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**TRUST INDENTURE**

Dated December 1, 1991

Between

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HOOVER**

and

**SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION**

Relating to the issuance of  
\$5,000,000  
Revenue Bonds  
(Bud's Best Cookies, Inc. Project),  
Series 1991  
by  
The Industrial Development Board  
of the City of Hoover

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## **TRUST INDENTURE**

**THIS TRUST INDENTURE** dated December 1, 1991 is entered into by **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HOOVER**, a public corporation organized under the laws of the State of Alabama (the "Issuer"), and **SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION**, a national banking association with its principal place of business in Birmingham, Alabama (the "Trustee").

### **Recitals**

The Issuer has duly authorized the creation, execution and delivery of its \$5,000,000 aggregate principal amount of Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991 (the "Bonds") pursuant to this Indenture.

The Bonds are being issued for the purpose of financing a portion of the costs of acquiring, constructing and equipping certain facilities for the manufacture of cookies and other similar food products (the "Project").

The Issuer and Bud's Best Cookies, Inc., a corporation organized under the laws of the State of Alabama ("Bud's Best Cookies"), will enter into a Lease Agreement dated December 1, 1991 (the "Lease Agreement"), whereby the Issuer will agree to lease the Project to Bud's Best Cookies and Bud's Best Cookies will agree to pay rentals to the Issuer at such times and in such amounts as shall be sufficient to pay when due the principal of, premium (if any) and interest ("Debt Service") on the Bonds. Pursuant to this Indenture the Issuer will assign and pledge to the Trustee all the Issuer's rights under the Lease Agreement, except for certain rights relating to indemnification, reimbursement of expenses and receipt of notices and other communications.

As security for the payment of Debt Service on the Bonds, Bud's Best Cookies will enter into a Guaranty Agreement dated December 1, 1991 (the "Bond Guaranty") in favor of the Trustee, whereby Bud's Best Cookies will guarantee payment when due of Debt Service on the Bonds.

Bud's Best Cookies will cause SouthTrust Bank of Alabama, National Association (the "Bank") to issue an irrevocable letter of credit in favor of the Trustee to enable the Trustee to pay Debt Service on the Bonds and to pay the purchase price of Bonds tendered for purchase pursuant to the mandatory or optional tender provisions of this Indenture. The initial letter of credit to be delivered to the Trustee and any substitute letter of credit delivered to the Trustee pursuant to this Indenture are herein referred to as the "Letter of Credit".

The initial Letter of Credit will be issued by the Bank pursuant to a Letter of Credit Application and Reimbursement Agreement dated December 1, 1991 (the "Credit Agreement") between the Bank and Bud's Best Cookies whereby Bud's Best Cookies will agree, among other



things, to reimburse the Bank for all amounts drawn by the Trustee pursuant to the initial Letter of Credit.

As security for Bud's Best Cookies' obligations under the Credit Agreement, Bud's Best Cookies and the Issuer shall execute a Mortgage and Security Agreement dated December 1, 1991 (the "Mortgage") in favor of the Bank, whereby the Bank will be granted a mortgage, assignment and pledge of, and security interest in, the Project, the rights of Bud's Best Cookies under the Lease Agreement and certain other collateral.

The Bonds shall be limited obligations of the Issuer payable solely out of (i) payments by Bud's Best Cookies pursuant to the Lease Agreement and Bond Guaranty, (ii) any other revenues, rentals or receipts derived by the Issuer from the leasing or sale of the Project, and (iii) money received by the Trustee from a draw on the Letter of Credit. The Trustee will not have a lien on or security interest in the Project. The Mortgage is for the sole benefit of the Bank.

All things have been done which are necessary to make the Bonds, when executed by the Issuer and authenticated and delivered by the Trustee hereunder, the valid obligations of the Issuer, and to constitute this Indenture a valid trust indenture for the security of the Bonds, in accordance with the terms of the Bonds and this Indenture.

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

It is hereby covenanted and declared that all the Bonds are to be authenticated and delivered and the property subject to this Indenture is to be held and applied by the Trustee, subject to the covenants, conditions and trusts hereinafter set forth, and the Issuer does hereby covenant and agree to and with the Trustee, for the equal and proportionate benefit (except as otherwise expressly provided herein) of all Holders (as hereinafter defined) of the Bonds, and for the benefit and security of the Bank, as follows:

**ARTICLE 1**

**Definitions and Other Provisions  
of General Application**

**SECTION 1.01 Definitions**

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) The terms defined in this Article have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular, and vice versa.

(2) The definitions in the recitals to this instrument are for convenience only and shall not affect the construction of this instrument.

(3) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to "generally accepted accounting principles" refer to such principles as they exist at the date of application thereof.

(4) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(5) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(6) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(7) The term "person" shall include any individual, corporation, partnership, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.

Act of Bankruptcy shall mean the filing of a petition in bankruptcy (or the other commencement of a bankruptcy or similar proceeding) by or against Bud's Best Cookies or the Issuer under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect or the insolvency of the Bank.

Additional Rental Payments shall mean the payments required by Section 4.03 of the Lease Agreement.

Affiliate of any specified person shall mean any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, "control" when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Authorized Denominations shall mean (i) for Bonds bearing interest at the Variable Rate or for Bonds bearing interest at a Term Rate for a Term Rate Period of 9 months or less, \$100,000 or any larger amount that is a multiple of \$5,000, and (ii) for Bonds bearing interest at a Term Rate for a Term Rate Period of more than 9 months, \$5,000 or any multiple thereof.

**Authorized Issuer Representative** shall mean the Chairman or Vice-Chairman of the Board of Directors of the Issuer or the Secretary or Treasurer of the Issuer or any other officer or agent of the Issuer authorized by the governing body of the Issuer to act as "Authorized Issuer Representative" for purposes of this Indenture and the Lease Agreement.

**Authorized Bud's Best Cookies Representative** shall mean the President of Bud's Best Cookies or any other officer or agent of Bud's Best Cookies authorized by the governing body of Bud's Best Cookies to act as "Authorized Bud's Best Cookies Representative" for purposes of this Indenture and the Lease Agreement.

**Bank** shall mean SouthTrust Bank of Alabama, National Association, a national banking association, and its successors and assigns, until a Substitute Letter of Credit shall have been accepted by the Trustee, and thereafter "Bank" shall mean the issuer of such Substitute Letter of Credit.

**Bank Indebtedness** shall mean all indebtedness or obligations of Bud's Best Cookies to the Bank under the Credit Agreement, including without limitation (i) Bud's Best Cookies' obligation to reimburse the Bank for draws made under the Letter of Credit and (ii) Bud's Best Cookies' obligation to pay fees and charges for the issuance and continuation of the Letter of Credit.

**Basic Rental Payments** shall mean the payments required by Section 4.02 of the Lease Agreement.

**Bond** shall mean any bond authenticated and delivered pursuant to this Indenture.

**Bond Fund** shall mean the fund established pursuant to Section 8.01.

**Bond Guaranty** shall mean that certain Guaranty Agreement dated December 1, 1991, executed by Bud's Best Cookies in favor of the Trustee.

**Bond Payment Date** shall mean each date (including any date fixed for redemption of Bonds) on which Debt Service is payable on the Bonds.

**Bond Purchase Fund** shall mean the fund established pursuant to Section 8.02.

**Bond Register** shall mean the register or registers for the registration and transfer of Bonds maintained by the Issuer pursuant to Section 5.01.

**Bond Registrar** shall mean the agent of the Issuer appointed as such pursuant to Section 5.01 for the purpose of registering Bonds and transfers of Bonds.

**Bondholder** when used with respect to any Bond shall mean the person in whose name such Bond is registered in the Bond Register.

**Bud's Best Cookies** shall mean Bud's Best Cookies, Inc., a corporation organized under the laws of the State of Alabama, until a successor shall have become such pursuant to the applicable provisions of the Lease Agreement and the Bond Guaranty, and thereafter "Bud's Best Cookies" shall mean such successor.

**Business Day** shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are required or authorized to remain closed in any city where the Trustee, the Tender Agent, the Remarketing Agent or the Bank maintains its place of business for performance of its obligations under this Indenture or the Letter of Credit or a day on which the payment system of the Federal Reserve is not operational.

**Cap Rate** shall mean (i) for any period during which the Bonds are secured by a Letter of Credit, the maximum rate per annum, specified therein, upon which there has been calculated the amount available to be drawn on such Letter of Credit to pay interest on the Bonds, and (ii) for any period during which the Bonds are not secured by a Letter of Credit, the rate of 12% per annum.

**Construction Fund** shall mean the fund established pursuant to Section 7.02.

**Conversion Date** shall mean the first day of any Term Rate Period.

**Credit Agreement** shall mean that certain Letter of Credit Application and Reimbursement Agreement dated December 1, 1991 between the Bank and Bud's Best Cookies, until a Substitute Letter of Credit shall have been accepted by the Trustee, and thereafter "Credit Agreement" shall mean the instrument evidencing Bud's Best Cookies' obligations with respect to such Substitute Letter of Credit.

**Credit Guarantor** shall mean Albert L. Cason.

**Credit Guaranty** shall mean that certain Guaranty Agreement dated December 1, 1991 executed by the Credit Guarantor in favor of the Bank.

**Debt Service** shall mean the principal, premium (if any) and interest payable on the Bonds.

**Defaulted Interest** shall have the meaning stated in Section 5.03.

**Determination of Taxability** shall mean, and shall occur when, (i) the Trustee receives written notice from Bud's Best Cookies, supported by an Opinion of Counsel, that interest on the Bonds is Taxable or (ii) the Internal Revenue Service shall claim in writing that interest on the Bonds is Taxable; provided, that such a claim shall not be deemed a Determination of Taxability unless Bud's Best Cookies is afforded reasonable opportunity (at its sole expense and for a period not to exceed 2 years) to pursue any judicial or administrative remedy available to Bud's Best Cookies with respect to such claim.

**Eligible Remarketing Proceeds** shall mean proceeds from the remarketing of Tendered Bonds to any person other than (i) Bud's Best Cookies, (ii) the Issuer, or (iii) any Affiliate of Bud's Best Cookies or the Issuer. The Trustee may assume that all proceeds from the remarketing of Bonds are Eligible Remarketing Proceeds unless any notice received by the Trustee from the Remarketing Agent pursuant to Section 4.06(b) indicates otherwise or the Trustee has actual notice to the contrary.

**Enabling Law** shall mean Article 4, Chapter 54, Title 11 (Section 11-54-80 et seq.) of the Code of Alabama 1975.

**Equipment** shall mean the personal property and fixtures described in Exhibit B to the Lease Agreement and all other personal property and fixtures acquired by the Issuer with proceeds of the Bonds or pursuant to any provision of the Lease Agreement, including all substitutions and replacements for such personal property and fixtures.

**Event of Default** shall have the meaning stated in Article 12. An Event of Default shall "exist" if an Event of Default shall have occurred and be continuing.

**Existing Letter of Credit** shall have the meaning assigned in Section 4.11.

**Favorable Tax Opinion** shall mean an Opinion of Counsel stating in effect that the proposed action, together with any other changes with respect to the Bonds made or to be made in connection with such action, will not cause interest on the Bonds to become Taxable.

**Federal Securities** shall mean noncallable, nonprepayable, direct obligations of, or obligations the full and timely payment of which is guaranteed by, the United States of America, excluding unit investment trusts and mutual funds.

**Financing Documents** shall mean the Indenture, the Remarketing Agreement, the Tender Agent Agreement, the Lease Agreement, the Bond Guaranty, the Credit Agreement, the Credit Guaranty and the Mortgage.

**Financing Participants** shall mean the Issuer, Bud's Best Cookies, the Bank, the Trustee, the Remarketing Agent, the Bond Registrar, the Paying Agent, the Tender Agent and the Bondholders.

**Fully Paid**, (i) when used with respect to Indenture Indebtedness, shall have the meaning stated in Section 15.01, and (ii) when used with respect to Bank Indebtedness, shall mean that all indebtedness or obligations of Bud's Best Cookies under the Credit Agreement have been paid in full.

**Holder** when used with respect to any Bond shall mean the person in whose name such Bond is registered in the Bond Register.



**Improvements** shall mean the buildings, structures and improvements now existing or to be constructed on the Project Site pursuant to Article 3 of the Lease Agreement, more particularly described in Exhibit C to the Lease Agreement.

**Indebtedness** shall mean Indenture Indebtedness and Bank Indebtedness.

**Indenture** shall mean this instrument as originally executed or as it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

**Indenture Indebtedness** shall mean all indebtedness of the Issuer at the time secured by this Indenture, including without limitation (i) all Debt Service on the Bonds and (ii) all reasonable and proper fees, charges and disbursements of the Trustee for services performed and disbursements made under this Indenture.

**Independent**, when used with respect to any person, shall mean a person who (i) is in fact independent, (ii) does not have any direct financial interest or any material indirect financial interest in any Financing Participant or in any obligor with respect to the Bonds or in any Affiliate of any Financing Participant or of any such obligor, and (iii) is not connected with any Financing Participant or any such obligor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

**Inducement Agreement** shall mean that certain Inducement Agreement dated August 26, 1991 between the Issuer and Bud's Best Cookies.

**Interest Payment Date**, when used with respect to any installment of interest on a Bond, shall mean the date specified herein and in such Bond as the fixed date on which such installment of interest is due and payable.

**Internal Revenue Code** shall mean the Internal Revenue Code of 1986, as amended.

**Issuer** shall mean The Industrial Development Board of the City of Hoover, a public corporation organized under the laws of the State of Alabama, until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Issuer" shall mean such successor corporation.

**Lease Agreement** shall mean that certain Lease Agreement dated December 1, 1991, between the Issuer and Bud's Best Cookies.

**Lease Default** shall have the meaning stated in Article 8 of the Lease Agreement. A Lease Default shall "exist" if a Lease Default shall have occurred and be continuing.

**Letter of Credit** shall mean (i) the initial letter of credit delivered to the Trustee on the date of delivery of the Bonds, and, unless the context or use indicates another or different

meaning or intent, (ii) any Substitute Letter of Credit accepted by the Trustee, (iii) any confirmation of a Letter of Credit or Substitute Letter of Credit (a "Confirmation"), or (iv) any Letter of Credit that is in addition to, rather than in substitution of, a Letter of Credit or Substitute Letter of Credit (an "Additional Letter of Credit"), delivered to the Trustee by Bud's Best Cookies or the Bank.

**Mandatory Tender** shall mean a required tender of a Bond for purchase pursuant to Section 4.05.

**Mandatory Tender Date** shall mean a date on which a Bond is to be purchased pursuant to a Mandatory Tender.

**Maturity**, when used with respect to any Bond, shall mean the date specified herein and in such Bond as the fixed date on which principal of such Bond is due and payable. After Serial Maturities are assigned to the Bonds, the term "Maturity" shall refer to the Serial Maturity of a Bond.

**Moody's** shall mean Moody's Investors Service, Inc.

**Mortgage** shall mean that certain Mortgage and Security Agreement dated December 1, 1991 executed by Bud's Best Cookies and the Issuer in favor of the Bank, until a Substitute Letter of Credit shall have been accepted by the Trustee, and thereafter "Mortgage" shall mean the instrument (if any) securing Bud's Best Cookies' obligations with respect to such Substitute Letter of Credit.

**Municipality** shall mean the City of Hoover, Alabama.

**Obligor Bonds** shall mean Bonds registered in the name of (i) the Issuer, (ii) Bud's Best Cookies, (iii) the Bank, (iv) any other obligor with respect to Debt Service on or the purchase price of Bonds, (v) any Affiliate of persons described in clauses (i) through (iv), or (vi) any nominee or other person who holds such Bonds for the benefit of any person described in clauses (i) through (v). The Trustee may assume that no Bondholder is described in clauses (v) and (vi) of this definition unless the Trustee has actual knowledge to the contrary. Pledged Bonds shall be considered Obligor Bonds.

**Office of the Tender Agent** shall mean the office of the Tender Agent for hand delivery of notices and other documents, as specified pursuant to Section 16.01.

**Office of the Trustee** shall mean the office of the Trustee for hand delivery of notices and other documents, as specified pursuant to Section 16.01.

**Opinion of Counsel** shall mean an opinion from an attorney or firm of attorneys with experience in the matters to be covered in the opinion. Except as otherwise expressly provided in this Indenture, the attorney or attorneys rendering such opinion may be counsel for one or more of the Financing Participants.



**Optional Tender** shall mean tender of a Bond for purchase at the option of the Holder thereof pursuant to Section 4.04.

**Optional Tender Date** shall mean a date on which a Bond is to be purchased pursuant to an Optional Tender.

**Outstanding** when used with respect to Bonds shall mean, as of the date of determination, all Bonds authenticated and delivered under this Indenture, except:

- (1) Bonds cancelled by the Trustee or delivered to the Trustee for cancellation,
- (2) Bonds for whose payment or redemption money in the necessary amount has been deposited with the Trustee in trust for the Holders of such Bonds, provided that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made,
- (3) Unsurrendered Bonds for the purchase of which money in the necessary amount has been deposited in the Bond Purchase Fund and is held in trust for the Holders of such Unsurrendered Bonds, and
- (4) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Obligor Bonds shall be disregarded and deemed not to be Outstanding. Obligor Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that Bonds registered in the name of such pledgee as beneficial owner would not be considered Obligor Bonds.

**Paying Agent** shall mean the Trustee and any other person authorized by the Issuer to pay Debt Service on any Bonds on behalf of the Issuer.

**Permitted Encumbrances** shall mean the liens and encumbrances described in Exhibit E to the Lease Agreement.

**Pledged Bonds** shall mean Bonds purchased pursuant to the Optional or Mandatory Tender provisions of this Indenture with money drawn under the Letter of Credit and held by the Tender Agent or Trustee for the benefit of, or registered in the name of, the Bank, as pledgee, pursuant to Section 4.06 and the Credit Agreement.

**Post-Default Rate** shall mean (i) when used with respect to any payment of Debt Service on any Bond, the rate specified in such Bond for overdue installments of Debt Service on such

Bond, computed as provided in such Bond, and (ii) when used with respect to all other payments due under this Indenture or the Lease Agreement, a variable rate equal to the Trustee's prime rate plus 2%, computed on the basis of a 365 or 366-day year, as the case may be, for actual days elapsed.

**Project** shall mean (i) the Project Site, (ii) the Improvements and all other buildings, structures and improvements now or hereafter located on the Project Site, and (iii) the Equipment.

**Project Costs** shall have the meaning assigned in Section 3.02 of the Lease Agreement.

**Project Revenues** shall have the meaning stated in the granting clause of Article 2 entitled "Project Revenues and Lease Agreement".

**Project Site** shall mean the real property and interests therein described in Exhibit A to the Lease Agreement.

**Qualified Investments** shall mean:

- (1) Federal Securities,
- (2) an interest in any trust or fund that invests solely in Federal Securities,
- (3) a certificate of deposit issued by, or other interest-bearing deposit with, any bank organized under the laws of the United States of America or any state thereof (including without limitation the Trustee), provided that (i) such bank has capital, surplus and undivided profits of not less than \$50,000,000, (ii) such deposit is insured by the Federal Deposit Insurance Corporation, or (iii) such deposit is collaterally secured by the issuing bank by pledging Federal Securities having a market value (exclusive of accrued interest) not less than the face amount of such certificate less the amount of such deposit insured by the Federal Deposit Insurance Corporation, and
- (4) a repurchase agreement with respect to Federal Securities, provided that the Federal Securities subject to such repurchase agreement are held by or under the control of the Trustee pursuant to a perfected security interest free and clear of third-party liens.

**Rating Agency** shall mean Moody's, S & P and any other nationally recognized securities rating agency.

**Regular Record Date** shall mean (i) with respect to any Variable Rate Interest Payment Date, the day immediately prior to such Interest Payment Date, (ii) with respect to any Term Rate Interest Payment Date for a Term Rate Period of less than 6 months, the day immediately prior to such Term Rate Interest Payment Date, and (iii) with respect to any Term Rate Interest

Payment Date for a Term Rate Period of 6 months or more, the 15th day (whether or not a Business Day) of the month next preceding such Term Rate Interest Payment Date.

**Reimbursement Funds** shall have the meaning assigned in Section 4.06.

**Reimbursement Notice** shall have the meaning assigned in Section 4.06.

**Remarketing Agent** shall mean Sterne, Agee & Leach, Inc., until a successor Remarketing Agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Remarketing Agent" shall mean such successor.

**Remarketing Agreement** shall mean the agreement entered into by the Issuer, the Trustee and the Remarketing Agent pursuant to Section 13.12.

