mortgagee"), 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 4 of Chapter 54 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-54-80 et seq.) to acquire, own, mortgage, lease and dispose of the properties hereinafter described for the purposes set forth in said Article 4; and

WHEREAS, the Borrower has made the necessary arrangements with Walker Drug Company, a general partnership, as Lessee, for the acquisition of a warehouse (the "Project"), and the Borrower has further entered into an inducement agreement with the Lessee specifying the terms and conditions of the acquisition of the Project (hereinafter called the "Inducement Agreement"); and

WHEREAS, pursuant to the Inducement Agreement the Lessee has been authorized to proceed with the construction of the Project and to loan to the Borrower necessary funds in connection therewith; and

WHEREAS, the Lessee has made the necessary arrangements with the Mortgagee for the Mortgagee to loan such funds to the Lessee so that the Lessee can loan them to the Borrower; and

WHEREAS, the Borrower is authorized under the said Article 4 to mortgage all or any part or parts of its projects as security for any agreements made in connection with the issuance of any bonds of the Borrower; and

WHEREAS, this mortgage is entered into pursuant to such power and as an accommodation mortgage to secure the Mortgagee for moneys which it may advance to the Lessee for loan to the Borrower for the Project or on behalf of the Borrower with respect to the Project; and

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WHEREAS, the obligation of the Lessee to repay the moneys loaned by the Mortgagee to the Lessee and by the Lessee to the Borrower pursuant to the Inducement Agreement is herein called the "Obligation"; and

WHEREAS, all things necessary to make the Obligation the valid, binding and legal obligation 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 have been done and performed, and duly authorized;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

GRANTING CLAUSES

For and in consideration of the premises, and in order to secure the payment of the Obligation and the performance and observance by the Borrower of all the covenants expressed or implied herein, the Borrower does hereby grant, bargain, sell, convey, assign, mortgage and pledge unto the Mortgagee and its assigns forever:

I.

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All building materials, equipment, machinery, furnishings, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of, or used or useful in connection with, the Project, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, signs, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compacters, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Project.

II.

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 Mortgagee.

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 Mortgagee and its assigns forever;

PROVIDED, HOWEVER, that if the Lessee, its successors or assigns, shall well and truly pay, or cause to be paid, the Obligation, according to the true intent and meaning thereof, and the Borrower shall well and truly keep, perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, 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 Mortgaged Property is to be held and disposed of, which said conditions the Mortgagee 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:

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

"Event of Default" means those events specified in and defined by Section 5.1 hereof.

"Indenture" means these presents as from time to time supplemented and amended.

"Mortgaged Property" means (i) the items described or referred to in granting clause I hereof, and (ii) all properties which, under the terms hereof, are or subsequently become subject to the lien of this Indenture.

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

"Permitted Encumbrances" means, as of any particular time, (i) 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, and (ii) 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.

"State" means the State of Alabama.

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

Section 1.4 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 1.5 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 Mortgagee or either of them shall inure to the benefit of and bind their respective successors and assigns.

Section 1.6 Limitation of Rights. Nothing expressed or mentioned in or to be implied from this Indenture or the Obligation is intended or shall be construed to give any person other than the parties hereto and their successors hereunder 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 and the Lessee as herein provided.

No recourse shall be had for the payment of the Obligation 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.

ARTICLE II

THE OBLIGATION

The Obligation and all obligations by the Borrower hereunder are limited obligations payable solely from revenues and receipts derived from the leasing or sale of the Mortgaged Property and as authorized by the Enabling Law and provided herein. No covenant or agreement contained in this Indenture or the Obligation 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 rentals, revenues and receipts derived from or in connection with the Mortgaged Property and the moneys received under the Inducement Agreement, and nothing in the Obligation or in this Indenture shall be considered as pledging any other funds or assets of the Borrower. The Municipality is not liable for payment of the Obligation or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Borrower. Neither the Obligation nor any agreement of the Borrower shall be construed to constitute an indebtedness of the Municipality within the meaning of any constitutional or statutory provision whatever.

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ARTICLE III

COVENANTS BY THE BORROWER

The Borrower, for itself, its successors and assigns, covenants and agrees with the Mortgagee as follows:

Section 3.1 Performance of Covenants by Borrower. The Borrower will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Inducement Agreement, and in all proceedings of its Board of Directors pertaining thereto.

Section 3.2 Inspection of Books. All books and documents in the Borrower's possession relating to the Mortgaged Property and the revenues and receipts derived from the Mortgaged Property 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 Mortgagee may from time to time designate.

Section 3.3 Title to Mortgaged Property. The Borrower has title to and the beneficial interest in and is lawfully possessed of the Mortgaged Property 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 Mortgagee, its successor and assigns, against the claims and demands of all persons whomsoever, except those claiming under Permitted Encumbrances. All of the Mortgaged Property is free and clear of and from all and any liens and encumbrances of every nature and kind, except Permitted Encumbrances, 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 3.4 Further Assurances: Recording Indenture. 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 Mortgagee shall reasonably require for the better assuring, assigning, transferring, pledging and confirming unto the Mortgagee 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

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present or future law in order fully to preserve, continue and protect the security of the Obligation and the rights and remedies of the Mortgagee. 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 all financing statements and other security instruments relative thereto to 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.

ARTICLE IV

POSSESSION, USE, DESTRUCTION AND CONDEMNATION

Section 4.1 Lessee's Right to Possession of the Mortgaged Property. So long as the Lessee is not in default under the provisions of the Lease Agreement, the Lessee shall be entitled to possession of the Mortgaged Property and all other rights granted to the Lessee under the Inducement Agreement.