**S & P** shall mean Standard & Poor's Corporation.

**Serial Maturity** shall mean the Maturity of a Bond after the aggregate Maturities of the Bonds have been adjusted pursuant to Section 4.01(c) to correspond with the remaining scheduled mandatory redemption requirements. The original Maturity of the Bonds shall be one of the Serial Maturities.

**Special Funds** shall mean the Bond Fund, the Construction Fund, the Bond Purchase Fund and any other fund or account established pursuant to this Indenture.

**Special Record Date** for the payment of any Defaulted Interest on the Bonds means a date fixed by the Trustee pursuant to Section 5.03.

**Stated Expiration Date**, when used with respect to any Letter of Credit, shall mean the date on which such Letter of Credit will, by its terms, expire unless such Letter of Credit is terminated on an earlier date in accordance with its terms. The Stated Expiration Date of any Letter of Credit may be extended as provided in Section 4.11.

**Substitute Letter of Credit** shall mean a letter of credit delivered to the Trustee in substitution for the letter of credit then held by the Trustee, as more particularly described in Section 4.11.

**Taxable** shall mean that for purposes of federal income taxation interest on the Bonds is includible in the gross income of any Holder thereof for any reason [other than the fact that such Holder is a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) (or successor provision) of the Internal Revenue Code]. Interest on the Bonds shall not be deemed "Taxable" because interest is includible in any calculation of income for purposes of an alternative minimum tax, a foreign branch profits tax or any other type of taxation other than the regular tax imposed on gross income.

**Tender Agent** shall mean any person appointed as "Tender Agent" pursuant to Section 13.13, until a successor Tender Agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Tender Agent" shall mean such successor. Until a Tender Agent is appointed, the Trustee shall perform all duties of the Tender Agent; provided that the Trustee shall not be required to maintain an office in New York, New York.

**Tender Agent Agreement** shall mean the agreement entered into by the Issuer, the Trustee and the Tender Agent pursuant to Section 13.13.

**Tender Date** shall mean an Optional Tender Date or a Mandatory Tender Date, as the case may be.

**Tendered Bonds** shall mean Bonds tendered (or deemed tendered) for purchase pursuant to the Optional or Mandatory Tender provisions of this Indenture.

**Term Rate**, when used with respect to any Bond, shall mean the fixed interest rate borne by such Bond during a Term Rate Period.

**Term Rate Interest Payment Date**, when used with respect to any Bond, shall mean a date on which interest calculated according to a Term Rate is payable on such Bond.

**Term Rate Period**, when used with respect to any Bond, shall mean a period specified by Bud's Best Cookies during which such Bond shall bear interest at a Term Rate.

**Trust Estate** shall have the meaning stated in Article 2.

**Trustee** shall mean SouthTrust Bank of Alabama, National Association, a national banking association with its principal place of business in Birmingham, Alabama, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor.

**Unsurrendered Bond** shall mean a Bond (or portion thereof) which is deemed purchased pursuant to the Optional or Mandatory Tender provisions hereof, but which has not been presented to the Trustee by the Holder thereof.

**Variable Rate**, when used with respect to any Bond, shall mean the variable interest rate borne by such Bond during a Variable Rate Period.

**Variable Rate Interest Payment Date**, when used with respect to any Bond, shall mean a date on which interest calculated at the Variable Rate is payable on such Bond.

**Variable Rate Period**, when used with respect to any Bond, shall mean a period during which such Bond shall bear interest at the Variable Rate.

**SECTION 1.02 Ownership of Bonds; Effect of Action by Bondholders**

(a) The ownership of Bonds shall be proved by the Bond Register.

(b) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Bond.

**SECTION 1.03 Effect of Headings and Table of Contents**

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**SECTION 1.04 Date of Indenture**

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

**SECTION 1.05 Separability Clause**

If any provision in this Indenture or in the Bonds shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 1.06 Governing Law**

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

**SECTION 1.07 Counterparts**

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**SECTION 1.08 Designation of Time for Performance**

Except as otherwise expressly provided herein, any reference in this Indenture to the time of day shall mean the time of day in the city where the Trustee maintains its place of business for the performance of its obligations under this Indenture.



## ARTICLE 2

### Granting Clauses

To secure the payment of Debt Service on the Bonds and all other Indenture Indebtedness and the performance of the covenants herein and in the Bonds contained, to secure the payment of Bank Indebtedness for the benefit of the Bank to the extent herein provided, and to declare the terms and conditions on which the Bonds are secured, and in consideration of the premises and of the purchase of the Bonds by the Holders thereof, the Issuer by these presents does grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Trustee, all and singular the following described property:

#### I.

### Project Revenues and Lease Agreement

All payments by Bud's Best Cookies pursuant to the Lease Agreement and all other revenues, rentals and receipts derived by the Issuer from the leasing or sale of the Project (herein referred to as "Project Revenues"), together with all rights, powers, privileges, options and other benefits of the Issuer under the Lease Agreement; provided, however, that:

(1) Project Revenues shall not include (i) payments to be made directly to the Issuer pursuant to Section 4.03(a)(3) of the Lease Agreement, (ii) indemnity payments pursuant to Section 7.09 of the Lease Agreement, (iii) public service payments pursuant to Section 7.10 of the Lease Agreement, or (iv) any payments similar to the foregoing to be made by another lessee pursuant to any lease entered into by the Issuer with respect to the Project;

(2) the Issuer shall retain the right to receive notices or other communications to be sent to it under the Lease Agreement;

(3) nothing contained in this clause shall impair, diminish or otherwise affect the Issuer's obligations under the Lease Agreement or impose any of such obligations on the Trustee; and

(4) the exercise of remedies under the Lease Agreement shall be limited as provided in Section 12.12.

**II.**

**Special Funds**

Money and investments from time to time on deposit in, or forming a part of, the Special Funds, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

**III.**

Any and all property of every kind or description which may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Indenture as additional security by the Issuer or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Lease Agreement may come into the possession or control of the Trustee or a receiver appointed pursuant to this Indenture; and the Trustee is hereby authorized to receive any and all such property as and for additional security for the Bonds and to hold and apply all such property subject to the terms hereof.

**TO HAVE AND TO HOLD** all said property, rights and privileges of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental indenture or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over or confirmed as aforesaid, or intended, agreed or covenanted so to be, together with all the appurtenances thereto appertaining (said property, rights and privileges being herein collectively called the "Trust Estate") unto the Trustee and its successors and assigns forever;

**BUT IN TRUST, NEVERTHELESS**, for the equal and proportionate benefit and security of the Holders from time to time of the Bonds without any priority of any such Bond over any other such Bond, and for the benefit and security of the Bank as herein provided;

**PROVIDED, HOWEVER**, that money collected by the Trustee pursuant to the Letter of Credit shall be used solely for the purpose of paying Debt Service on the Bonds or the purchase price of Bonds tendered for purchase pursuant to the Optional Tender or Mandatory Tender provisions hereof.

Simultaneously with the delivery of this Indenture, Bud's Best Cookies has delivered to the Trustee the initial Letter of Credit as security for the payment of Debt Service on and the purchase price of Bonds. Such Letter of Credit (and any Substitute Letter of Credit) shall be held and used by the Trustee for the purposes specified herein.

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## **ARTICLE 3**

### **Limited Liability**

#### **SECTION 3.01 Source of Payment of Bonds and Other Obligations; Disclaimer of General Liability**

(a) The Debt Service on the Bonds and any other payments required by this Indenture shall be limited obligations of the Issuer payable solely out of (i) payments by Bud's Best Cookies pursuant to the Lease Agreement and Bond Guaranty, (ii) any other Project Revenues, and (iii) money received by the Trustee from a draw on the Letter of Credit. The Bonds shall be secured by the Trust Estate. The covenants and agreements contained herein and in the Bonds do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the general credit of the Issuer, and in the event of a breach of any such covenant or agreement, no personal or pecuniary liability or charge payable directly or indirectly from the general assets or revenues of the Issuer (other than the Trust Estate) shall arise therefrom. Nothing contained in this Section, however, shall relieve the Issuer from the observance and performance of the covenants and agreements on its part contained herein or in the Bonds.

(b) The Bonds and any other payments required by this Indenture shall never constitute an indebtedness of the Municipality within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Municipality or a charge against its general credit or taxing powers.

#### **SECTION 3.02 Officers, Directors, etc. Exempt from Individual Liability**

No recourse under or upon any covenant or agreement of this Indenture, or of any Bonds, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future incorporator, officer or member of the governing body of the Issuer, or of any successor, either directly or through the Issuer, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the Bonds issued hereunder are solely corporate obligations, and that no personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, officer or member of the governing body of the Issuer or any successor, or any of them, because of the issuance of the Bonds, or under or by reason of the covenants or agreements contained in this Indenture or in any Bonds or implied therefrom.

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## ARTICLE 4

### The Bonds

#### SECTION 4.01 Specific Title and Terms

(a) The Bonds shall be entitled "Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991". The aggregate principal amount of the Bonds which may be authenticated and delivered and Outstanding is limited to \$5,000,000.

(b) The Bonds shall be issuable as registered bonds without coupons in Authorized Denominations. The Bonds shall be numbered separately from 1 upward.

(c) The Bonds shall mature on December 1, 2001; provided, however, that the Trustee shall assign Serial Maturities to all Outstanding Bonds upon request of Bud's Best Cookies, accompanied by a Favorable Tax Opinion. If such request is received by the Trustee during the 60-day period preceding any date fixed for scheduled mandatory redemption of Bonds, then, if Bonds have not already been selected for such redemption, the Trustee shall nevertheless select Bonds for redemption on such date and any Bonds so selected (or already selected) for such scheduled mandatory redemption and the related requirement for such redemption shall be excluded from the process of assigning Serial Maturities. Serial Maturities shall be assigned in such manner as shall result in retirement of principal on dates and in amounts corresponding to the principal amortization that would have resulted from the remaining scheduled mandatory redemption requirements, including the amount that would have been retired after such scheduled mandatory redemptions were effected. Prior to the assignment of Serial Maturities, Bud's Best Cookies may direct that the principal amount of Bonds previously redeemed (other than pursuant to scheduled mandatory redemption) and not already credited against scheduled mandatory redemption requirements be credited against the remaining scheduled mandatory redemption requirements in such years and in such amounts as Bud's Best Cookies shall designate. After taking into account such credits, the Trustee shall assign Serial Maturities by lot. The procedure for assigning Serial Maturities shall provide for the selection of portions (in Authorized Denominations) of the principal amount of Bonds of a denomination larger than the smallest Authorized Denomination. After Serial Maturities have been assigned, the Trustee shall notify the other Financing Participants of the results. The notice to Bondholders shall contain directions for any Bondholder whose Bond (or a portion of whose Bond) has been assigned a Serial Maturity different from the original stated Maturity to surrender such Bond to the Trustee or Tender Agent in exchange for a Bond or Bonds with the appropriate Serial Maturity. If portions of any Bond are assigned different Serial Maturities, each Bond delivered in exchange for the Bond so surrendered shall have a single Serial Maturity.

(d) The Bonds shall be dated as of the date of initial delivery thereof and shall bear interest from such date, or the most recent date to which interest has been paid or duly provided for, at the applicable rate per annum set forth in this Article.

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(e) Each Bond shall bear interest at the Variable Rate or at a Term Rate, as provided in Sections 4.02 and 4.03. All Bonds shall initially bear interest at the Variable Rate, but the interest rate on any Bond or Bonds may from time to time be converted to a Term Rate under the terms and conditions specified in Section 4.03. The Trustee shall specify on each Bond certificate, in the space provided, whether the interest rate then in effect with respect to such Bond is the Variable Rate or a Term Rate. If a Term Rate is in effect with respect to a Bond, the Trustee shall also specify on the certificate for such Bond the Term Rate and the beginning and end of the Term Rate Period.

(f) Interest at the Variable Rate and interest at a Term Rate for each Term Rate Period of less than 6 months shall be computed on the basis of a 365 or 366-day year, as the case may be, for the actual number of days elapsed. Interest at the Term Rate for each Term Rate Period of 6 months or more shall be computed on the basis of a 360-day year with 12 months of 30 days each.

(g) Interest shall be payable on overdue principal on the Bonds and (to the extent legally enforceable) on any overdue installment of interest on the Bonds at the Post-Default Rate.

(h) Interest shall be payable in arrears on the following dates (each such date being herein called an "Interest Payment Date"):

(1) with respect to interest on any Bond payable at the Variable Rate, on (i) the first day of each March, June, September and December during the Variable Rate Period and (ii) the day immediately following any Variable Rate Period (each such date being herein called a "Variable Rate Interest Payment Date");

(2) with respect to interest on any Bond payable at a Term Rate for any Term Rate Period of less than 6 months, on the day immediately following such Term Rate Period (each such date being herein called a "Term Rate Interest Payment Date"); and

(3) with respect to interest on any Bond payable at a Term Rate for any Term Rate Period of 6 months or more, (i) on June 1 and December 1 in each year and (ii) on the day immediately following such Term Rate Period (each such date being herein called a "Term Rate Interest Payment Date").

(i) Payment of interest on the Bonds due on any Interest Payment Date shall be made by check or draft mailed by the Trustee to the persons entitled thereto at their addresses appearing in the Bond Register. Such payments of interest shall be deemed timely made if so mailed on the Interest Payment Date (or, if such Interest Payment Date is not a Business Day, on the Business Day next following such Interest Payment Date). Payment of principal of (and premium, if any, on) the Bonds and payment of accrued interest on the Bonds due upon redemption on any date other than an Interest Payment Date shall be made only upon surrender thereof at the Office of the Trustee or at the office of any other Paying Agent therefor.

(j) Subsection (i) of this Section to the contrary notwithstanding, upon the request of the Bank with respect to any Pledged Bond, or upon the request of the Holder of any Bond in a principal amount of not less than \$100,000, the Trustee will make payment of the Debt Service due on such Bond by wire transfer on or before 1:00 p.m. to an account of such Holder maintained at a bank in the continental United States or by any other method providing for payment in same-day funds that is acceptable to the Trustee, provided that:

(1) such request contains adequate instructions for the method of payment,

(2) payment of the principal of (and redemption premium, if any, on) such Bond and payment of the accrued interest on such Bond due upon redemption on any date other than an Interest Payment Date shall be made only upon surrender of such Bond to the Trustee, and

(3) the cost of such transfer shall be paid by the Holder.

#### **SECTION 4.02 Variable Rate**

(a) Each Bond shall bear interest at the Variable Rate during any period other than a Term Rate Period with respect to such Bond. Each period during which the Variable Rate is in effect is herein called a "Variable Rate Period".

(b) The Variable Rate shall be a fluctuating rate per annum determined by the Remarketing Agent periodically during a Variable Rate Period as provided below in this Section.

(c) The Variable Rate with respect to any Bond shall be determined on the first day of each Variable Rate Period with respect to such Bond and on each Thursday during such Variable Rate Period (or, if such Thursday is not a Business Day, on the next succeeding Business Day). The Variable Rate so determined shall become effective (i) on the date of determination, if such date is the first day of the Variable Rate Period, or (ii) if such date is not the first day of a Variable Rate Period, on the day immediately following the date of determination, and once effective shall remain in effect until and including the next determination date or, if sooner, the end of such Variable Rate Period; provided, however, that if the Remarketing Agent fails to determine the Variable Rate on any such determination date, the last Variable Rate in effect with respect to such Bond shall remain in effect until and including the next determination date.

(d) The Variable Rate with respect to a Bond shall be determined by the Remarketing Agent and shall be the lowest interest rate that would, in the opinion of the Remarketing Agent, result in the market value of such Bond being 100% of the principal amount thereof on the date of such determination, taking into account relevant market conditions and credit rating factors as they exist on such date; provided, however, that the Variable Rate may never exceed the Cap Rate. On each Variable Rate determination date with respect to a Bond the Remarketing Agent shall give telephonic notice to the Trustee of the Variable Rate so determined, and shall

promptly confirm such notice in writing. Upon the request of the Issuer, Bud's Best Cookies, or any Bondholder, the Trustee shall confirm (by telephone and in writing, if so requested) the Variable Rate then in effect.

(e) The Variable Rate determined from time to time by the Remarketing Agent shall be conclusive and binding on the Issuer, Bud's Best Cookies, the Trustee and the Bondholders.

#### **SECTION 4.03 Term Rate**

(a) Subject to the terms and conditions of this Section, at the request of Bud's Best Cookies a fixed rate shall be established with respect to any Bond for the period specified by Bud's Best Cookies in such request. Each period during which a Term Rate is in effect is herein called a "Term Rate Period". The first day of any such Term Rate Period is herein called a "Conversion Date".

(b) The Term Rate shall be a fixed rate per annum which shall be determined by the Remarketing Agent as provided below in this Section. The Term Rate shall be applicable during the entire Term Rate Period; provided, however, that if a Term Rate is in effect when a Bond is to be purchased pursuant to the Mandatory Tender provisions of Section 4.05(a)(3) (relating to notice of an event of default under the Credit Agreement), the related Term Rate Period with respect to such Bond shall end on the day prior to such Mandatory Tender Date.

(c) The establishment of a Term Rate with respect to any Bond shall be subject to the following terms and conditions:

(1) The request to establish a Term Rate must be received by the Trustee not less than 10 days prior to the proposed Conversion Date and (except for a request to establish a Term Rate for all Bonds) must specify the principal amount and certificate number of the Bond for which a Term Rate is to be established.

(2) A Term Rate may be established for less than the entire principal amount of a Bond if both the principal amount of such Bond for which a Term Rate is to be established and the remaining portion of such Bond will be in Authorized Denominations.

(3) If such request is made during a Term Rate Period with respect to such Bond, the specified Conversion Date may not be sooner than the first day immediately following the Term Rate Period then in effect.

(4) The specified Conversion Date must be a Business Day. If the Conversion Date specified by Bud's Best Cookies is not in fact a Business Day, then the Conversion Date shall be deemed to be the next succeeding Business Day.

(5) The Term Rate Period (other than a Term Rate Period extending to the final Maturity) must end on a day immediately prior to a Business Day. If the final day of

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the Term Rate Period specified by Bud's Best Cookies is not in fact immediately prior to a Business Day, then such Term Rate Period shall be deemed to extend to the next day that is immediately prior to a Business Day.

(6) If the Letter of Credit is to be effective during the Term Rate Period, the length of the Term Rate Period shall be limited as follows:

(A) if the Term Rate Period is to be less than 6 months, the number of days in the Term Rate Period must be at least 20 days less than the number of days of interest coverage provided by the Letter of Credit;

(B) the Term Rate Period may not be longer than 6 months unless the Letter of Credit provides for payment of interest for not less than 200 days (computed on the basis of a 360-day year); and

(C) the Term Rate Period must end at least 15 days prior to the Stated Expiration Date of the Letter of Credit.

(7) A Term Rate Period of more than 5 years may not be specified unless the Letter of Credit (if any) to be effective during such Term Rate Period provides for payment of the maximum redemption premium on the Bonds that could be payable during such Term Rate Period.

(8) The Term Rate Period may not be less than 15 days.

The Trustee shall deliver a copy of any request for establishment of a Term Rate to the Issuer, the Remarketing Agent, the Tender Agent and the Bank on or before the following Business Day.

(d) After receipt of notice that a Term Rate is to be established with respect to any Bond, but not less than 3 days prior to the proposed Conversion Date, the Remarketing Agent shall determine the interest rate for the Term Rate Period (herein called the "Term Rate"), which shall be the lowest interest rate that would, in the opinion of the Remarketing Agent, result in the market value of such Bond being 100% of the principal amount thereof on the date of such determination, taking into account relevant market conditions and credit rating factors as they exist on such date, and assuming that the Term Rate Period began on such date; provided, however, that the Term Rate may not exceed the Cap Rate. The Remarketing Agent shall give telephonic notice to the Trustee of the Term Rate so determined, and shall promptly confirm such notice in writing. Upon the request of the Issuer, Bud's Best Cookies or any Bondholder, the Trustee shall confirm (by telephone) the Term Rate so determined.

(e) Notwithstanding the foregoing, a Term Rate shall not be established if

(1) Bud's Best Cookies delivers to the Trustee notice of revocation of its election to establish the Term Rate before 8:00 a.m. on the proposed Conversion Date or

(2) prior to 8:00 a.m. on the proposed Conversion Date the Trustee does not receive (i) a Favorable Tax Opinion, and (ii) the Substitute Letter of Credit (if any) that was to be effective on such Conversion Date.

If all conditions to the establishment of a Term Rate are not satisfied, the Bond shall continue (or, if a Term Rate Period ended on the preceding day, shall begin) to bear interest at the Variable Rate from the proposed Conversion Date. Notwithstanding the failure to establish a Term Rate, if a notice of Mandatory Tender has been given by the Trustee with respect to any Bond in connection with a proposed conversion to a Term Rate, such Bond shall be subject to a Mandatory Tender on the proposed Conversion Date.

(f) The Term Rate determined by the Remarketing Agent shall be conclusive and binding on the Issuer, Bud's Best Cookies, the Trustee and the Bondholders.

#### **SECTION 4.04 Optional Tenders**

(a) The Holder of any Bond shall have the right to tender such Bond to the Trustee or Tender Agent (if a Tender Agent has been appointed) for purchase in whole or in part on any Business Day during any Variable Rate Period, but not during any Term Rate Period, at a purchase price equal to 100% of the principal amount of the Bond (or portion thereof) tendered plus accrued interest to the specified purchase date (an "Optional Tender Date"). In order to exercise such option with respect to any Bond, the Holder thereof must deliver notice thereof to the Trustee, as provided below in this Section, at least 7 days prior to the proposed Optional Tender Date.

(b) Any such notice of Optional Tender must be duly executed by the Bondholder and must specify (i) the name of the registered Holder of the Bond to be tendered for purchase, (ii) the Optional Tender Date, (iii) the certificate number and principal amount of such Bond, and (iv) the principal amount of such Bond to be purchased (if such amount is less than the entire principal amount, both the amount to be purchased and the remaining amount must be in an Authorized Denomination). Such notice may be given to the Trustee in writing or by telephone, but no such telephonic notice shall be effective unless confirmed in writing delivered to the Trustee not more than 2 Business Days after such telephonic notice. The written notice of Optional Tender must be substantially in the following form or in such other form as shall be acceptable to the Trustee:



**Optional Tender Notice**

SouthTrust Bank of Alabama, National Association  
7th Floor, SouthTrust Tower  
Birmingham, Alabama 35203  
Attention: Corporate Trust Department

Re: Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991  
issued by The Industrial Development Board of the City of Hoover  
pursuant to a Trust Indenture dated December 1, 1991

The undersigned is the registered owner of the following Bond, which is  
part of the above-referenced issue of Bonds:

Certificate Number: \_\_\_\_\_  
Principal Amount: \_\_\_\_\_

The undersigned hereby elects to have (check one as appropriate, and be certain  
to designate the principal amount tendered, if less than the entire amount):

\_\_\_\_\_ the entire principal amount

\_\_\_\_\_ \$ \_\_\_\_\_ of the principal amount of such  
Bond (Note: If such amount is less than the entire principal  
amount, both the amount to be purchased and the remaining  
amount must be an Authorized Denomination, as defined in the  
Indenture)

purchased on the following date (specify a business day that is at least 7 days  
after notice of tender is delivered to the Trustee):

\_\_\_\_\_  
[Optional Tender Date]

THE UNDERSIGNED ACKNOWLEDGES THAT THIS ELECTION IS  
IRREVOCABLE AND BINDING ON THE UNDERSIGNED AND CANNOT  
BE WITHDRAWN.

Dated: \_\_\_\_\_

Print or Type

\_\_\_\_\_  
Name(s) of Bondholder(s)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

Signature

\_\_\_\_\_  
(The name(s) and signature(s) must correspond exactly to the name appearing on the registration books maintained by the Trustee)

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By \_\_\_\_\_  
(Authorized Officer)

(c) If any notice of Optional Tender specifies an Optional Tender Date that is not a Business Day, then such notice shall be deemed to specify the next following Business Day as the Optional Tender Date. Unless a notice of Optional Tender indicates that less than the entire principal amount of the Bond is being tendered for purchase, the Holder will be deemed to have tendered the Bond in its entire principal amount for purchase.

(d) Not later than the Business Day after receipt of any such telephonic or written notice of Optional Tender the Trustee shall deliver notice to the Tender Agent, the Remarketing Agent, Bud's Best Cookies and the Bank specifying (i) the principal amount of the Bond for which a notice of Optional Tender has been given and (ii) the proposed Optional Tender Date therefor.

(e) Upon delivery of a written notice of Optional Tender, the election to tender shall be irrevocable and binding upon such Holder and may not be withdrawn. The Trustee shall, in its sole discretion, determine whether, with respect to any Bond, the Holder thereof shall have properly exercised the option to have his Bond purchased pursuant to this Section.

(f) If a written notice of tender shall have been duly given with respect to any Bond, the Holder of such Bond shall deliver such Bond to the Office of the Trustee or to the Office of the Tender Agent on the Optional Tender Date, together with all necessary endorsements for transfer. If only a portion of such Bond is to be purchased (as a result of the exercise of the

Optional Tender right only with respect to such portion), the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same Maturity and interest rate and of any Authorized Denomination or Denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal amount of the Bond surrendered. Any Bond (or portion thereof) that is to be so purchased but that is not so delivered to the Trustee or Tender Agent (an "Unsurrendered Bond") shall nevertheless be deemed to have been tendered by the Holder thereof on the Optional Tender Date.

(g) On each Optional Tender Date the Trustee shall pay (by wire transfer on or before 1:00 p.m. with respect to any Holder of not less than \$100,000 in principal amount of Bonds who has requested payment of Debt Service in such manner) to the Holder of each Bond (or portion thereof) properly tendered for purchase an amount equal to 100% of the principal amount thereof plus accrued interest to the Optional Tender Date, if any. Funds for payment of the purchase price of such Bonds shall be drawn by the Trustee from the Bond Purchase Fund as provided in Section 8.02 of this Indenture.

(h) If there has been irrevocably deposited in the Bond Purchase Fund an amount sufficient to pay the purchase price of any Unsurrendered Bond, such Unsurrendered Bond shall be deemed to have been tendered for purchase and purchased from the Holder thereof on such Optional Tender Date and the Holder of such Unsurrendered Bond shall not be entitled to receive interest on such Unsurrendered Bond for any period on and after the Optional Tender Date. The Trustee shall issue a new Bond or Bonds in the same aggregate principal amount for any Unsurrendered Bond which is not tendered for purchase on any Optional Tender Date and, upon receipt by the Trustee or Tender Agent of any such Unsurrendered Bond from the Holder thereof, shall pay, or cause to be paid, the purchase price of such Unsurrendered Bond to the Holder thereof and cancel such Unsurrendered Bond.

(i) Anything in this Indenture to the contrary notwithstanding, Bondholders may exercise their Optional Tender rights notwithstanding the existence of an Event of Default.

#### **SECTION 4.05 Mandatory Tenders**

(a) The Holder of each Bond shall be required to tender such Bond to the Trustee or Tender Agent (if a Tender Agent has been appointed) for purchase on the following dates (each such date being herein called a "Mandatory Tender Date"):

(1) each proposed Conversion Date with respect to such Bond specified in a notice to the Holder thereof (whether or not a Term Rate is successfully established on such date);

(2) the date immediately following the expiration of a Term Rate Period with respect to such Bond;

(3) 14 days after the Trustee receives notice from the Bank (i) stating that an event of default, as therein defined, has occurred and is continuing under the Credit

Agreement and (ii) directing that the Bonds be purchased pursuant to the Mandatory Tender provisions of this Indenture;

(4) on any date proposed by Bud's Best Cookies for delivery of a Substitute Letter of Credit unless such Substitute Letter of Credit is to be accompanied by either (i) if any Rating Agency maintains a rating with respect to the Bonds at the time of such substitution, evidence from each such Rating Agency to the effect that such substitution will not, by itself, result in a reduction or withdrawal of its rating then assigned to the Bonds or (ii) if no Rating Agency maintains a rating with respect to the Bonds at the time of substitution, evidence that long-term deposits of the issuer of such Substitute Letter of Credit have a credit rating (gradations within a rating category being disregarded for this purpose) of not less than A by Moody's or not less than A by S & P; provided, however, that no substitution requiring a Mandatory Tender pursuant to this paragraph may be effected unless the date of substitution is, with respect to all Bonds, either a Conversion Date or a day during a Variable Rate Period; and

(5) 15 days prior to the Stated Expiration Date of the Letter of Credit.

If any of such dates is not a Business Day, the Mandatory Tender Date shall be the next succeeding Business Day.

(b) Notice of a Mandatory Tender shall be given by the Trustee by registered or certified mail, mailed to the Holder of each affected Bond at such Holder's address appearing on the Bond Register not less than 7 days prior to the Mandatory Tender Date. Such notice of Mandatory Tender shall

(1) specify the Mandatory Tender Date,

(2) state the reason for the Mandatory Tender (that is, the applicable event listed in subsection (a) of this Section), and

(3) state that such Bond shall be delivered by the Holder thereof to the Office of the Trustee or to the Office of the Tender Agent on such Mandatory Tender Date, together with all necessary endorsements for transfer, and shall be purchased on such Mandatory Tender Date at a purchase price equal to 100% of the principal amount thereof plus accrued interest, if any, and that if such Bond is not so delivered to the Trustee or Tender Agent such Bond shall nevertheless be deemed to have been tendered for purchase by the Holder thereof on the Mandatory Tender Date.

(c) Any Bond for which a notice of Mandatory Tender has been given shall be tendered by the Holder thereof on the Mandatory Tender Date, by delivering such Bond to the Office of the Trustee or the Office of the Tender Agent, together with all necessary endorsements for transfer. If only a portion of such Bond is to be purchased (as a result of the establishment of a Term Rate only with respect to such portion), the Issuer shall execute and the Trustee shall

authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same Maturity and interest rate and of any Authorized Denomination or Denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal amount of the Bond surrendered. Any such Bond (or portion thereof) that is to be so purchased but that is not so delivered to the Trustee or Tender Agent on the Mandatory Tender Date ("an Unsurrendered Bond") shall nevertheless be deemed to have been tendered for purchase by the Holder thereof on the Mandatory Tender Date.

(d) On the Mandatory Tender Date with respect to any Bond, the Trustee shall pay (by wire transfer on or before 1:00 p.m. with respect to any Holder of not less than \$100,000 in principal amount of Bonds who has requested payment of Debt Service in such manner) to the Holder of such Bond properly tendered for purchase an amount equal to 100% of the principal amount thereof plus accrued interest, if any to the Mandatory Tender Date. Funds for payment of the purchase price of such Bond shall be drawn by the Trustee from the Bond Purchase Fund as provided in Section 8.02 of this Indenture.

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(e) If there has been irrevocably deposited in the Bond Purchase Fund an amount sufficient to pay the purchase price of any Unsurrendered Bond, such Unsurrendered Bond shall be deemed to be tendered for purchase and purchased from the Holder thereof on such Mandatory Tender Date and the Holder of such Unsurrendered Bond shall not be entitled to receive interest on such Unsurrendered Bond for any period on and after the relevant Mandatory Tender Date. The Trustee shall issue a new Bond or Bonds in the same aggregate principal amount for any Unsurrendered Bond which is not tendered for purchase on any Mandatory Tender Date and, upon receipt by the Trustee or Tender Agent of any such Unsurrendered Bond from the Holder thereof, shall pay, or cause to be paid, the purchase price of such Unsurrendered Bond to the Holder thereof and cancel such Unsurrendered Bond.

(f) After notice of a Mandatory Tender has been given by the Trustee with respect to any Bond, such Bond shall be subject to Mandatory Tender notwithstanding the fact that the reasons for giving such notice cease to exist or are no longer applicable.

#### **SECTION 4.06 Purchase and Remarketing of Bonds**

(a) The Remarketing Agent will use its best efforts to remarket all Bonds tendered or deemed to be tendered for purchase pursuant to the Optional or Mandatory Tender provisions hereof, subject to the provisions of subsections (g) and (h) of this Section. With the consent of the Bank, Bud's Best Cookies may at any time direct the Remarketing Agent to cease or resume the remarketing of some or all of the Bonds.

(b) Promptly after arranging for the remarketing of any Bond the Remarketing Agent shall give the Trustee notice specifying, with respect to the purchaser of such Bond, (i) such purchaser's name, address and taxpayer identification number, (ii) the principal amount and denomination of the Bond to be purchased, and (iii) whether the remarketing proceeds to be



received from such purchaser will constitute Eligible Remarketing Proceeds. The Remarketing Agent shall make appropriate settlement arrangements with the purchaser of such remarketed Bond and shall direct such purchaser by appropriate instructions to pay the purchase price of such Bond to the Trustee. The Trustee shall deposit the proceeds of any such remarketing in the Bond Purchase Fund. All Eligible Remarketing Proceeds shall be deposited and held in a separate, segregated account in the Bond Purchase Fund and shall not be commingled with other money in the Bond Purchase Fund.

(c) On the Tender Date with respect to any Bond (or portion thereof) the Trustee shall pay the purchase price to the Holder of such Bond. Such purchase price shall be paid by check or draft mailed by the Trustee to the Holder of such Bond at his address appearing in the Bond Register or, upon the request of such Holder accompanied by adequate instructions, by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for payment in same-day funds that is acceptable to the Trustee. The Trustee shall pay such purchase price from money on deposit in the Bond Purchase Fund; provided, that the Trustee shall not pay the purchase price of any Unsurrendered Bond, unless and until the Holder of such Unsurrendered Bond presents such Unsurrendered Bond to the Trustee or Tender Agent. Any Bond so purchased by the Trustee shall be delivered by the Trustee or Tender Agent in accordance with this Section.

(d) The Trustee and the Tender Agent shall hold any Bond delivered to them pursuant to the Optional or Mandatory Tender provisions hereof in trust solely for the benefit of the Holder who shall have so delivered such Bond until money representing the purchase price of such Bond shall have been delivered to or for the account of such Holder.

(e) Any Bond purchased by the Trustee with money drawn under the Letter of Credit (herein referred to as a "Pledged Bond") shall be held by the Trustee or Tender Agent for the benefit of the Bank, as pledgee, subject to the following terms and conditions:

(1) When the Trustee delivers to the Bank funds adequate and available to reimburse the Bank for such draw ("Reimbursement Funds") or when the Trustee receives a notice from the Bank that the Bank has been reimbursed for such draw (a "Reimbursement Notice"), then such Bond shall no longer be considered a "Pledged Bond" and the Trustee shall register such Bond as follows:

(A) if such Bond has been remarketed by the Remarketing Agent, as directed by the Remarketing Agent, or

(B) if such Bond has not been remarketed, in the name of Bud's Best Cookies.

Any Bond registered as directed by the Remarketing Agent shall be delivered by the Trustee or Tender Agent to, or upon the direction of, the Remarketing Agent. Any Bond registered in the name of Bud's Best Cookies shall be held by the Trustee or Tender

Agent for the account of Bud's Best Cookies or, upon request of Bud's Best Cookies, shall be delivered to Bud's Best Cookies.

(2) If the Trustee does not deliver Reimbursement Funds to the Bank or receive a Reimbursement Notice by the close of business on the Tender Date, then the Trustee shall register such Pledged Bond in the name of the Bank, as pledgee. Such Pledged Bond shall be held by the Trustee or Tender Agent on behalf of the Bank, as pledgee, or, upon request of the Bank, shall be delivered to the Bank. Upon delivery of Reimbursement Funds to the Bank or receipt by the Trustee of a Reimbursement Notice, such Bond shall no longer be considered a "Pledged Bond" and shall, subject to the provisions of subsections (g) and (h) of this Section, be disposed of as provided in paragraph (1) of this subsection (e).

The Trustee shall give prompt notice to the Tender Agent of the delivery to the Bank of any Reimbursement Funds or the receipt by the Trustee of any Reimbursement Notice.

(f) Any Bond purchased by the Trustee with money from any source other than money drawn under the Letter of Credit shall be registered as provided in paragraph (1) of subsection (e) of this Section.

(g) Notwithstanding any other provision of this Indenture, if any Bond is purchased pursuant to the Optional or Mandatory Tender provisions of this Indenture and the Letter of Credit has expired or terminated (or will expire or terminate within 30 days after such Mandatory Tender has been effected), such Bond may not be sold or remarketed unless (i) the Trustee receives a Favorable Tax Opinion and (ii) the Trustee and Issuer receive an Opinion of Counsel stating in effect that the remarketing of such Bond under such circumstances will not be in violation of any federal or state laws regarding registration of, or other filing in connection with the issuance or sale of, securities.

(h) Notwithstanding any other provision of this Indenture, if the Bonds are purchased pursuant to the Mandatory Tender provisions of Section 4.05(a)(3), the Bonds may not be remarketed without the consent of the Bank and receipt by the Trustee of a Favorable Tax Opinion.

(i) Any Bond remarketed that has been called for prior redemption shall be delivered with a copy of the redemption notice, and any Bond remarketed as to which notice of Mandatory Tender has been given shall be delivered with a copy of the notice of Mandatory Tender.

(j) Any Bond purchased pursuant to the Optional Tender or Mandatory Tender provisions of this Indenture shall not, by virtue of such purchase, be deemed paid or cancelled, but shall remain Outstanding until Fully Paid.



#### **SECTION 4.07 Form of Bonds**

The Bonds and the certificate of authentication shall be substantially as follows, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture:

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[Form of Bonds]

No. \_\_\_\_\_

**The Industrial Development Board  
of the City of Hoover**

**Revenue Bonds  
(Bud's Best Cookies, Inc. Project),  
Series 1991**

Maturity Date

Date of Initial Delivery

Interest Rate

This bond may bear interest at the Variable  
Rate or a Term Rate, as herein defined.  
The interest rate now in effect is:

..

**THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HOOVER**, a  
public corporation organized under the laws of the State of Alabama (the "Issuer", which term  
includes any successor corporation under the Indenture hereinafter referred to), for value  
received, hereby promises to pay (but solely from the source hereinafter described) to

\_\_\_\_\_,  
or registered assigns, the principal sum of

\_\_\_\_\_ **DOLLARS**

\*The Serial Maturity is to be inserted on the Bonds after Serial Maturities are assigned, as  
provided in Section 4.01(c).

\*\*The Trustee is to insert one of the following, as appropriate: "Variable Rate" or "Term  
Rate of \_\_\_\_\_ % from \_\_\_\_\_ until \_\_\_\_\_". If Term Rate  
is appropriate, Trustee will complete the blanks as appropriate.

on the Maturity date specified above and to pay (but solely from the source hereinafter described) interest hereon from the date of initial delivery of this bond, or the most recent date to which interest has been paid or duly provided for, until the principal hereof shall become due and payable at the Variable Rate or the Term Rate, as hereinafter provided.

Interest at the Variable Rate and interest at the Term Rate for a Term Rate Period of less than 6 months shall be computed on the basis of a 365 or 366-day year, as the case may be, for the actual number of days elapsed. Interest at the Term Rate for each Term Rate Period of 6 months or more shall be computed on the basis of a 360-day year with 12 months of 30 days each.

Interest shall be payable (but solely from the source hereinafter described) on overdue principal on this bond and (to the extent legally enforceable) on any overdue installment of interest on this bond at the rate of interest last applicable to this bond when such overdue principal or interest became delinquent.

Interest on this bond shall be payable in arrears on the following dates (each such date being herein called an "Interest Payment Date"):

(1) with respect to interest payable at the Variable Rate, on (i) the first day of each March, June, September and December during the Variable Rate Period and (ii) on the day immediately following any Variable Rate Period (each such date being herein called a "Variable Rate Interest Payment Date");

(2) with respect to interest payable at a Term Rate for any Term Rate Period of less than 6 months, on the day immediately following such Term Rate Period (each such date being herein called a "Term Rate Interest Payment Date"); and

(3) with respect to interest payable at a Term Rate for any Term Rate Period of 6 months or more, (i) on June 1 and December 1 in each year, and (ii) on the day immediately following such Term Rate Period (each such date being herein called a "Term Rate Interest Payment Date").

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture hereinafter referred to, be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such interest, which shall be the day next preceding any Variable Rate Interest Payment Date or any Term Rate Interest Payment Date with respect to a Term Rate Period of less than 6 months, or the 15th day (whether or not a Business Day) of the month next preceding any Term Rate Interest Payment Date with respect to a Term Rate Period of 6 months or more. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered Holder on such Regular Record Date, and shall be paid to the person in whose name this bond is registered at the close of business on a Special Record Date for the payment of such

defaulted interest to be fixed by the Trustee, notice of such Special Record Date being given to Holders of the Bonds not less than 10 days prior to such Special Record Date.

Payment of interest on this bond due on any Interest Payment Date shall be made by check or draft mailed by the Trustee to the person entitled thereto at his address appearing in the Bond Register maintained by the Trustee. Such payments shall be deemed timely made if so mailed on the Interest Payment Date (or, if such Interest Payment Date is not a Business Day, on the Business Day next following such Interest Payment Date). Payment of the principal of (and premium, if any, on) this bond and payment of accrued interest on this bond due upon redemption on any date other than an Interest Payment Date shall be made only upon surrender of this bond at the Office of the Trustee. Upon the terms and conditions of the Indenture the Holder of any Bond in a principal amount of not less than \$100,000 may request that payment of Debt Service on such Bond be made by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for payment in same-day funds that is acceptable to the Trustee. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

This bond is one of a duly authorized issue of bonds of the Issuer, aggregating \$5,000,000 in principal amount, designated "Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991" (the "Bonds") and issued under and pursuant to a Trust Indenture dated December 1, 1991 (the "Indenture"), between the Issuer and SouthTrust Bank of Alabama, National Association, a national banking association with its principal place of business in Birmingham, Alabama (the "Trustee", which term includes any successor trustee under the Indenture). Capitalized terms not otherwise defined herein shall have the meanings assigned in the Indenture.