Section 4.2 Condemnation or Destruction of or Damage to Mortgaged Property. In the event of condemnation or destruction of or damage to the Mortgaged Property, all condemnation and insurance proceeds referable thereto shall be paid to the Mortgagee and at its option applied to (a) the reduction of debt owed by the Lessee with respect to the Mortgaged Property, or (b) the purchase of other property to constitute a part of the Mortgaged Property.

Section 4.3 Prohibition of Mortgages. The Borrower will not mortgage, pledge or otherwise encumber the Mortgaged Property or any part thereof.

ARTICLE V

DEFAULT PROVISIONS AND REMEDIES OF MORTGAGEE

Section 5.1 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 Lessee to pay any installment of principal or interest on its obligations to the Mortgagee 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 five days after such installment becomes due and payable;

(b) Failure by the Borrower to perform any of the agreements on its part herein contained after five days' written notice of such failure (which notice must state that it is a "Notice of Default" hereunder) made by the Mortgagee to the Borrower, unless during such period 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; or

(d) An event of default under the Loan Agreement between the Lessee and the Mortgagee respecting the Project.

Section 5.2 Remedies on Default. Whenever any Event of Default shall have happened and be subsisting:

(a) The Mortgagee may proceed to protect and enforce its rights hereunder 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 Mortgagee shall deem most effectual to protect and enforce its rights hereunder.

(b) The Mortgagee 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 Mortgaged Property. Any such receiver shall, except as herein otherwise provided, have all the usual powers and duties of receivers in similar cases.

(c) The Mortgagee may, in its discretion, enter upon the land on which it is located and take possession of the Mortgaged Property 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, alterations, additions and improvements thereto and thereon as may seem judicious, as effectually as the Borrower could do.

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

(1) sell, or cause to be sold, all and singular the Mortgaged Property, and all the estate, right, title and interest, claim and demand therein, such sale or sales to be made at public outcry at the main door of the County Courthouse of the County in which the Mortgaged Property is situated, at such time or times and upon such terms as may be required by law or as the Mortgagee 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 5.3 Sale of Mortgaged Property. On any sale of the Mortgaged Property or any part thereof by the Mortgagee pursuant to any of the foregoing powers or pursuant to judicial authority,

(a) The whole of the Mortgaged Property shall be sold in one lot and as an entirety, unless the Mortgagee shall deem such sale as an entirety to be illegal or impracticable or inadvisable by reason of some statute or other cause.

(b) Any machinery, equipment or personal property constituting a part of the Mortgaged Property 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 Mortgaged Property or any part thereof at the place of sale upon any foreclosure sale thereof.

(c) The Mortgagee 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.

(d) The Mortgagee may bid for and purchase the Mortgaged Property, or the portion thereof to be sold, at such sale.

(e) The Mortgagee 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.

(f) The purchaser upon paying the purchase money to the Mortgagee 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 Mortgagee of any part of the purchase money.

Section 5.4 Application of Proceeds of Foreclosure Sale. Any money collected by the Mortgagee pursuant to a foreclosure sale of the Mortgaged Property shall be applied as follows:

First. To the payment of all necessary expenses incident to said sale.

Second. To the payment of all amounts lawfully due and owing to the Mortgagee under the Obligation, this Indenture and the Loan Agreement.

Third. To the Borrower or whomsoever may be entitled thereto.

Section 5.5 Remedies Cumulative. No remedy herein conferred upon or reserved to 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 hereunder or now or hereafter existing at law or in equity or by statute.

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Section 5.6 Delay or Omission Not a Waiver. No delay or omission of the Mortgagee 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 Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

Section 5.7 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Indenture invalid or unenforceable.

ARTICLE VI

MISCELLANEOUS

Section 6.1 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 as provided in the Loan Agreement, or if to the Borrower, at City Hall, Pelham, Alabama 35124. A duplicate copy of each notice required to be given hereunder by either the Borrower or the Mortgagee shall also be given to the Lessee, and a duplicate copy of each notice required to be given hereunder by the Mortgagee to either the Borrower or the Lessee shall also be given to the other. The Borrower, the Lessee and the Mortgagee may, by notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 6.2 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 6.3 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 who is thereunto duly authorized, and the Borrower has caused this Indenture to be dated as of May 16, 1990.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF PELHAM

By [Signature]
Chairman of its Board of
Directors

ACKNOWLEDGMENT OF BORROWER

STATE OF ALABAMA
COUNTY OF SHELBY

I, Robert H. Walston, a Notary Public in and for said County in said State, do hereby certify that Daniel M. Spitzer, whose name as Chairman of the Board of Directors of The Industrial Development Board of the City of Pelham, a public corporation, is signed to the foregoing Mortgage and Indenture and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage and Indenture, 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 15th day of May, 1990.

Robert H. Walston
Notary Public

NO TAX COLLECTED

NOTARIAL SEAL

My commission expires: 12-30-90

This instrument prepared by:
R. H. Walston
Cabaniss, Johnston, Gardner,
Dumas & O'Neal
1700 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 252-8800

1. Doc. Fee	\$	
2. Notary Fee	\$	
3. L. & C. Fee	\$	3.00
4. Int. Fee	\$	5.00
5. P. & A. Fee	\$	1.00
6. Certified Fee	\$	1.00
Total	\$	10.00

90 MAY 21 AM 9:54

JUDGE OF PROBATE