The Bonds are issued for the purpose of financing the costs of acquiring, constructing and equipping certain facilities for the manufacture of cookies and other similar food products referred to in the Indenture as the "Project" (the "Project"). The Project is leased by the Issuer to Bud's Best Cookies, Inc., a corporation organized under the laws of the State of Alabama ("Bud's Best Cookies"), pursuant to a Lease Agreement dated December 1, 1991 (the "Lease Agreement"). Pursuant to the Lease Agreement, Bud's Best Cookies has agreed to pay rentals sufficient to pay Debt Service when due on the Bonds and to pay the purchase price of Bonds tendered for purchase pursuant to the Mandatory and Optional Tender provisions of the Indenture. Pursuant to the Indenture the Issuer has assigned and pledged to the Trustee all the Issuer's rights under the Lease Agreement, except for certain rights relating to indemnification, reimbursement of expenses and receipt of notices and other communications.

As security for the payment of Debt Service on the Bonds, Bud's Best Cookies has entered into a Guaranty Agreement dated December 1, 1991 (the "Bond Guaranty") in favor of the Trustee, whereby Bud's Best Cookies has guaranteed payment when due of Debt Service on the Bonds.

Bud's Best Cookies will cause SouthTrust Bank of Alabama, National Association (the "Bank"), to issue an irrevocable letter of credit in favor of the Trustee to enable the Trustee to pay Debt Service on the Bonds and to pay the purchase price of Bonds tendered for purchase pursuant to the mandatory or optional tender provisions of the Indenture. Subject to the terms and conditions of the Indenture, Bud's Best Cookies may, at its option, replace such letter of credit with a substitute letter of credit. The initial letter of credit so delivered to the Trustee and any substitute letter of credit delivered to the Trustee pursuant to the Indenture are herein referred to as the "Letter of Credit".

The initial Letter of Credit will be issued by the Bank pursuant to a Credit Agreement dated December 1, 1991 (the "Credit Agreement") between the Bank and Bud's Best Cookies, whereby Bud's Best Cookies will agree, among other things, to reimburse the Bank for all amounts drawn by the Trustee pursuant to the initial Letter of Credit.

As security for Bud's Best Cookies' obligations under the Credit Agreement, Bud's Best Cookies and the Issuer shall execute a Mortgage and Security Agreement dated December 1, 1991 (the "Mortgage") in favor of the Bank, whereby the Bank will be granted a mortgage, assignment and pledge of, and security interest in, the Project, the rights of the Issuer and Bud's Best Cookies under the Lease Agreement, the Project Revenues, and certain other collateral.

**THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF (i) PAYMENTS BY BUD'S BEST COOKIES PURSUANT TO THE LEASE AGREEMENT AND BOND GUARANTY, (ii) ANY OTHER REVENUES, RENTALS OR RECEIPTS DERIVED BY THE ISSUER FROM THE LEASING OR SALE OF THE PROJECT, AND (iii) MONEY RECEIVED BY THE TRUSTEE FROM A DRAW ON THE LETTER OF CREDIT. THE TRUSTEE WILL NOT HAVE A LIEN ON OR SECURITY INTEREST IN THE PROJECT. THE MORTGAGE IS FOR THE SOLE BENEFIT OF THE BANK. THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE CITY OF HOOVER, ALABAMA (THE "MUNICIPALITY") WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE MUNICIPALITY.**

Copies of the Indenture, the Lease Agreement, the Bond Guaranty, the initial Letter of Credit, the Credit Agreement and the Mortgage are on file at the Office of the Trustee, and reference is hereby made to such instruments for a description of the properties mortgaged, pledged and assigned, the nature and extent of the security, the respective rights thereunder of the Holders of the Bonds, the Trustee, the Issuer, Bud's Best Cookies and the Bank, and the terms upon which the Bonds are, and are to be, authenticated and delivered.



[The following provisions may be printed  
on the reverse side of the Bonds]

Each Bond shall bear interest at the Variable Rate or at a Term Rate, as described below. The Trustee shall specify on each Bond certificate whether the interest rate then in effect is the Variable Rate or a Term Rate. If a Term Rate is in effect with respect to a Bond, the Trustee shall also specify on the Bond certificate the Term Rate and the beginning and end of the Term Rate Period.

#### Variable Rate

Each Bond shall bear interest at the Variable Rate during any period other than a Term Rate Period with respect to such Bond. Each period during which the Variable Rate is in effect is herein called a "Variable Rate Period".

The Variable Rate shall be a fluctuating rate per annum determined by the Remarketing Agent periodically during a Variable Rate Period as follows. The Variable Rate with respect to any Bond shall be determined on the first day of each Variable Rate Period with respect to such Bond and on each Thursday during such Variable Rate Period (or, if such Thursday is not a Business Day, on the next succeeding Business Day). The Variable Rate so determined shall become effective (i) on the date of determination, if such date is the first day of the Variable Rate Period, or (ii) if such date is not the first day of a Variable Rate Period, on the day immediately following the date of determination, and once effective shall remain in effect until and including the next determination date or, if sooner, the end of such Variable Rate Period; provided, however, that if the Remarketing Agent fails to determine the Variable Rate on any such determination date, the last Variable Rate in effect with respect to such Bond shall remain in effect until and including the next determination date.

The Variable Rate with respect to a Bond shall be determined by the Remarketing Agent and shall be the lowest interest rate that would, in the opinion of the Remarketing Agent, result in the market value of such Bond being 100% of the principal amount thereof on the date of such determination, taking into account relevant market conditions and credit rating factors as they exist on such date; provided, however, that the Variable Rate may never exceed the Cap Rate. The term "Cap Rate" means (i) for any period during which the Bonds are secured by a Letter of Credit, the maximum rate per annum, specified therein, upon which there has been calculated the amount available to be drawn on such Letter of Credit to pay interest on the Bonds and (ii) for any period during which the Bonds are not secured by a Letter of Credit, the rate

If portions of the Bonds are printed on the reverse side, the following legend shall be printed on the face of the Bonds: "REFERENCE IS MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF."

of 15% per annum. Upon the request of any Bondholder, the Trustee shall confirm (by telephone) the Variable Rate then in effect.

Sterne, Agee & Leach, Inc., a Delaware corporation with its principal place of business in Birmingham, Alabama, has been appointed as "Remarketing Agent" pursuant to the Indenture. The Indenture permits Bud's Best Cookies, with the consent of the Bank, to remove such Remarketing Agent and appoint a successor, subject to certain terms and conditions specified in the Indenture.

The Indenture also permits the Trustee, with the consent of the Issuer, Bud's Best Cookies and the Bank to appoint a Tender Agent subject to certain terms and conditions specified in the Indenture.

#### **Term Rate**

Subject to the terms and conditions of the Indenture, at the request of Bud's Best Cookies a fixed rate shall be established with respect to any Bond for the period specified by Bud's Best Cookies in such request. Each period during which a Term Rate is in effect is herein called a "Term Rate Period". The first day of any such Term Rate Period is herein called a "Conversion Date".

The Term Rate shall be a fixed rate per annum determined by the Remarketing Agent as provided below. The Term Rate shall be applicable during the entire Term Rate Period; provided, however, that if a Term Rate is in effect when a Bond is to be purchased pursuant to the Mandatory Tender provisions relating to notice of an event of default under the Credit Agreement, the related Term Rate Period with respect to such Bond shall end on the day prior to such Mandatory Tender Date.

After receipt of notice from Bud's Best Cookies that a Term Rate is to be established with respect to any Bond, but not less than 3 days prior to the proposed Conversion Date, the Remarketing Agent shall determine the interest rate for the Term Rate Period (herein called the "Term Rate"), which shall be the lowest interest rate that would, in the opinion of the Remarketing Agent, result in the market value of such Bond being 100% of the principal amount thereof on the date of such determination, taking into account relevant market conditions and credit rating factors as they exist on such date, and assuming that the Term Rate Period began on such date; provided, however, that the Term Rate may not exceed the Cap Rate.

Notwithstanding the foregoing, a Term Rate shall not be established if

(1) Bud's Best Cookies delivers to the Trustee notice of revocation of its election to establish the Term Rate before 10:00 a.m. on the proposed Conversion Date or

(2) prior to 10:00 a.m. on the proposed Conversion Date the Trustee does not receive (i) a Favorable Tax Opinion and (ii) the Substitute Letter of Credit (if any) that was to be effective on such Conversion Date.

If all conditions to the establishment of a Term Rate are not satisfied, the Bond shall continue (or, if a Term Rate Period ended on the preceding day, shall begin) to bear interest at the Variable Rate from the proposed Conversion Date. Notwithstanding the failure to establish a Term Rate, if a notice of Mandatory Tender has been given by the Trustee with respect to any Bond in connection with a proposed conversion to a Term Rate, such Bond shall be subject to a Mandatory Tender on the proposed Conversion Date.

#### **Optional Tender**

The Holder of any Bond shall have the right to tender such Bond to the Trustee or to any Tender Agent appointed pursuant to the Indenture for purchase in whole or in part (if in part, only in an Authorized Denomination) on any Business Day during any Variable Rate Period, but not during any Term Rate Period, at a purchase price equal to 100% of the principal amount of the Bond (or portion thereof) tendered plus accrued interest to the specified purchase date (an "Optional Tender Date"). In order to exercise such option with respect to any Bond, the Holder thereof must deliver notice thereof to the Trustee, as provided below, at least 7 days prior to the proposed Optional Tender Date.

Any such notice of Optional Tender must be duly executed by the Bondholder and must specify (i) the name of the registered Holder of the Bond to be tendered for purchase, (ii) the Optional Tender Date, (iii) the certificate number and principal amount of such Bond, and (iv) the principal amount of such Bond to be purchased (if such amount is less than the entire principal amount, both the amount to be purchased and the amount remaining must be in an Authorized Denomination). Such notice may be given to the Trustee in writing or by telephone, but no such telephonic notice shall be effective unless confirmed in writing delivered to the Trustee not more than 2 Business Days after such telephonic notice. A form of the Optional Tender Notice may be obtained from the Trustee upon request.

If any notice of Optional Tender specifies an Optional Tender Date that is not a Business Day, then such notice shall be deemed to specify the next following Business Day as the Optional Tender Date. Unless a notice of Optional Tender indicates that less than the entire principal amount of the Bond is being tendered for purchase, the Holder will be deemed to have tendered the Bond in its entire principal amount for purchase.

Upon delivery of a written notice of Optional Tender, the election to tender shall be irrevocable and binding upon such Holder and may not be withdrawn.

If a written notice of Optional Tender shall have been duly given with respect to any Bond, the Holder of such Bond shall deliver such Bond to the Office of the Trustee or the Office of the Tender Agent on the Optional Tender Date, together with all necessary endorsements for

transfer. If only a portion of such Bond is to be purchased (as a result of the exercise of the Optional Tender right only with respect to such portion), the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same Maturity and interest rate and of any Authorized Denomination or Denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal amount of the Bond surrendered. Any Bond (or portion thereof) that is to be so purchased but that is not so delivered to the Trustee or Tender Agent (an "Unsurrendered Bond") shall nevertheless be deemed to have been tendered by the Holder thereof on the Optional Tender Date.

If there has been irrevocably deposited in the Bond Purchase Fund an amount sufficient to pay the purchase price of any Unsurrendered Bond, such Unsurrendered Bond shall be deemed to have been tendered for purchase and purchased from the Holder thereof on such Optional Tender Date and the Holder of such Unsurrendered Bond shall not be entitled to receive interest on such Unsurrendered Bond for any period on and after the Optional Tender Date.

Anything in this Bond or the Indenture to the contrary notwithstanding, Bondholders may exercise their Optional Tender rights notwithstanding the existence of an Event of Default.

#### **Mandatory Tender**

The Holder of each Bond shall be required to tender such Bond to the Trustee or Tender Agent for purchase on the following dates (each such date being herein called a "Mandatory Tender Date"):

(1) each proposed Conversion Date with respect to such Bond specified in a notice to the Holder thereof (whether or not a Term Rate is successfully established on such date);

(2) the date immediately following the expiration of a Term Rate Period with respect to such Bond;

(3) 14 days after the Trustee receives notice from the Bank (i) stating that an event of default, as therein defined, has occurred and is continuing under the Credit Agreement and (ii) directing that the Bonds be purchased pursuant to the Mandatory Tender provisions of this Indenture;

(4) on any date proposed by Bud's Best Cookies for delivery of a Substitute Letter of Credit unless such Substitute Letter of Credit is to be accompanied by either (i) if any Rating Agency maintains a rating with respect to the Bonds at the time of such substitution, evidence from each such Rating Agency to the effect that such substitution will not, by itself, result in a reduction or withdrawal of its rating then assigned to the Bonds or (ii) if no Rating Agency maintains a rating with respect to the Bonds at the time

of substitution, evidence that long-term deposits of the issuer of such Substitute Letter of Credit have a credit rating (gradations within a rating category being disregarded for this purpose) of not less than A by Moody's or not less than A by S & P; provided, however, that no substitution requiring a Mandatory Tender pursuant to this paragraph may be effected unless the date of substitution is with respect to all Bonds either a Conversion Date or a day during a Variable Rate Period; and

(5) 15 days prior to the Stated Expiration Date of the Letter of Credit.

If any of such dates is not a Business Day, the Mandatory Tender Date shall be the next succeeding Business Day.

Notice of a Mandatory Tender shall be given by the Trustee by registered or certified mail, mailed to the Holder of the affected Bond at the address of such Holder appearing on the Bond Register not less than 7 days prior to the Mandatory Tender Date. Such notice of Mandatory Tender shall, among other things, specify the Mandatory Tender Date.

Any Bond for which a notice of Mandatory Tender has been given shall be tendered by the Holder thereof for purchase on the Mandatory Tender Date, by delivering such Bond to the Office of the Trustee or the Office of the Tender Agent, together with all necessary endorsements for transfer. If only a portion of such Bond is to be purchased (as a result of the establishment of a Term Rate only with respect to such portion), the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same Maturity and interest rate and of any Authorized Denomination or Denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal amount of the Bond surrendered. Any such Bond (or portion thereof) that is to be so purchased but that is not so delivered to the Trustee or Tender Agent on the Mandatory Tender Date (an "Unsurrendered Bond") shall nevertheless be deemed to have been tendered for purchase by the Holder thereof on the Mandatory Tender Date.

If there has been irrevocably deposited in the Bond Purchase Fund an amount sufficient to pay the purchase price of any Unsurrendered Bond, such Unsurrendered Bond shall be deemed to be tendered for purchase and purchased from the Holder thereof on such Mandatory Tender Date and the Holder of such Unsurrendered Bond shall not be entitled to receive interest on such Unsurrendered Bond for any period on and after the relevant Mandatory Tender Date.

After notice of a Mandatory Tender has been given by the Trustee with respect to any Bond, such Bond shall be subject to Mandatory Tender notwithstanding the fact that the reasons for giving such notice cease to exist or are no longer applicable.

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## **Redemption**

In the manner and with the effect provided in the Indenture, the Bonds will be subject to redemption prior to Maturity as follows:

(1) **Optional Redemption.** The Bonds may be redeemed at the option of the Issuer (exercised upon direction of Bud's Best Cookies if no Lease Default exists) as follows:

(A) On any date during a Variable Rate Period and on any Conversion Date with respect to any Bond, such Bond may be redeemed in whole or in part at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the date of redemption.

(B) During any Term Rate Period of more than 5 years with respect to any Bond, such Bond may be redeemed in whole or in part on or after the First Optional Call Date (as defined below) at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the date of redemption plus a redemption premium (expressed as a percentage of principal amount redeemed) equal to whichever of the following shall be applicable: 2% if the date of redemption is on or after the First Optional Call Date but prior to the first anniversary of the First Optional Call Date; 1% if the date of redemption is on or after the first anniversary of the First Optional Call Date but prior to the second anniversary of the First Optional Call Date; and without premium if the date of redemption is on or after the second anniversary of the First Optional Call Date. For any Term Rate Period of more than 5 years but not more than 10 years, the First Optional Call Date shall be the fifth anniversary of the beginning of the Term Rate Period.

(2) **Optional Redemption Upon Occurrence of Certain Calamities.** All (but not less than all) Bonds may be redeemed at the option of the Issuer (exercised upon direction of Bud's Best Cookies if no Lease Default exists), at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the redemption date, within 180 days after any of the following shall have occurred:

(A) the Project shall have been damaged or destroyed to such extent that, in the opinion of Bud's Best Cookies, it cannot be restored within a period of 4 months to substantially the condition thereof immediately prior to such damage or destruction or Bud's Best Cookies is thereby prevented from carrying on its normal operations at the Project for a period of not less than 4 months; or

(B) the taking by eminent domain of all or substantially all the Project or of any part, use or control of the Project that, in the opinion of Bud's Best

Cookies, results in Bud's Best Cookies being thereby prevented from carrying on its normal operations at the Project for a period of not less than 4 months; or

(C) Bud's Best Cookies ceases operation of the Project for a period of 4 months because of a change in technology or in the availability at reasonable cost of labor, raw materials, energy or transportation that, in the opinion of Bud's Best Cookies, renders the Project uneconomic for its intended use; or

(D) as a result of a change in law or a final order of any court or other governmental authority the Lease Agreement becomes void or unenforceable or impossible of performance or unreasonable burdens or excessive liabilities are imposed on Bud's Best Cookies that, in the opinion of Bud's Best Cookies, render the Project uneconomic for its intended use.

(3) Mandatory Redemption Upon Determination of Taxability. All Bonds shall be redeemed within 60 days after a Determination of Taxability is made with respect to the Bonds at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the redemption date.

(4) Scheduled Mandatory Redemption. Unless Serial Maturities have been assigned to the Bonds, the Bonds shall be redeemed, at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the redemption date, on December 1 in years and principal amounts (after credit as provided below) as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1994	\$200,000	1998	\$700,000
1995	400,000	1999	800,000
1996	600,000	2000	800,000
1997	700,000		

\$800,000 of the Bonds  
will be retired at Maturity

Not less than 45 or more than 60 days prior to each such scheduled mandatory redemption date, the Trustee shall proceed to select for redemption, by lot, Bonds or portions thereof in an aggregate principal amount equal to the amount required to be redeemed and shall call such Bonds or portions thereof for redemption on such scheduled mandatory redemption date; provided, however, that Bud's Best Cookies may, upon direction delivered to the Trustee not less than 60 days prior to such scheduled mandatory redemption date, direct that any or all of the following amounts be credited

against the principal amount of Bonds scheduled for redemption on such date: (i) the principal amount of Bonds delivered by Bud's Best Cookies to the Trustee for cancellation and not previously claimed as a credit; and (ii) the principal amount of Bonds previously redeemed (other than Bonds redeemed pursuant to this paragraph) and not previously claimed as a credit.

Subject to the provisions of the Indenture requiring redemption of all Pledged Bonds eligible for redemption before any other eligible Bonds are redeemed, and except as otherwise provided with respect to scheduled mandatory redemption of Bonds, if less than all Bonds Outstanding are to be redeemed, the principal amount of Bonds of each Maturity to be redeemed may be specified by the Issuer (at the direction of Bud's Best Cookies if no Lease Default exists) by notice to the Trustee, or, in the absence of timely receipt by the Trustee of such notice, shall be selected by the Trustee by lot or by such other method as the Trustee may deem fair and appropriate; provided, however, that the principal amount of Bonds of each Maturity to be redeemed may not be larger than the principal amount of Bonds of such Maturity then eligible for redemption and may not be smaller than the smallest Authorized Denomination.

Subject to the provisions of the Indenture requiring the redemption of all Pledged Bonds eligible for redemption before any other eligible Bonds are redeemed, if less than all Bonds with the same Maturity are to be redeemed, the particular Bonds of such Maturity to be redeemed shall be selected by the Trustee from the Outstanding Bonds of such Maturity then eligible for redemption by lot or by such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (in Authorized Denominations) of the principal of Bonds of such Maturity of a denomination larger than the smallest Authorized Denomination.

Upon any partial redemption of any Bond, the same shall, except as otherwise permitted by the Indenture, be surrendered in exchange for one or more new Bonds of the same Maturity and interest rate and in authorized form for the unredeemed portion of principal. Bonds (or portions thereof as aforesaid) for whose redemption and payment provision is made in accordance with the Indenture shall thereupon cease to be entitled to the lien of the Indenture and shall cease to bear interest from and after the date fixed for redemption.

Any redemption shall be made upon at least 30 days' notice in the manner and upon the terms and conditions provided in the Indenture.

If an "Event of Default", as defined in the Indenture, shall occur, the principal of all Bonds then Outstanding may become or be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and of the Lease Agreement and the modification of the rights and obligations of the Issuer and Bud's Best Cookies and the rights of the Holders of the Bonds at any time with the consent of a majority in principal amount of the Bonds at the time Outstanding effected by such

modification. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of Bonds at the time Outstanding on behalf of the Holders of all the Bonds, to waive compliance by the Issuer or Bud's Best Cookies with certain provisions of the Indenture or the Lease Agreement and certain past defaults under such instruments and their consequences. Any such consent or waiver by the Holder of this bond shall be conclusive and binding upon such Holder and upon all future Holders of this bond and of any bond issued in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this bond. The Indenture provides in effect that, if the Letter of Credit is in effect and the Bank is not in default under the Letter of Credit, no amendment to the Indenture or Lease Agreement may be made without the consent of the Bank and that any remedies available under the Indenture and Lease Agreement (other than mandatory acceleration of the Bonds and mandatory draws under the Letter of Credit) may be exercised only with the consent of the Bank.

The Holder of this bond shall have no right to enforce the provisions of the Indenture, or to institute any action to enforce the covenants therein, or to take any action with respect to any default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, this bond is transferable on the Bond Register maintained at the Office of the Trustee, upon surrender of this bond for transfer at such office or at the Office of the Tender Agent, together with all necessary endorsements for transfer, and thereupon one or more new Bonds of the same Maturity and interest rate, of any Authorized Denominations and for a like aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, the Bonds are exchangeable for other Bonds of the same Maturity and interest rate, of any Authorized Denominations and of a like aggregate principal amount, as requested by the Holder surrendering the same.

No service charge shall be made for any transfer or exchange hereinbefore referred to, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Issuer, the Trustee and any agent of the Issuer or the Trustee may treat the person in whose name this bond is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this bond is overdue, and neither the Issuer, the Trustee nor any agent shall be affected by notice to the contrary.

No covenant or agreement contained in this bond or the Indenture shall be deemed to be a covenant or agreement of any officer, agent or employee of the Issuer, and neither any member of the governing body of the Issuer nor any officer executing this bond shall be liable

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personally on this bond or be subject to any personal liability or accountability by reason of the issuance of this bond.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and issuance of this bond do exist, have happened and have been performed in due time, form and manner as required by law.

[End of provisions that may be printed  
on the reverse side of Bonds]

Unless the certificate of authentication hereon has been executed by the Trustee or by the Tender Agent by manual signature, this bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this bond to be duly executed under its corporate seal.

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HOOVER**

By \_\_\_\_\_  
Chairman

[SEAL]

Attest:

\_\_\_\_\_  
Secretary

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**Certificate of Authentication**

This is one of the Bonds referred to in the within-mentioned Indenture.

Date of authentication: \_\_\_\_\_

**SOUTHTRUST BANK OF ALABAMA,  
NATIONAL ASSOCIATION,  
as Trustee**

By \_\_\_\_\_  
Authorized Officer

[Note: If a Tender Agent is appointed, Bonds providing for authentication by the Tender Agent shall be printed.]

**Assignment**

For value received, \_\_\_\_\_ hereby sell(s),  
assign(s) and transfer(s) unto \_\_\_\_\_ this bond and  
hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to  
transfer this bond on the books of the within named Issuer at the office of the within named  
Trustee, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTE:** The name signed to this assignment must correspond with the name of the payee written on the face of the within bond in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By \_\_\_\_\_  
(Authorized Officer)

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#### **SECTION 4.08 Execution, Authentication, Delivery and Dating**

(a) The Bonds shall be executed on behalf of the Issuer by its Chairman or Vice-Chairman of the Board of Directors under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Bonds may be manual or, to the extent permitted by law, facsimile. Bonds bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Issuer shall bind the Issuer, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the authentication and delivery of such Bonds or shall not have held such offices at the date of such Bonds.

(b) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Bonds executed by the Issuer to the Trustee for authentication and the Trustee or the Tender Agent shall authenticate and deliver such Bonds as in this Indenture provided and not otherwise.

(c) No Bond shall be secured by, or be entitled to any lien, right or benefit under, this Indenture or be valid or obligatory for any purpose, unless there appears on such Bond a certificate of authentication substantially in the form provided for herein, executed by the Trustee or Tender Agent by manual signature, and such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly authenticated and delivered hereunder.

#### **SECTION 4.09 Temporary Bonds**

(a) Pending the preparation of definitive Bonds, the Issuer may execute, and upon request of the Issuer the Trustee shall authenticate and deliver, temporary Bonds which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are issued, with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Bonds may determine, as evidenced by their execution of such Bonds.

(b) If temporary Bonds are issued, the Issuer will cause definitive Bonds to be prepared without unreasonable delay. After the preparation of definitive Bonds, the temporary Bonds shall be exchangeable for definitive Bonds upon surrender of the temporary Bonds at the Office of the Trustee, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Bonds the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Bonds of Authorized Denominations. Until so exchanged, temporary Bonds shall in all respects be entitled to the security and benefits of this Indenture.

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#### **SECTION 4.10 Authentication and Delivery of Bonds to Original Purchasers**

Upon the execution and delivery of this Indenture, Bonds in the aggregate principal amount authorized in this article may be executed by the Issuer and delivered to the Trustee for authentication, and such Bonds shall thereupon be authenticated and delivered by the Trustee to the original purchaser or purchasers thereof, upon order executed by an Authorized Issuer Representative.

#### **SECTION 4.11 Substitute Letters of Credit**

(a) Bud's Best Cookies may at any time and from time to time on or after January 1, 1993 or sooner in accordance with the terms of the Credit Agreement deliver another irrevocable letter of credit (a "Substitute Letter of Credit") to the Trustee in substitution for the Letter of Credit then held by the Trustee (the "Existing Letter of Credit"), provided that

(1) such Substitute Letter of Credit complies with the applicable conditions set forth in subsection (c) of this Section;

(2) simultaneously with the delivery of such Substitute Letter of Credit Bud's Best Cookies delivers to the Trustee any related documentation required by subsection (d) of this Section (the "Related Documentation");

(3) no substitution requiring a Mandatory Tender pursuant to Section 4.05(a)(4) may be effected unless the date of substitution is with respect to all Outstanding Bonds either a Conversion Date or a day during a Variable Rate Period; and

(4) Bud's Best Cookies gives the Trustee and the Bank 14 days' prior notice of such substitution, which notice must specify (i) a Business Day on which such substitution will occur, and (ii) whether a Mandatory Tender will be required on the substitution date pursuant to Section 4.05(a)(4).

(b) Bud's Best Cookies may, but shall not be required to, deliver a Substitute Letter of Credit to the Trustee prior to the Stated Expiration Date of the Letter of Credit then in effect; provided, however, that if a Substitute Letter of Credit and the Related Documentation are not delivered to the Trustee at least 30 days prior to the Stated Expiration Date of the then Existing Letter of Credit, the Bonds shall be subject to a Mandatory Tender, as provided in Section 4.05.

(c) Each Substitute Letter of Credit delivered to the Trustee pursuant to this Section must meet the following criteria:

(1) Such Substitute Letter of Credit must be substantially in the same form and of the same tenor as the Initial Letter of Credit, except as otherwise provided in this subsection.

(2) The Substitute Letter of Credit must have minimum interest coverage as follows:

(A) if no Term Rate Period is in effect on the date of substitution, 110 days;

(B) if any Term Rate Period is in effect on the date of substitution, the greater of (i) 110 days or (ii) the sum of 20 days plus the maximum number of days between Interest Payment Dates with respect to the longest Term Rate Period in effect on the date of substitution.

(3) If such Substitute Letter of Credit is being delivered in connection with a conversion of the interest rate on any Bond to a Term Rate, the effective date shall be not later than the Conversion Date.

(4) If such Substitute Letter of Credit will be effective during a Term Rate Period when the Bonds are subject to optional redemption, such Substitute Letter of Credit must provide for payment of the maximum redemption premium on the Bonds.

(5) Such Substitute Letter of Credit must have a Stated Expiration Date that is not sooner than 1 year after its effective date; provided, however, that any Substitute Letter of Credit that is to be substituted for an Existing Letter of Credit that is effective during a Term Rate Period must have a Stated Expiration Date not sooner than the Stated Expiration Date of such Existing Letter of Credit.

(d) Each Substitute Letter of Credit delivered to the Trustee must be accompanied by the following (herein referred to as the "Related Documentation"), to the extent applicable:

(1) if any Rating Agency maintains a rating with respect to the Bonds at the time of delivery of such Substitute Letter of Credit to the Trustee, evidence from each such Rating Agency to the effect that the substitution of the proposed Substitute Letter of Credit will not, by itself, result in a reduction or withdrawal of its rating then assigned to the Bonds;

(2) if no Rating Agency maintains a rating with respect to the Bonds at the time of delivery of such Substitute Letter of Credit, evidence that long-term deposits of the issuer of such Substitute Letter of Credit have a credit rating (gradations within a rating category being disregarded for this purpose) of not less than A by Moody's or not less than A by S & P;

(3) a Favorable Tax Opinion;

(4) an Opinion of Counsel stating in effect that such Substitute Letter of Credit is a valid and binding obligation of the issuer thereof; and

(5) an Opinion of Counsel stating in effect that upon the occurrence of an Act of Bankruptcy, money drawn under such Substitute Letter of Credit will not be recoverable from the Trustee or Bondholders under provisions of the United States Bankruptcy Code relating to voidable preferences;

provided, however, that the Related Documentation required by paragraphs (1) and (2) of this subsection shall not be required if the Bonds will be subject to Mandatory Tender on such substitution date pursuant to Section 4.05(a)(4).

(e) At the close of business on the effective date of any Substitute Letter of Credit, the Trustee shall return the Existing Letter of Credit to the issuer thereof, provided that any draws on such Existing Letter of Credit made on or prior to such date have been honored. Any draws that, under the terms of the Indenture, are to be made on the Letter of Credit on or prior to the effective date of a Substitute Letter of Credit shall be made under the Existing Letter of Credit. Not later than the close of business on the effective date of a Substitute Letter of Credit, Bud's Best Cookies shall deliver to the Trustee evidence that all obligations of Bud's Best Cookies to the issuer of the Existing Letter of Credit for reimbursement of amounts drawn thereunder have been satisfied, and upon receipt of such evidence any Pledged Bonds held by the Trustee or the Tender Agent for the benefit of the issuer of the Existing Letter of Credit shall be delivered to, or upon the order of, Bud's Best Cookies.

(f) If the Trustee accepts a Substitute Letter of Credit, the Trustee shall send notice of such substitution to the Bondholders within 30 days of such substitution.

(g) If Bonds are redeemed prior to Maturity, the Trustee shall take any action necessary to reduce the interest portion of the Letter of Credit as provided therein, provided that the interest coverage shall not be reduced below the relevant amount specified in paragraph (2) of subsection (c) of this Section.

(h) The term of any Letter of Credit already held by the Trustee may be extended by the Bank by delivery to the Trustee of an amendment to such Letter of Credit (or an amended, restated or replacement Letter of Credit) containing the new Stated Expiration Date. Such Letter of Credit, as so amended, restated or replaced, shall not be considered a Substitute Letter of Credit and shall not require the delivery of Related Documentation; provided, however, that upon the request of the Trustee Bud's Best Cookies shall deliver to the Trustee a Favorable Tax Opinion and an Opinion of Counsel stating in effect that such Letter of Credit, as so amended, restated or replaced, is a valid and binding obligation of the issuer thereof.

#### **SECTION 4.12 Cancellation of Letter of Credit in Connection With Conversion to Term Rate**

(a) At the request of Bud's Best Cookies, the Trustee shall deliver the Letter of Credit to the Bank for cancellation on any Conversion Date (which is also a Mandatory Tender Date) with respect to all Outstanding Bonds, but only if (i) no Event of Default exists and (ii) the



purchase price of all Tendered Bonds due on the related Mandatory Tender Date has been paid by the Trustee from the sources specified in Section 8.02 (or funds sufficient for such payment with respect to any Unsurrendered Bonds are held by the Trustee in the Bond Purchase Fund).

(b) The Letter of Credit may not be cancelled as provided in this Section with respect to only a portion of the Bonds, it being intended that all Outstanding Bonds will be secured by the Letter of Credit if the Letter of Credit is in effect.

(c) If the Letter of Credit is cancelled as provided in this Section, the Bonds may not be sold or remarketed except as provided in Section 4.06(g).

(d) Bud's Best Cookies shall give the Issuer, the Trustee and each Rating Agency that maintains a rating with respect to the Bonds 10 days' notice of its intent to have the Letter of Credit cancelled pursuant to this Section.

(e) At the close of business on the date of cancellation of the Letter of Credit pursuant to this Section, the Trustee shall return the Letter of Credit to the Bank, provided that any draws on the Letter of Credit made on or prior to such date have been honored. Not later than the close of business on the date of cancellation Bud's Best Cookies shall deliver to the Trustee evidence that all obligations of Bud's Best Cookies to the Bank under the Credit Agreement have been satisfied.

## ARTICLE 5

### Registration, Exchange and General Provisions Regarding the Bonds

#### SECTION 5.01 Registration, Transfer and Exchange

(a) The Issuer shall cause to be kept at the Office of the Trustee a register (herein sometimes referred to as the "Bond Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Bonds and registration of transfers of Bonds entitled to be registered or transferred as herein provided. The Trustee is hereby appointed "Bond Registrar" for the purpose of registering Bonds and transfers of Bonds as herein provided.

(b) Upon surrender for transfer of any Bond at the Office of the Trustee or Tender Agent, the Issuer shall execute, and the Trustee or Tender Agent shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of the same Maturity and interest rate, of any Authorized Denominations and of a like aggregate principal amount.

(c) At the option of the Holder, Bonds may be exchanged for other Bonds of the same Maturity and interest rate, of any Authorized Denominations and of a like aggregate principal

amount, upon surrender of the Bonds to be exchanged at the Office of the Trustee or at the Office of the Tender Agent. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee or Tender Agent shall authenticate and deliver, the Bonds which the Bondholder making the exchange is entitled to receive.

(d) All Bonds surrendered upon any exchange or transfer provided for in this Indenture shall be promptly cancelled by the Trustee or Tender Agent.

(e) All Bonds issued upon any transfer or exchange of Bonds shall be the valid obligations of the Issuer and entitled to the same security and benefits under this Indenture as the Bonds surrendered upon such transfer or exchange.

(f) Every Bond presented or surrendered for transfer or exchange shall contain, or be accompanied by, all necessary endorsements for transfer.

(g) No service charge shall be made for any transfer or exchange of Bonds, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds.

(h) The Issuer shall not be required (i) to transfer or exchange any Bond during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing, or (ii) to transfer or exchange any Bond so selected for redemption in whole or in part, or (iii) to transfer or exchange any Bond during a period beginning on the date of receipt by the Trustee of notice of Optional Tender for such Bond and ending on the Optional Tender Date, or (iv) to transfer or exchange any Bond during a period beginning on the date notice of Mandatory Tender is given to Bondholders and ending on the Mandatory Tender Date. For purposes of item (i) above, an Optional Tender shall not be considered a transfer.

#### **SECTION 5.02 Mutilated, Destroyed, Lost and Stolen Bonds**

(a) If (i) any mutilated Bond is surrendered to the Trustee, or the Issuer and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Bond, and (ii) there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer or the Trustee that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding.

(b) Upon the issuance of any new Bond under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

(c) Every new Bond issued pursuant to this Section in lieu of any destroyed, lost or stolen Bond shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the security and benefits of this Indenture equally and ratably with all other Outstanding Bonds.

(d) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds.

#### **SECTION 5.03 Payment of Interest on Bonds; Interest Rights Preserved**

(a) Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Bond is registered at the close of business on the Regular Record Date for such Interest Payment Date.

(b) Any interest on any Bond which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date solely by virtue of such Holder having been such Holder; and such Defaulted Interest shall be paid by the Issuer to the persons in whose names such Bonds are registered at the close of business on a special record date (herein called a "Special Record Date") for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this subsection provided and not to be deemed part of the Trust Estate. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of a Bond at his address as it appears in the Bond Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds are registered on such Special Record Date.

(c) Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Bond shall carry all the

rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond and each such Bond shall bear interest from a date such that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

#### **SECTION 5.04 Persons Deemed Owners**

The Issuer, the Trustee and any agent of the Issuer or the Trustee may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of Debt Service on such Bond (subject to Section 5.03) and for all other purposes whatsoever whether or not such Bond is overdue, and, to the extent permitted by law, neither the Issuer, the Trustee nor any such agent shall be affected by notice to the contrary.

#### **SECTION 5.05 Paying Agent**

The Debt Service on the Bonds shall, except as otherwise provided herein, be payable at the Office of the Trustee. The Trustee is hereby appointed a Paying Agent for the purpose of paying Debt Service on the Bonds on behalf of the Issuer.

#### **SECTION 5.06 Payments Due on Non-Business Days**

If any payment on the Bonds is due on a day which is not a Business Day, such payment may be made on the first succeeding day which is a Business Day with the same effect as if made on the day such payment was due.

#### **SECTION 5.07 Cancellation**

All Bonds surrendered for payment, redemption, transfer or exchange, shall be promptly cancelled by the Trustee and destroyed. No Bond shall be authenticated in lieu of or in exchange for any Bond cancelled as provided in this Section, except as expressly provided by this Indenture.

### **ARTICLE 6**

#### **Redemption of Bonds**

##### **SECTION 6.01 When Bonds Are Subject to Redemption**

(a) The Bonds shall be subject to redemption prior to Maturity as follows:

(1) **Optional Redemption.** The Bonds may be redeemed at the option of the Issuer (exercised upon direction of Bud's Best Cookies if no Lease Default exists) as follows:

(A) On any date during a Variable Rate Period and on any Conversion Date with respect to any Bond, such Bond may be redeemed in whole or in part

at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the date of redemption.

(B) During any Term Rate Period of more than 5 years with respect to any Bond, such Bond may be redeemed in whole or in part on or after the First Optional Call Date (as defined below) at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the date of redemption plus a redemption premium (expressed as a percentage of principal amount redeemed) equal to whichever of the following shall be applicable: 2% if the date of redemption is on or after the First Optional Call Date but prior to the first anniversary of the First Optional Call Date; 1% if the date of redemption is on or after the first anniversary of the First Optional Call Date but prior to the second anniversary of the First Optional Call Date; and without premium if the date of redemption is on or after the second anniversary of the First Optional Call Date. For any Term Rate Period of more than 5 years but not more than 10 years, the First Optional Call Date shall be the fifth anniversary of the beginning of the Term Rate Period.

(2) Optional Redemption Upon Occurrence of Certain Calamities. All (but not less than all) Bonds may be redeemed at the option of the Issuer (exercised upon direction of Bud's Best Cookies if no Lease Default exists), at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the redemption date, within 180 days after any of the following shall have occurred:

(A) the Project shall have been damaged or destroyed to such extent that, in the opinion of Bud's Best Cookies, it cannot be restored within a period of 4 months to substantially the condition thereof immediately prior to such damage or destruction or Bud's Best Cookies is thereby prevented from carrying on its normal operations at the Project for a period of not less than 4 months; or

(B) the taking by eminent domain of all or substantially all the Project or of any part, use or control of the Project that, in the opinion of Bud's Best Cookies, results in Bud's Best Cookies being thereby prevented from carrying on its normal operations at the Project for a period of not less than 4 months; or

(C) Bud's Best Cookies ceases operation of the Project for a period of 4 months because of a change in technology or in the availability at reasonable cost of labor, raw materials, energy or transportation that, in the opinion of Bud's Best Cookies, renders the Project uneconomic for its intended use; or

(D) as a result of a change in law or a final order of any court or other governmental authority the Lease Agreement becomes void or unenforceable or impossible of performance or unreasonable burdens or excessive liabilities are



imposed on Bud's Best Cookies that, in the opinion of Bud's Best Cookies, render the Project uneconomic for its intended use.

(3) **Mandatory Redemption Upon Determination of Taxability.** All Bonds shall be redeemed within 60 days after a Determination of Taxability is made with respect to the Bonds at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the redemption date.

(4) **Scheduled Mandatory Redemption.** Unless Serial Maturities have been assigned to the Bonds, the Bonds shall be redeemed, at a redemption price equal to 100% of the principal amount to be redeemed plus accrued interest thereon to the redemption date, on December 1 in years and principal amounts (after credit as provided below) as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1994	\$200,000	1998	\$700,000
1995	400,000	1999	800,000
1996	600,000	2000	800,000
1997	700,000		

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\$800,000 of the Bonds  
will be retired at Maturity

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Not less than 45 or more than 60 days prior to each such scheduled mandatory redemption date, the Trustee shall proceed to select for redemption, by lot, Bonds or portions thereof in an aggregate principal amount equal to the amount required to be redeemed and shall call such Bonds or portions thereof for redemption on such scheduled mandatory redemption date; provided, however, that Bud's Best Cookies may, upon direction delivered to the Trustee not less than 60 days prior to such scheduled mandatory redemption date, direct that any or all of the following amounts be credited against the principal amount of Bonds scheduled for redemption on such date: (i) the principal amount of Bonds delivered by Bud's Best Cookies to the Trustee for cancellation and not previously claimed as a credit; and (ii) the principal amount of Bonds previously redeemed (other than Bonds redeemed pursuant to this paragraph) and not previously claimed as a credit.

(b) Bonds shall be redeemed in accordance with the mandatory redemption provisions of the Bonds without any direction from or consent by the Issuer or Bud's Best Cookies. Unless the date fixed for such mandatory redemption is otherwise specified by this Indenture, the Trustee shall select the date for mandatory redemption, subject to the provisions of this Indenture with respect to the permitted period for such redemption.

## **SECTION 6.02 Election to Redeem: Notice to Trustee**

The election of the Issuer to exercise any right of optional redemption shall be evidenced by notice to the Trustee from an Authorized Issuer Representative and, if required by this Indenture, shall be accompanied by the consent of Bud's Best Cookies (if no Lease Default exists), executed on its behalf by an Authorized Bud's Best Cookies Representative. The notice of election to redeem must be received by the Trustee at least 60 days prior to the date fixed for redemption (unless a shorter notice is acceptable to the Trustee) and shall specify (i) the principal amount of Bonds to be redeemed (if less than all Bonds Outstanding may be redeemed pursuant to such option) and (ii) the redemption date, subject to the provisions of this Indenture with respect to the permitted period for such redemption.

## **SECTION 6.03 Selection by Trustee of Bonds to be Redeemed**

(a) Subject to the provisions of subsection (c) of this Section, and except as otherwise provided with respect to scheduled mandatory redemption of Bonds, if less than all Bonds Outstanding are to be redeemed, the principal amount of Bonds of each Maturity to be redeemed may be specified by the Issuer (at the direction of Bud's Best Cookies if no Lease Default exists) by notice delivered to the Trustee not less than 60 days before the date fixed for redemption (unless a shorter notice is acceptable to the Trustee), or, in the absence of timely receipt by the Trustee of such notice, shall be selected by the Trustee by lot or by such other method as the Trustee shall deem fair and appropriate; provided, however, that the principal amount of Bonds of each Maturity to be redeemed may not be larger than the principal amount of Bonds of such Maturity then eligible for redemption and may not be smaller than the smallest Authorized Denomination.

(b) Subject to the provisions of subsection (c) of this Section, if less than all Bonds with the same Maturity are to be redeemed, the particular Bonds of such Maturity to be redeemed shall be selected by the Trustee not less than 30 nor more than 60 days prior to the redemption date from the Outstanding Bonds of such Maturity then eligible for redemption by lot or by such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (in Authorized Denominations) of the principal of Bonds of such Maturity of a denomination larger than the smallest Authorized Denomination.

(c) Notwithstanding any other provision of this Indenture, all Pledged Bonds eligible for redemption shall be redeemed before any other eligible Bonds are redeemed.

(d) The Trustee shall promptly notify the Issuer and the Tender Agent of the Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

(e) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Bonds shall relate, in the case of any Bond redeemed

or to be redeemed only in part, to the portion of the principal of such Bond which has been or is to be redeemed.

#### **SECTION 6.04 Notice of Redemption**

(a) Unless waived by the Holders of all Bonds then Outstanding to be redeemed, notice of redemption shall be given by registered or certified mail, mailed not less than 30 nor more than 60 days prior to the redemption date, to each Holder of Bonds to be redeemed, at his address appearing in the Bond Register.

(b) All notices of redemption shall state:

(1) the redemption date,

(2) the redemption price,

(3) the principal amount of Bonds to be redeemed, and, if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) that on the redemption date the redemption price of each of the Bonds to be redeemed will become due and payable and that the interest thereon shall cease to accrue from and after said date, and

(5) the place or places where the Bonds to be redeemed are to be surrendered for payment of the redemption price.

(c) Notice of redemption of Bonds to be redeemed at the option of the Issuer shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer. Notice of redemption of Bonds in accordance with the mandatory redemption provisions of the Bonds shall be given by the Trustee in the name and at the expense of the Issuer.

(d) The Issuer and the Trustee shall, to the extent practical under the circumstances, comply with the standards set forth in Securities and Exchange Commission's Exchange Act Release No. 23856 dated December 3, 1986, regarding redemption notices, provided that their failure to do so shall not in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in this Section.

(e) Anything herein to the contrary notwithstanding, the Trustee shall not give any notice of a redemption of Bonds pursuant to Section 6.01(a)(1) or (2) and shall not effect any such redemption without the prior written consent of the Bank unless sufficient moneys to effect such redemption shall have been deposited with the Trustee on or prior to the date that such notice of redemption is to be given by the Trustee hereunder.

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#### **SECTION 6.05 Deposit of Redemption Price**

On the applicable redemption date, an amount of money sufficient to pay the redemption price of all the Bonds which are to be redeemed on that date shall be deposited with the Trustee. Such money shall be held in trust for the benefit of the persons entitled to such redemption price and shall not be deemed to be part of the Trust Estate.

#### **SECTION 6.06 Bonds Payable on Redemption Date**

(a) Notice of redemption having been given as aforesaid, the Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds shall cease to bear interest. Upon surrender of any such Bond for redemption in accordance with said notice such Bond shall be paid by the Issuer at the redemption price. Installments of interest due on or prior to the redemption date shall be payable to the Holders of the Bonds registered as such on the relevant Record Dates according to the terms of such Bonds and the provisions of Section 5.03.

(b) If any Bond called for redemption shall not be paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the redemption date at the Post-Default Rate.

#### **SECTION 6.07 Bonds Redeemed in Part**

Unless otherwise provided herein, any Bond which is to be redeemed only in part shall be surrendered at the Office of the Trustee with all necessary endorsements for transfer, and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same Maturity and interest rate and of any Authorized Denomination or Denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond surrendered.

### **ARTICLE 7**

#### **Application of Proceeds**

#### **SECTION 7.01 Proceeds From Sale of Bonds**

The proceeds from the sale of the Bonds to the original purchaser or purchasers thereof shall be deposited in the Construction Fund.

## **SECTION 7.02 Construction Fund**

(a) There is hereby established with the Trustee a trust fund which shall be designated the "Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991 Construction Fund". A deposit to the Construction Fund is to be made pursuant to Section 7.01.

(b) The money in the Construction Fund shall be paid out by the Trustee from time to time for the purpose of paying Project Costs, subject to the requirements of Section 3.02 of the Lease Agreement.

## **SECTION 7.03 Completion of the Project**

The completion of the Project and the payment of all costs and expenses incidental thereto shall be evidenced by the filing with the Trustee of the certificate of an Authorized Issuer Representative and an Authorized Bud's Best Cookies Representative in the form required by Section 3.05 of the Lease Agreement. Upon receipt of such certificate by the Trustee, any balance remaining in the Construction Fund shall be deposited in the Bond Fund and shall be applied to the redemption of as many Bonds as possible on the next date on which the Bonds are subject to redemption and for which the required notice of redemption can be given, and the balance remaining, if any, after such redemption shall be applied to the payment of Debt Service on the Bonds on the next ensuing Bond Payment Date. Pending such application, the money so deposited in the Bond Fund shall be segregated in a separate account within the Bond Fund and may be invested in Qualified Investments, provided that the yield on such investments may not exceed the yield on the Bonds, computed in accordance with applicable provisions of the Internal Revenue Code.

## **ARTICLE 8**

### **Revenues**

## **SECTION 8.01 Bond Fund**

(a) There is hereby established a special trust fund which shall be designated the "Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991 Bond Fund". The Trustee shall be the depository, custodian and disbursing agent for the Bond Fund.

(b) There shall be deposited in the Bond Fund, as and when received:

(1) all money drawn by the Trustee under the Letter of Credit for the purpose of paying Debt Service due on the Bonds on any Bond Payment Date,

(2) all Basic Rental Payments under the Lease Agreement with respect to Debt Service on the Bonds,



(3) all other money required to be deposited in the Bond Fund pursuant to the Lease Agreement or this Indenture, and

(4) all other money received by the Trustee when accompanied by directions that such money is to be deposited in the Bond Fund.

(c) Subject to the provisions of subsections (d) and (e) of this Section, the Trustee is hereby authorized and directed to withdraw sufficient money from the Bond Fund to pay Debt Service on the Bonds as the same become due and payable, whether at Maturity, by call for redemption, or otherwise.

(d) The Trustee shall draw on the Letter of Credit in accordance with its terms for payment by the Bank to the Trustee on each Bond Payment Date of an amount equal to Debt Service due such Bond Payment Date with respect to Bonds other than Obligor Bonds. Such draws shall be made without regard to Basic Rental Payments received or anticipated with respect to Debt Service on Bonds other than Obligor Bonds. Any money so drawn under the Letter of Credit shall be deposited and held in a separate, segregated account in the Bond Fund and shall not be commingled with other money in the Bond Fund. Such money shall be used only to pay Debt Service on Bonds other than Obligor Bonds. Debt Service on Bonds other than Obligor Bonds shall be payable from the following sources in the order of priority indicated:

(1) **First**, money drawn under the Letter of Credit.

(2) **Second** (but only if the Letter of Credit is no longer in effect, or money drawn, or available for drawing, under the Letter of Credit is not sufficient for such payment, or the related draw on the Letter of Credit is not honored), any other money on deposit in the Bond Fund.

(e) On each Bond Payment Date money on deposit in the Bond Fund from any source other than the Letter of Credit remaining after all Debt Service has been paid on Bonds other than the Obligor Bonds shall be applied by the Trustee for the following purposes in the order of priority indicated:

(1) **First**, the Trustee shall reimburse the Bank, prior to the close of business on such Bond Payment Date, for the amount drawn under the Letter of Credit for payment of Debt Service on the Bonds.

(2) **Second**, the Trustee shall pay to the Bank Debt Service due on such Bond Payment Date on Pledged Bonds and shall reimburse the Bank for all other amounts, if any, certified by the Bank as due to it, but unpaid, under the terms of the Credit Agreement.

(3) **Third**, the Trustee shall pay Debt Service due on such Bond Payment Date on all Obligor Bonds other than Pledged Bonds.

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(4) **Fourth**, the balance, if any, shall be retained in the Bond Fund.

#### **SECTION 8.02 Bond Purchase Fund**

(a) There is hereby established a special trust fund which shall be designated the "Revenue Bonds (Bud's Best Cookies, Inc. Project), Series 1991 Bond Purchase Fund". The Trustee shall be the depository, custodian and disbursing agent for the Bond Purchase Fund.

(b) There shall be deposited in the Bond Purchase Fund, ~~as~~ and when received:

(1) all money drawn by the Trustee under the Letter of Credit for the purpose of paying the purchase price of Bonds due on any Tender Date,

(2) all Additional Rental Payments under the Lease Agreement with respect to the purchase price of tendered Bonds,

(3) the proceeds of any remarketing of Bonds by the Remarketing Agent,

(4) all other money required to be deposited in the Bond Purchase Fund pursuant to the Lease Agreement or this Indenture, and

(5) all other money received by the Trustee when accompanied by directions that such money is to be deposited in the Bond Purchase Fund.

(c) Subject to the provisions of subsections (d) and (e) of this Section, the Trustee is hereby authorized and directed to withdraw sufficient money from the Bond Purchase Fund to pay the purchase price (principal plus accrued interest) of Bonds due on any Tender Date.

(d) Funds for the payment of the purchase price of Bonds other than Obligor Bonds shall be derived from the following sources in the order of priority indicated:

(1) **First**, Eligible Remarketing Proceeds.

(2) **Second**, money drawn under the Letter of Credit.

(3) **Third** (but only if the Letter of Credit is no longer in effect, or Eligible Remarketing Proceeds and money drawn, or available for drawing, under the Letter of Credit are not sufficient for such payment, or the related draw on the Letter of Credit is not honored), any other money on deposit in the Bond Purchase Fund.

One hour prior to the latest time that a draw may be made under the Letter of Credit for payment of funds by the Bank to the Trustee on a Tender Date, the Trustee shall determine the amount of Eligible Remarketing Proceeds already on deposit in the Bond Purchase Fund. After such determination the Trustee shall draw on the Letter of Credit in accordance with its terms

for payment by the Bank to the Trustee on such Tender Date of the amount (if any) by which (i) the purchase price due on such Tender Date with respect to Bonds other than Obligor Bonds exceeds (ii) the Eligible Remarketing Proceeds already on deposit in the Bond Purchase Fund. Any money so drawn under the Letter of Credit shall be deposited and held in a separate, segregated account in the Bond Purchase Fund and shall not be commingled with other money in the Bond Purchase Fund. Such money shall be used only to pay the purchase price of Bonds other than Obligor Bonds.

(e) On each Tender Date money in the Bond Purchase Fund from any source other than the Letter of Credit remaining after payment of the purchase price of Bonds other than Obligor Bonds shall be applied by the Trustee for the following purposes in the order of priority indicated:

(1) **First**, the Trustee shall reimburse the Bank, prior to the close of business on such Tender Date, for the amount drawn under the Letter of Credit for payment of the purchase price of Bonds other than Obligor Bonds.

(2) **Second**, the Trustee shall pay to the Bank the purchase price due on such Tender Date on Pledged Bonds and shall reimburse the Bank for all other amounts, if any, certified by the Bank as due to it, but unpaid, under the terms of the Credit Agreement.

(3) **Third**, the Trustee shall pay the purchase price due on such Tender Date on all Obligor Bonds other than Pledged Bonds.

(4) **Fourth**, the balance, if any, shall be paid to Bud's Best Cookies.

(f) If proceeds from the remarketing of Bonds are deposited in the Bond Purchase Fund after such Tender Date, such proceeds shall be applied as provided in subsection (e) of this Section.

**SECTION 8.03 Money for Bond Payments to be Held in Trust; Repayment of Unclaimed Money**

(a) If money is on deposit in the Bond Fund on any Bond Payment Date sufficient to pay Debt Service on the Bonds due and payable on such Date, but the Holder of any Bond that matures on such Date or that is subject to redemption on such Date fails to surrender such Bond to the Trustee for payment of Debt Service due and payable on such Date, the Trustee shall segregate and hold in trust for the benefit of the person entitled thereto money sufficient to pay the Debt Service due and payable on such Bond on such Date. Money so segregated and held in trust shall not be a part of the Trust Estate and shall not be invested, but shall constitute a separate trust fund for the benefit of the persons entitled to such Debt Service.

(b) If money is on deposit in the Bond Purchase Fund on any Tender Date sufficient to pay the purchase price on the Bonds to be paid on such Tender Date, but the Holder of any Unsurrendered Bond fails to deliver such Bond to the Trustee or Tender Agent for payment of such purchase price on such Tender Date, the Trustee shall segregate and hold in trust for the benefit of the person entitled thereto money sufficient to pay such purchase price due and payable on such Bond on such Tender Date. Money so segregated and held in trust shall not be a part of the Trust Estate and shall not be invested, but shall constitute a separate trust fund for the benefit of the persons entitled to such purchase price.

(c) Any money held in trust by the Trustee for the payment of Debt Service on or the purchase price of any Bond pursuant to subsections (a) and (b) of this Section and remaining unclaimed for 3 years after such Debt Service or purchase price has become due and payable shall be paid to Bud's Best Cookies upon request of an Authorized Bud's Best Cookies Representative; and the Holder of such Bond shall thereafter, as an unsecured general creditor, look only to Bud's Best Cookies for payment thereof, and all liability of the Trustee with respect to such trust money, and all liability of the Issuer with respect thereto, shall thereupon cease; provided, however, that the Trustee, before being required to make any such payment to Bud's Best Cookies, may at the expense of Bud's Best Cookies cause to be published once, in a newspaper of general circulation in the city where the Office of the Trustee is located, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to Bud's Best Cookies.

## **ARTICLE 9**

### **Security for and Investment of Special Funds**

#### **SECTION 9.01 Security for Trust Estate Money**

Any money on deposit in the Special Funds or otherwise held by the Trustee as part of the Trust Estate shall be impressed with the trust established by this Indenture and shall, unless invested as provided in this Indenture or secured by the Federal Deposit Insurance Corporation (or any successor agency of the United States of America), be secured for the benefit of the Holders of the Bonds, either

(1) by holding on deposit, as collateral security, Federal Securities or other marketable securities eligible as security for the deposit of trust funds under regulations of the Comptroller of the Currency, United States Treasury, having a market value (exclusive of accrued interest) not less than the amount of money being secured, or

(2) if the furnishing of security in the manner provided by the foregoing paragraph (1) is not permitted by the then applicable law and regulations, then in such other manner as may be required or permitted by the then applicable state and federal

laws and regulations respecting the security for, or granting a preference in the case of, the deposit of trust funds.

#### **SECTION 9.02 Investment of Special Funds**

(a) Any money held as part of a Special Fund shall be invested or reinvested in Qualified Investments by the Trustee in accordance with the instructions of Bud's Best Cookies if no Lease Default exists, to the extent that such investment is, in the opinion of the Trustee, feasible and consistent with the purposes for which such Fund was created; provided, however, that money in the Bond Fund and Bond Purchase Fund that was derived from a draw on the Letter of Credit or that constitutes Eligible Remarketing Proceeds shall be invested only in Federal Securities with a maturity not later than the earlier of (i) 30 days after the date of such investment, or (ii) the date such money will be needed for the payment of Debt Service on, or the purchase price of, Bonds. Any investment made with money on deposit in a Special Fund shall be held by or under control of the Trustee and shall be deemed at all times a part of the Special Fund where such money was on deposit, and the interest and profits realized from such investment shall be credited to such Special Fund and any loss resulting from such investment shall be charged to such Special Fund.

(b) Any investment of money in the Special Funds may be made by the Trustee through its own bond department, investment department or other commercial banking department providing investment services. Any certificate of deposit issued by, or other interest-bearing deposit with, the Trustee shall be deemed an investment rather than a deposit requiring security in the manner specified in Section 9.01.

#### **SECTION 9.03 Arbitrage**

(a) The Issuer will not cause or permit any investment to be made of any money on deposit in the Special Funds that would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 (or successor provision) of the Internal Revenue Code.

(b) The Trustee shall follow the instructions of Bud's Best Cookies or, if a Lease Default exists, the Issuer with respect to investments of the Special Funds as provided in Section 9.02, but the Trustee shall not be responsible for (i) determining that any such investment complies with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code, or (ii) calculating the amount of, or making payment of, any rebate due to the United States under Section 148(f) of the Internal Revenue Code.

#### **SECTION 9.04 Application of Funds After Bonds Fully Paid**

After all Bonds have been Fully Paid, any money or investments remaining in the Special Funds or otherwise constituting part of the Trust Estate shall be applied by the Trustee as follows in the order of priority indicated:



(1) First, the Trustee shall reimburse the Bank for all amounts certified by the Bank as due to it, but unpaid, under the terms of the Credit Agreement.

(2) Second, the Trustee shall pay the balance to Bud's Best Cookies.

## ARTICLE 10

### Representations and Covenants

#### SECTION 10.01 General Representations

The Issuer makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(1) It is duly organized as a public corporation under the provisions of the Enabling Law and is not in default under any of the provisions contained in its certificate of incorporation or bylaws or in the laws of the State of Alabama.

(2) Under the provisions of the Enabling Law and its certificate of incorporation, it has the power to consummate the transactions contemplated by the Financing Documents to which it is a party.

(3) By proper corporate action the Issuer has duly authorized the execution and delivery of the Financing Documents to which it is a party and the consummation of the transactions contemplated therein.

(4) It has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the issuance of the Bonds and the execution and delivery of the Financing Documents to which it is a party.

(5) The execution and delivery by it of the Financing Documents to which it is a party and the consummation by it of the transactions contemplated therein will not (i) conflict with, be in violation of, or result in a default under its certificate of incorporation or bylaws, or any agreement, instrument, order or judgment to which it is a party or is subject or (ii) result in or require the creation or imposition of any lien of any nature with respect to the Project or Trust Estate, except as contemplated by the Financing Documents.

(6) The Financing Documents to which it is a party constitute legal, valid and binding obligations and are enforceable against it in accordance with the terms of such instruments, except as enforcement thereof may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (ii) general principles of equity, including the exercise of judicial discretion in appropriate cases.

(7) The Issuer has not created or permitted the creation of any mortgage, pledge, encumbrance, security interest, assignment or other charge of any kind with respect to the Trust Estate, except as contemplated by the Financing Documents.

(8) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or threatened against or affecting it or its properties, that involves the consummation of the transactions contemplated by, or the validity or enforceability of, the Financing Documents.

#### **SECTION 10.02 No Encumbrance on Trust Estate**

The Issuer will not create or permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Trust Estate or any part thereof prior to or on a parity of lien with this Indenture.

#### **SECTION 10.03 General Covenants**

(a) Subject to the provisions of Article 3, the Issuer will duly and punctually pay, or cause to be paid, the Debt Service on the Bonds as and when the same shall become due and will duly and punctually deposit, or cause to be deposited, in the Special Funds the amounts required to be deposited therein, all in accordance with the terms of the Bonds and this Indenture.

(b) The Issuer will not extend or consent to the extension of the time for payment of Debt Service on the Bonds, unless such extension is consented to by the Holder of the Bond affected.

#### **SECTION 10.04 Concerning the Lease Agreement**

(a) The Issuer will perform and observe all agreements and covenants required to be performed and observed by it under the Lease Agreement. Without relieving the Issuer from the responsibility for such performance and observance, the Trustee, on behalf of the Issuer, may perform and observe any such agreement or covenant, all to the end that the Issuer's rights under the Lease Agreement may be unimpaired and free from default.

(b) The Issuer will promptly notify the Trustee of the occurrence of any Lease Default under the Lease Agreement or the occurrence of any event which, upon notice or lapse of time (or both), would become such a Lease Default, provided that the Issuer has knowledge of such event.

#### **SECTION 10.05 Inspection of Records**

The Issuer will at any and all times, upon the request of the Trustee, afford and procure a reasonable opportunity for the Trustee by its representatives to inspect the Project and any books, records, reports and other papers of the Issuer relating to the Project, and to make copies

therefrom, and the Issuer will furnish to the Trustee any and all information as the Trustee may reasonably request with respect to the performance by the Issuer of its covenants in this Indenture.

#### **SECTION 10.06 Advances by Trustee**

If the Issuer shall fail to perform any of its covenants in this Indenture, the Trustee may, but shall not be required, at any time and from time to time, after notice to Bud's Best Cookies if no Lease Default exists under the Lease Agreement, to make advances to effect performance of any such covenant on behalf of the Issuer. Any money so advanced by the Trustee, together with interest at the Post-Default Rate, shall be repaid (subject to the provisions of Article 3) upon demand and such advances shall be secured under this Indenture prior to the Bonds.

#### **SECTION 10.07 Corporate Existence; Merger, Consolidation, Etc.**

(a) The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

(b) The Issuer shall not consolidate with or merge into any other corporation or transfer its property substantially as an entirety to any person unless:

(1) the corporation formed by such consolidation or into which the Issuer is merged or the person which acquires by conveyance or transfer the Issuer's property substantially as an entirety (the "Successor") shall execute and deliver to the Trustee an instrument in form recordable and acceptable to the Trustee containing an assumption by such Successor of the due and punctual payment of the Debt Service on the Bonds and the performance and observance of every covenant and condition of this Indenture and the Lease Agreement to be performed or observed by the Issuer; and

(2) the Issuer shall deliver to the Trustee a Favorable Tax Opinion.

(c) Upon any consolidation or merger or any conveyance or transfer of the Issuer's property substantially as an entirety in accordance with this Section, the Successor shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Successor had been named as the Issuer herein.

#### **SECTION 10.08 Appointment of Successor Trustee**

Whenever necessary to avoid or fill a vacancy in the office of the Trustee, the Issuer will appoint a successor Trustee in the manner provided in Article 13.

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#### **SECTION 10.09 Tax Exempt Status of Bonds**

(a) The Issuer covenants and agrees that it will not take any action, or fail to take any action, if such action or failure to act would cause the interest on the Bonds to be Taxable; provided, however, that if a Determination of Taxability is made and the Bonds are redeemed in accordance with the applicable redemption provisions of the Bonds, any default by the Issuer in the performance or observance of the covenant contained in this Section shall not constitute an Event of Default under this Indenture.

(b) (i) The Holder of any Bond that is paid or redeemed prior to a Determination of Taxability shall not be entitled to any redemption premium as a result of any such Determination of Taxability, and (ii) if a trust is established for the payment or redemption of Bonds pursuant to Section 15.02 prior to a Determination of Taxability, the Holders of Bonds to be paid or redeemed from such trust shall not be entitled to early redemption or a redemption premium as a result of any such Determination of Taxability.

#### **SECTION 10.10 Performance by Bud's Best Cookies**

Without relieving the Issuer from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, Bud's Best Cookies, on behalf of the Issuer, may perform any such agreement or covenant.

#### **SECTION 10.11 Delivery of Project Revenues**

The Issuer shall deliver to the Trustee all Project Revenues promptly upon receipt of such Project Revenues by the Issuer.

### **ARTICLE 11**

#### **The Project**

#### **SECTION 11.01 Indenture not to be Construed as Mortgage**

Nothing contained in this Indenture shall be construed to create a mortgage or other lien on the Project.

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## ARTICLE 12

### Remedies

#### SECTION 12.01 Events of Default

Any one or more of the following shall constitute an event of default (an "Event of Default") under this Indenture (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Bond when such interest becomes due and payable; or

(2) default in the payment of the principal of (or premium, if any, on) any Bond when such principal (or premium, if any) becomes due and payable, whether at its stated Maturity, by declaration of acceleration or call for redemption or otherwise; or

(3) failure to pay when due the purchase price of any Bond tendered for purchase pursuant to the Optional Tender or Mandatory Tender provisions hereof; or

(4) receipt by the Trustee of notice from the Bank (i) stating that an event of default, as therein defined, has occurred and is continuing under the Credit Agreement and (ii) directing that the Bonds be declared due and payable pursuant to Section 12.02; or

(5) default in the performance, or breach, of any covenant or warranty of the Issuer in this Indenture (other than a covenant or warranty a default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Issuer, Bud's Best Cookies and the Bank by the Trustee or to the Issuer, Bud's Best Cookies, the Trustee and the Bank by the Holders of at least 10% in principal amount of the Outstanding Bonds, a notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder; or

(6) the occurrence of an event of default, as therein defined, under the Lease Agreement or Bond Guaranty and the expiration of the applicable grace period, if any, specified therein; or

(7) a decree or order of a court or agency or supervisory authority, having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator of any insolvency, readjustment of debt, marshalling of assets and liabilities or similar

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proceeding, or for the winding up or liquidation of its affairs, shall have been entered against the Bank or the Bank shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Bank or of or relating to all or substantially all of its property.

#### **SECTION 12.02 Acceleration of Maturity; Rescission and Annulment**

(a) If an Event of Default exists under Section 12.01(1), (2), (3) or (7) with respect to Bonds other than Obligor Bonds and the Letter of Credit is in effect, or if an Event of Default exists under Section 12.01(4), the Trustee shall declare the principal of all the Bonds and the interest accrued thereon to be due and payable immediately, by notice to the Issuer and the Bank, and upon any such declaration such Debt Service shall become immediately due and payable. Upon any such declaration of acceleration the Trustee shall immediately draw under the Letter of Credit to the fullest extent permitted by the terms thereof to pay Debt Service on Bonds other than Obligor Bonds on the due date specified in such declaration.

(b) If an Event of Default exists under Section 12.01(1), (2) or (3) with respect to Obligor Bonds, or if an Event of Default exists under Section 12.01(5) or (6), or if any other Event of Default exists and the Letter of Credit is no longer in effect, then and in every such case, the Trustee or the Holders of not less than 25% in principal amount of the Bonds Outstanding may (but only with the consent of the Bank if the Letter of Credit is in effect) declare the principal of all the Bonds and the interest accrued thereon to be due and payable on a date specified in such declaration (such due date to be not more than 3 days after such declaration), by notice to the Issuer (and to the Trustee, if given by Bondholders), and upon any such declaration such Debt Service shall become due and payable on the date specified in such declaration.

(c) At any time after such a declaration of acceleration has been made pursuant to subsection (b) of this Section, the Holders of a majority in principal amount of the Bonds Outstanding may (subject to the provisions of Section 16.03), by notice to the Issuer and the Trustee, rescind and annul such declaration and its consequences if

(1) the Issuer has deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on all Bonds,

(B) the principal of (and premium, if any, on) any Bonds which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Bonds,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Bonds, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default, other than the non-payment of the principal of Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in Section 12.11.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

#### **SECTION 12.03 Application of Money Collected**

(a) Any money collected by the Trustee from a draw under the Letter of Credit shall be applied solely for the purpose or purposes for which such money was drawn pursuant to this Indenture.

(b) Any money collected by the Trustee pursuant to this Article and any other sums then held by the Trustee as part of the Trust Estate (other than money from a draw under the Letter of Credit), shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(1) **First:** To the payment of all undeducted amounts due the Trustee under Section 13.07;

(2) **Second:** To the payment of the whole amount then due and unpaid upon the Outstanding Bonds for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected by the Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Bonds) on overdue principal (and premium, if any) and on overdue installments of interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon such Bonds, then to the payment of such principal (and premium, if any) and interest, without any preference or priority, ratably according to the aggregate amount so due; provided, however, that payments with respect to Pledged Bonds shall be made only after all other Bonds have been Fully Paid;

(3) **Third:** To the payment of all amounts then due to the Bank pursuant to the Credit Agreement; and

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(4) **Fourth:** To the payment of the remainder, if any, to the Issuer or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

#### **SECTION 12.04 Trustee May Enforce Claims without Possession of Bonds**

All rights of action and claims under this Indenture or the Bonds may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Bonds in respect of which such judgment has been recovered.

#### **SECTION 12.05 Limitation on Suits**

No Holder of any Bond shall have any right to institute any proceeding, judicial or otherwise, under or with respect to this Indenture, or for the appointment of a receiver or trustee or for any other remedy hereunder, unless

(1) such Holder has previously given notice to the Trustee of a continuing Event of Default;

(2) the Holders of not less than 25% in principal amount of the Outstanding Bonds shall have made request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding;

(5) no direction inconsistent with such request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Bonds; and

(6) such direction or request is joined in or approved by the Bank, if required by Section 16.03;

it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the lien of this Indenture or the rights of any other Holders of Bonds, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right

under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all Outstanding Bonds.

**SECTION 12.06 Unconditional Right of Bondholders to Receive Principal, Premium and Interest**

Notwithstanding any other provision in this Indenture other than those set forth in Article 3, the Holder of any Bond shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and interest on such Bond on the Maturity date expressed in such Bond (or, in the case of redemption, on the redemption date) and to receive the purchase price (principal plus accrued interest) on any Optional Tender Date with respect to such Bond, provided the Holder has complied with the requirements for Optional Tender of Bonds and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

**SECTION 12.07 Restoration of Positions**

If the Trustee or any Bondholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Trustee or to such Bondholder, then and in every such case the Issuer, the Trustee and the Bondholders shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Bondholders shall continue as though no such proceeding had been instituted.

**SECTION 12.08 Rights and Remedies Cumulative**

No right or remedy herein conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**SECTION 12.09 Delay or Omission Not Waiver**

No delay or omission of the Trustee or of any Holder of any Bond to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Bondholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Bondholders, as the case may be.

**SECTION 12.10 Control by Bank and Bondholders**

The Holders of a majority in principal amount of the Outstanding Bonds (subject to the provisions of Section 16.03) shall have the right, during the continuance of an Event of Default,

(1) to require the Trustee to proceed to enforce this Indenture, either by judicial proceedings for the enforcement of the payment of the Bonds or otherwise, and

(2) to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee hereunder, provided that

(A) the provisions of Section 12.02 requiring a declaration of acceleration and a draw under the Letter of Credit may not be modified or waived without the consent of all Bondholders,

(B) such direction shall not be in conflict with any rule of law or this Indenture,

(C) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(D) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders not taking part in such direction.

**SECTION 12.11 Waiver of Past Defaults**

(a) Before any draw has been made under the Letter of Credit or any judgment or decree for payment of money due has been obtained by the Trustee, the Holders of not less than a majority in principal amount of the Outstanding Bonds may (subject to the provisions of Section 16.03), by notice to the Trustee, the Issuer and Bud's Best Cookies, on behalf of the Holders of all the Bonds waive any past default hereunder or under the Lease Agreement and its consequences, except a default

(1) in the payment of the principal of (or premium, if any) or interest on any Bond,

(2) in the payment of a Basic Rental Payment, or

(3) in respect of a covenant or provision hereof which under Article 14 cannot be modified or amended without the consent of the Holder of each Outstanding Bond affected.



(b) Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture and the Lease Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

#### **SECTION 12.12 Remedies Under Lease Agreement**

(a) The Trustee shall have the right, in its own name or on behalf of the Issuer, to declare any default and exercise any remedies under the Lease Agreement; provided, however, that if the Letter of Credit is in effect and the Bank has not defaulted in the payment of any draw, neither the Issuer nor the Trustee will exercise any of their remedies under the Lease Agreement without the consent of the Bank.

(b) Any money collected by the Trustee pursuant to the exercise of any remedies under the Lease Agreement shall be applied as provided in Section 12.03.

#### **SECTION 12.13 Waiver of Appraisement and Other Laws**

(a) To the full extent that it may lawfully so agree, the Issuer will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture; and the Issuer, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Issuer, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Trust Estate marshalled upon any enforcement hereof.

(b) If any law in this Section referred to and now in force, of which the Issuer or its successor or successors might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section.

#### **SECTION 12.14 Suits to Protect the Trust Estate**

The Trustee shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Indenture and to protect its interests and the interests of the Bondholders in the Trust Estate and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Bondholders or the Trustee.

### **SECTION 12.15 Remedies Subject to Applicable Law**

All rights, remedies and powers provided by this Article may be exercised only to the extent that 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, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

### **SECTION 12.16 Subrogation Rights of Bank**

(a) The Bank shall be subrogated to all rights possessed by the Holders of the Bonds in respect of which Debt Service shall have been paid with funds provided by the Bank pursuant to the Letter of Credit. Such subrogation rights shall be subordinate in right of payment to the rights of all other Bondholders, and, to that end, the Bank shall be precluded from exercising or enforcing any subrogation rights under this Indenture unless and until all Bonds owned by any person other than the Bank shall have been Fully Paid. After all Bonds owned by any person other than the Bank have been Fully Paid, any reference herein to the Holders of the Bonds or to the Bondholders shall mean the Bank to the extent of its subrogation rights resulting from payments made pursuant to the Letter of Credit. If Debt Service on any Bond is paid with funds provided by the Bank pursuant to the Letter of Credit, then, insofar as the subrogation rights of the Bank are concerned, such Bond shall be deemed to be in default and Outstanding with respect to such Debt Service until all amounts paid in respect thereof under the Letter of Credit shall have been repaid to the Bank, and, after all Bonds owned by persons other than the Bank have been Fully Paid, the Bank may exercise all rights which it would have under the Indenture as the Holder of such Bond then in default as to the payment of such Debt Service.

(b) The Bank may exercise all its subrogation rights under the Indenture in respect of any Bonds without the necessity of possessing any of such Bonds or producing the same in any trial or other proceeding related to the enforcement of its rights in respect thereof. Nevertheless, in order to evidence the subrogation rights acquired in respect of any Bonds Debt Service on which was paid with funds provided pursuant to the Letter of Credit, the Bank may require the Trustee to transfer to it all Bonds surrendered for payment with funds provided pursuant to the Letter of Credit or to issue to it new Bonds of like tenor with those so surrendered. The subrogation rights granted to the Bank in this Indenture are not intended to be exclusive of any other remedy or remedies available to the Bank, and such subrogation rights shall be cumulative and shall be in addition to (i) every other remedy given hereunder, under the Credit Agreement or any other instrument or agreement with respect to the reimbursement of money paid by the Bank pursuant to the Letter of Credit, and (ii) every other remedy now or hereafter existing at law or in equity or by statute.

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## **ARTICLE 13**

### **The Trustee, the Remarketing Agent and the Tender Agent**

#### **SECTION 13.01 Certain Duties and Responsibilities of Trustee**

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

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

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

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

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

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

(2) the Trustee shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

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

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its

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duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

#### **SECTION 13.02 Notice of Defaults**

Within 10 days after the occurrence of an Event of Default described in (1), (2), (3) or (7) of Section 13.01 and within 90 days after the occurrence of any other default hereunder, the Trustee shall transmit by mail to all Bondholders as their names and addresses appear in the Bond Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of Debt Service on any Bond, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the Bondholders; and provided, further, that in the case of any default of the character specified in Section 12.01(5) no such notice to Bondholders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

#### **SECTION 13.03 Certain Rights of Trustee**

Except as otherwise provided in Section 13.01:

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

(2) any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Issuer Representative;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate executed by an Authorized Issuer Representative;

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

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Bondholders pursuant to this Indenture, unless such Bondholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, provided, that nothing contained in this paragraph shall be construed to require such security or indemnity for the performance by the Trustee of its obligations under Sections 8.01, 8.02 and 12.02;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Issuer, personally or by agent or attorney; and

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

#### **SECTION 13.04 Not Responsible for Recitals**

The recitals contained herein and in the Bonds, except the certificate of authentication on the Bonds, shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Issuer thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Indenture or of the Bonds.

#### **SECTION 13.05 May Hold Bonds**

The Trustee in its individual or any other capacity, may become the owner or pledgee of Bonds and may otherwise deal with the Issuer and Bud's Best Cookies with the same rights it would have if it were not Trustee.

#### **SECTION 13.06 Money Held in Trust**

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent expressly provided in this Indenture or required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise provided in Article 9.



### **SECTION 13.07 Compensation and Reimbursement**

**(a) The Issuer agrees**

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); and

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's negligence or bad faith.

(b) As security for the performance of the obligations of the Issuer under this Section the Trustee shall be secured under this Indenture by a lien prior to the Bonds, and for the payment of such compensation, expenses, reimbursements and indemnity the Trustee shall have the right to use and apply any money held by it as a part of the Trust Estate; provided, however, that money received by the Trustee from a draw on the Letter of Credit shall be used solely for the purpose of paying Debt Service on, or the purchase price of, Bonds as herein provided and shall never be subject to any lien imposed by this Section in favor of the Trustee.

### **SECTION 13.08 Corporate Trustee Required: Eligibility**

There shall at all times be a Trustee hereunder which shall (i) be a commercial bank or trust company organized and doing business under the laws of the United States of America or of any state, (ii) be authorized under such laws to exercise corporate trust powers, (iii) have a combined capital and surplus of at least \$50,000,000, and (iv) be subject to supervision or examination by federal or state authority.

### **SECTION 13.09 Resignation and Removal: Appointment of Successor**

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 13.10.

(b) The Trustee may resign at any time by giving notice thereof to the Issuer, Bud's Best Cookies and the Bank. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by the Holders of a majority in principal amount of the Outstanding Bonds (subject to the provisions of Section 16.03) by notice delivered to the Trustee, the Issuer and Bud's Best Cookies.

(d) If at any time:

(1) the Trustee shall cease to be eligible under Section 13.08 and shall fail to resign after request therefor by the Issuer or by any Bondholder who has been a bona fide Holder of a Bond for at least 6 months, or

(2) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Issuer by a resolution of its governing body may remove the Trustee, or (ii) any Bondholder who has been a bona fide Holder of a Bond for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Issuer, by a resolution of its governing body, shall (but only with the consent of the Bank if the Letter of Credit is in effect) promptly appoint a successor Trustee. In case all or substantially all of the Trust Estate shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may (but only with the consent of the Bank if the Letter of Credit is in effect) similarly appoint a successor to fill such vacancy until a new Trustee shall be so appointed by the Bondholders. If, within 1 year after such resignation, removal or incapability or the occurrence of such vacancy, a successor Trustee shall (subject to the provisions of Section 16.03) be appointed by Act of the Holders of a majority in principal amount of the Outstanding Bonds delivered to the Issuer, Bud's Best Cookies and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Issuer or by such receiver or trustee. If no successor Trustee shall have been so appointed by the Issuer or the Bondholders and accepted appointment in the manner hereinafter provided, any Bondholder who has been a bona fide Holder of a Bond for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuer shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing notice of such event by first-class mail, postage prepaid, to the Holders of Bonds as their names and addresses appear in the Bond Register. Each notice shall include the name of the successor Trustee and the address of the Office of the Trustee.

### **SECTION 13.10 Acceptance of Appointment by Successor**

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Trustee; but, on request of the Issuer or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Trustee upon the trusts herein expressed the Letter of Credit and all the estates, properties, rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 13.07. Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such estates, properties, rights, powers and trusts.

(b) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article, to the extent operative.

### **SECTION 13.11 Merger, Conversion, Consolidation or Succession to Business**

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

### **SECTION 13.12 Remarketing Agent**

(a) The Issuer and Bud's Best Cookies have appointed the initial Remarketing Agent to act in such capacity in accordance with the terms of this Indenture.

(b) The Remarketing Agent shall signify its acceptance of such appointment and its assumption of the duties and obligations imposed upon it by this Indenture by execution and delivery of an agreement satisfactory to the Issuer, Bud's Best Cookies, the Bank and the Trustee.

(c) The Remarketing Agent shall be authorized by law to perform all the duties imposed upon it by this Indenture.

(d) The Remarketing Agent may resign at any time by giving 30 days' notice to the Issuer, the Trustee, Bud's Best Cookies and the Bank; provided, however, that no such resignation shall become effective until a successor Remarketing Agent has been appointed and has accepted its duties and obligations hereunder.

(e) Bud's Best Cookies may, with the consent of the Issuer, the Bank and the Trustee, remove the Remarketing Agent at any time upon 30 days' notice to the Remarketing Agent.

(f) If the Remarketing Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Remarketing Agent for any cause, the Issuer and Bud's Best Cookies shall, with the consent of the Bank and the Trustee, promptly appoint a successor Remarketing Agent.

(g) The Trustee shall give notice to Bondholders of each resignation and each removal of the Remarketing Agent and each appointment of a successor Remarketing Agent.

(h) Compensation of the Remarketing Agent shall be paid directly by Bud's Best Cookies.

#### **SECTION 13.13 Tender Agent**

(a) The Trustee may, with the consent of the Issuer, Bud's Best Cookies and the Bank, appoint an agent (the "Tender Agent") to act on its behalf in the acceptance of delivery of Bonds tendered for purchase pursuant to the optional or mandatory tender provisions of this Indenture and in the authentication and delivery of Bonds pursuant to the transfer and exchange provisions of this Indenture. For all purposes of this Indenture, (i) Bonds to be purchased pursuant to the optional or mandatory tender provisions of this Indenture may be delivered to the Tender Agent, as well as the Trustee, and (ii) the authentication and delivery of Bonds by the Tender Agent pursuant to the transfer and exchange provisions of this Indenture shall be deemed to be the authentication and delivery of Bonds "by the Trustee". In order to facilitate payment of the purchase price of Tendered Bonds delivered to the Tender Agent and the required entries on the Bond Register with respect to Bonds delivered to the Tender Agent for transfer or exchange, the Tender Agent shall communicate with the Trustee about such matters in accordance with procedures established by the Trustee.

(b) Any Tender Agent shall signify its acceptance of such appointment and its assumption of the duties and obligations imposed upon it by this Indenture by execution and delivery of an agreement satisfactory to the Trustee, the Issuer, Bud's Best Cookies and the Bank.

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(c) Any such Tender Agent shall (i) be a bank or trust company having an office for the performance of its duties hereunder in New York, New York, (ii) have a combined capital and surplus of at least \$5,000,000, and (iii) be subject to supervision and examination by federal or state authority.

(d) The Tender Agent may resign at any time by giving 30 days' notice to the Issuer, the Trustee, Bud's Best Cookies and the Bank.

(e) The Trustee may, with the consent of the Issuer, Bud's Best Cookies and the Bank, remove the Tender Agent by giving 30 days' notice to the Tender Agent.

(f) If the Tender Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Tender Agent for any cause, the Trustee may, with the consent of the Issuer, Bud's Best Cookies and the Bank, appoint a successor Tender Agent.

(g) The Trustee shall give notice to Bondholders of the initial appointment of a Tender Agent, each resignation and each removal of a Tender Agent, and each appointment of a successor Tender Agent.

(h) Compensation of the Tender Agent shall be paid directly by Bud's Best Cookies.

(i) The provisions of Sections 5.04, 13.04 and 13.05 shall be applicable to any Tender Agent.

**SECTION 13.14 Limitation on Resignation or Removal of Trustee or appointment of Successor Trustee**

Notwithstanding any of the foregoing provisions of this Article XIII concerning the resignation or removal of the Trustee or the appointment of a Successor Trustee, no such resignation, removal or appointment shall be effective until the Bank shall have issued and delivered to the successor Trustee a replacement Letter of Credit in favor of such successor Trustee, whereupon the Trustee shall return the Letter of Credit then held by it to the entity which issued such Letter of Credit.

**ARTICLE 14**

**Supplemental Indentures, Amendments to Lease Agreement and Amendments of Letter of Credit**

**SECTION 14.01 Supplemental Indentures Without Consent of Bondholders**

Without the consent of the Holders of any Bonds, the Issuer and the Trustee may (subject to the provisions of Sections 14.10 and 16.03) from time to time enter into one or more



indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject to the lien of this Indenture additional property; or
- (2) to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue of Bonds; or
- (3) to evidence the succession of another corporation to the Issuer and the assumption by any such successor of the covenants of the Issuer herein and in the Bonds contained; or
- (4) to add to the covenants of the Issuer or Bud's Best Cookies for the benefit of the Holders of Bonds and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture; provided, however, that with respect to any such covenant, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default; or
- (5) to surrender any right or power herein conferred upon the Issuer, Bud's Best Cookies or the Bank; or
- (6) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions, with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the provisions of this Indenture, provided such action shall not adversely affect the interests of the Holders of the Bonds; or
- (7) to provide for a book-entry system of registration for the Bonds; or
- (8) to secure or maintain ratings from a Rating Agency, provided that the changes necessary to obtain or secure such ratings do not, in the opinion of the Trustee, adversely affect the interests of the Holders of the Bonds.

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## **SECTION 14.02 Supplemental Indentures With Consent of Bondholders**

With the consent of the Holders of not less than a majority in principal amount of the Bonds then Outstanding affected by such supplemental indenture, the Issuer and the Trustee may (subject to the provisions of Sections 14.10 and 16.03) enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Bonds under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Bond affected thereby,

(1) change the stated Maturity of the principal of, or any installment of interest on, any Bond, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change any place of payment where, or the coin or currency in which, any Bond, or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated Maturity thereof (or, in the case of redemption, on or after the redemption date); or

(2) reduce the percentage in principal amount of the Outstanding Bonds, the consent of whose Holders is required for any such supplemental indenture or any amendment to the Lease Agreement, or the consent of whose Holders is required for any waiver provided for in this Indenture of compliance with certain provisions of this Indenture or certain defaults hereunder or under the Lease Agreement and their consequences; or

(3) modify or alter the provisions of the proviso to the definition of the term "Outstanding"; or

(4) modify any of the provisions of this Section or Section 12.11, except to increase any percentage provided thereby or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Bond affected thereby; or

(5) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any of the Trust Estate or terminate the lien of this Indenture on any property at any time subject hereto or deprive the Holder of any Bond of the security afforded by the lien of this Indenture; or

(6) provide for release or cancellation of the Letter of Credit prior to its expiration or termination in accordance with its terms, except as otherwise provided in Section 14.12 or unless a Substitute Letter of Credit is delivered to the Trustee pursuant to Section 4.11.

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#### **SECTION 14.03 Amendments to Lease Agreement Without Consent of Bondholders**

Without the consent of the Holders of any Bonds, the Trustee may (subject to the provisions of Sections 14.10 and 16.03) from time to time consent to the execution and delivery by the Issuer and Bud's Best Cookies of one or more amendments to the Lease Agreement, in form satisfactory to the Trustee, for any one of the following purposes:

(1) to correct or amplify the description of any property at any time subject to the demise of the Lease Agreement, or to subject to the demise of the Lease Agreement additional property;

(2) to evidence the succession of another entity to Bud's Best Cookies and the assumption by any such successor of the agreements and covenants of Bud's Best Cookies contained in the Lease Agreement;

(3) to add to the covenants of Bud's Best Cookies for the benefit of the Issuer, the Trustee, or the Holders of Bonds, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants a Lease Default permitting the enforcement of all or any of the several remedies provided in the Lease Agreement; provided, however, that with respect to any such additional covenant such amendment to the Lease Agreement may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee or the Issuer, as the case may be, upon such default;

(4) to surrender any right or power conferred by the Lease Agreement upon Bud's Best Cookies;

(5) to provide terms related to a Confirmation or an Additional Letter of Credit, provided such terms shall not adversely affect the interests of the Holders of the Bonds; or

(6) to cure any ambiguity, to correct or supplement any provision therein which may be inconsistent with any other provision therein or to make any provisions, with respect to matters or questions arising under the Lease Agreement, which shall not be inconsistent with the provisions of the Lease Agreement, provided such action shall not adversely affect the interests of the Holders of the Bonds.

#### **SECTION 14.04 Amendments to Lease Agreement With Consent of Bondholders**

With the consent of the Holders of not less than a majority in principal amount of the Bonds then outstanding, the Trustee may (subject to the provisions of Sections 14.10 and 16.03) consent to the execution and delivery by the Issuer and Bud's Best Cookies of one or more amendments to the Lease Agreement, in form satisfactory to the Trustee, for the purpose of

adding any provisions or changing in any manner or eliminating any of the provisions of the Lease Agreement or of modifying in any manner the rights of the Issuer, the Trustee or the Holders of the Bonds under the Lease Agreement; provided, however, that without the consent of the Holders of all Outstanding Bonds, no such amendment shall relieve Bud's Best Cookies from the obligation to make Basic Rent Payments at times and in amounts sufficient to pay Debt Service on the Bonds when due.

#### **SECTION 14.05 Discretion of Trustee**

The Trustee may in its discretion determine whether or not any Bonds would be affected by any supplemental indenture or amendment to the Lease Agreement and any such determination shall be conclusive upon the Holders of all Bonds, whether theretofore or thereafter authenticated and delivered hereunder. The Trustee shall not be liable for any such determination made in good faith.

#### **SECTION 14.06 Execution of Supplemental Indentures**

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, or consenting to the amendment of the Lease Agreement, the Trustee shall be entitled to receive, and, subject to Section 13.01, shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture or amendment is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture or consent to any such amendment which affects the Trustee's own rights, duties or immunities under this Indenture, the Lease Agreement or otherwise.

#### **SECTION 14.07 Effect of Supplemental Indentures**

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Bonds theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

#### **SECTION 14.08 Reference in Bonds to Supplemental Indentures**

Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Bonds so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Bonds.

**SECTION 14.09 Amendment of Letter of Credit**

(a) The Trustee may, without the consent of or notice to the Holders of the Bonds, consent to any amendment of the Letter of Credit

(1) for the purpose of extending the term of the Letter of Credit, as provided in Section 4.11, or

(2) for the purpose of curing any ambiguity or formal defect or omission or for the purpose of obtaining a credit rating on the Bonds from any Rating Agency, provided that (i) the Trustee, in its sole judgment, shall determine that such amendment does not adversely affect the interests of the Holders of the Bonds and (ii) the Trustee shall receive a Favorable Tax Opinion and an Opinion of Counsel to the effect that such amendment is permitted by applicable law.

(b) Except as provided in subsection (a) of this Section, no amendment, modification or other change of the Letter of Credit shall be made without the consent of the Holders of all Bonds Outstanding.

**SECTION 14.10 Amendments Not to Affect Tax Exemption**

No amendment may be made to this Indenture or the Lease Agreement unless the Trustee receives a Favorable Tax Opinion.

**ARTICLE 15**

**Defeasance**

**SECTION 15.01 Payment of Indebtedness; Satisfaction and Discharge of Indenture**

(a) Whenever all Indenture Indebtedness has been Fully Paid and the Bank certifies that all Bank Indebtedness has been Fully Paid, then (i) this Indenture and the lien, rights and interests created hereby shall cease, determine and become null and void (except as to any surviving rights of transfer or exchange of Bonds herein or therein provided for), (ii) the Letter of Credit shall be surrendered by the Trustee for cancellation, and (iii) the Trustee shall, upon the request of the Issuer or Bud's Best Cookies, execute and deliver a termination statement and such instruments of satisfaction and discharge as may be necessary and pay, assign, transfer and deliver to the Issuer or upon the order of the Issuer, all cash and securities then held by it hereunder as a part of the Trust Estate.

(b) A Bond shall be deemed "Fully Paid" if

(1) such Bond has been cancelled by the Trustee or delivered to the Trustee for cancellation, or



(2) such Bond shall have matured or been called for redemption and, on such Maturity date or redemption date, money for the payment of Debt Service on such Bond is held by the Trustee in trust for the benefit of the person entitled thereto, or

(3) such Bond is an Unsurrendered Bond, or

(4) such Bond is alleged to have been destroyed, lost or stolen and has been replaced as provided in Section 5.02, or

(5) a trust for the payment of such Bond has been established in accordance with Section 15.02.

(c) Indenture Indebtedness other than Debt Service on the Bonds shall be deemed "Fully Paid" whenever the Issuer has paid, or made provisions satisfactory to the Trustee for payment of, all such Indenture Indebtedness other than Debt Service on the Bonds.

#### **SECTION 15.02 Trust for Payment of Debt Service**

(a) The Issuer may provide for the payment of any Bond by establishing a trust for such purpose with the Trustee and depositing therein cash and/or Federal Securities which (assuming the due and punctual payment of the principal of and interest on such Federal Securities, but without reinvestment) will provide funds sufficient to pay the Debt Service on such Bond as the same becomes due and payable until the Maturity or redemption of such Bond; provided, however, that

(1) such Federal Securities must not be subject to redemption prior to their respective maturities at the option of the issuer of such Securities,

(2) if such Bond is to be redeemed prior to its Maturity, either (i) the Trustee shall receive evidence that notice of such redemption has been given in accordance with the provisions of this Indenture and such Bond or (ii) the Issuer shall confer on the Trustee irrevocable authority for the giving of such notice on behalf of the Issuer,

(3) such trust must be established only when such Bond bears interest at a Term Rate, and such Bond must either mature or be called for redemption on or before the date immediately following the Term Rate Period then in effect with respect to such Bond,

(4) prior to the establishment of such trust the Trustee must receive (i) an Opinion of Counsel stating in effect that upon the occurrence of an Act of Bankruptcy, money and investments in such trust will not be recoverable from the Trustee or Bondholders under provisions of the United States Bankruptcy Code relating to voidable preferences and (ii) a Favorable Tax Opinion, and

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(5) prior to the establishment of such trust the Trustee must receive a report by an Independent certified public accountant stating in effect that the principal and interest payments on the Federal Securities in such trust, without reinvestment, together with the cash initially deposited therein, will be sufficient to make the required payments from such trust.

The Issuer shall give each Rating Agency that maintains a rating with respect to the Bonds 10 days' notice of its intent to establish such a trust and shall deliver to each such Rating Agency a copy of the opinions and report required by subsections (a)(4) and (5) of this Section.

(b) Cash and/or Federal Securities deposited with the Trustee pursuant to this Section shall not be a part of the Trust Estate but shall constitute a separate, irrevocable trust fund for the benefit of the Holder of the Bond to be paid from such fund.

## ARTICLE 16

### Miscellaneous

#### SECTION 16.01 Notices

(a) Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, the Issuer, the Trustee, the Tender Agent, the Remarketing Agent, Bud's Best Cookies, or the Bank must (except as otherwise expressly provided in this Indenture) be in writing and be delivered by one of the following methods: (i) by personal delivery at the hand delivery address specified below, (ii) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (iii) if facsimile transmission facilities for such party are identified below or pursuant to a separate notice from such party, sent by facsimile transmission to the number specified below or in such notice. The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

#### Issuer

By hand: City Hall  
1699 Montgomery Highway  
Hoover, Alabama 35216

By mail: City Hall  
1699 Montgomery Highway  
Hoover, Alabama 35216

By facsimile: (205) 978-5572

Trustee

By hand: 7th Floor, SouthTrust Tower  
Birmingham, Alabama 35203  
Attention: Corporate Trust Department

By mail: P. O. Box 2554  
Birmingham, Alabama 35290  
Attention: Corporate Trust Department

By facsimile: (205) 254-5099

Tender Agent

[To be provided by notice to all parties  
if a Tender Agent is appointed]

Remarketing Agent

By hand: Sterne, Agee & Leach, Inc.  
1901 Sixth Avenue North  
Suite 2100, AmSouth/Harbert Plaza  
Birmingham, Alabama 35203

By mail: 1901 Sixth Avenue North  
Suite 2100, AmSouth/Harbert Plaza  
Birmingham, Alabama 35203

By facsimile: (205) 252-6141

Bud's Best Cookies

By hand: 2070 Parkway Office Circle  
Birmingham, Alabama 35244

By mail: 2070 Parkway Office Circle  
Birmingham, Alabama 35244

By facsimile: None.

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**Bank**

By hand: 7th Floor, SouthTrust Tower  
Birmingham, Alabama 35203  
Attention: Asset-Based Lending Department

By mail: P. O. Box 2554  
Birmingham, Alabama 35290  
Attention: Asset-Based Lending Department

By facsimile: (205) 254-4369

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section.

(b) Any notice or other document shall be deemed delivered when actually received by the party to whom directed at the address or number specified pursuant to this Section, or, if sent by mail, 3 days after such notice or document is deposited in the United States mail, addressed as provided above.

**SECTION 16.02 Notices to Bondholders: Waiver**

(a) Where this Indenture provides for giving of notice to Bondholders of any event, such notice must (unless otherwise herein expressly provided) be in writing and mailed, first-class postage prepaid, to each Holder of such Bonds, at the address of such Holder as it appears in the Bond Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

(b) In any case where notice to Bondholders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Bondholder shall affect the sufficiency of such notice with respect to other Bondholders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Bondholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 16.03 Bank's Participation Required for Amendments and Certain Acts of Bondholders**

Any consent, waiver, authorization, direction or approval by Bondholders (or a percentage of Bondholders) under this Indenture and any amendment of the Indenture or Lease Agreement must be joined in or approved by the Bank unless the Letter of Credit is no longer in effect or the Bank is in default under the Letter of Credit; provided, however, that nothing contained in this Section shall be construed to require any consent or approval by the Bank for

the performance by the Trustee of its obligations under Sections 8.01, 8.02, or 12.02(a) with respect to draws under the Letter of Credit and acceleration of the Maturity of the Bonds.

**SECTION 16.04 Discretion of Bank With Respect to Default Under Credit Agreement**

Notwithstanding any other provision of this Indenture, if an event of default exists under the Credit Agreement, the Bank, in its sole discretion, shall have the option of sending a notice to the Trustee of the type described in Section 4.05(a)(3), or sending a notice of the type described in Section 12.01(4), or withholding notice under either of such Sections. In addition, after the Bank has sent a notice to the Trustee pursuant to Section 4.05(a)(3), the Bank may in its discretion send a notice to the Trustee pursuant to Section 12.01(4).

**SECTION 16.05 Notice to Rating Agencies**

The Trustee shall promptly furnish to each Rating Agency that maintains a rating with respect to the Bonds notice of (i) any notice from Bud's Best Cookies proposing delivery of a Substitute Letter of Credit, (ii) any change of the Trustee, the Remarketing Agent or the Tender Agent, (iii) any change or amendment of the Financing Documents or the Letter of Credit, (iv) the expiration or renewal of the term of the Letter of Credit, (v) the conversion of the interest rate on any Bond to a Term Rate for a Term Rate Period of more than 90 days, (vi) the acceleration of payment of principal and interest on the Bonds pursuant to Section 12.02, (vii) the redemption by the Issuer of all Bonds Outstanding hereunder prior to Maturity, (viii) receipt of notice of Bud's Best Cookies' intent to have the Letter of Credit cancelled pursuant to Section 4.12, or (ix) receipt of notice of the Issuer's intent to establish a trust for the payment of the Bonds in accordance with Section 15.02 of this Indenture.

**SECTION 16.06 Successors and Assigns**

All covenants and agreements in this Indenture by the Issuer shall bind its successors and assigns, whether so expressed or not.

**SECTION 16.07 Benefits of Indenture**

Nothing in this Indenture or in the Bonds, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, the Holders of the Outstanding Bonds, Bud's Best Cookies and the Bank, any benefit or any legal or equitable right, remedy or claim under this Indenture.

**SECTION 16.08 Trustee As Agent of Bank For Limited Purpose**

The Trustee may, and hereby does, agree that it shall serve as agent of the Bank for the limited purpose of taking possession of the money and investments on deposit in the Special Funds in order to perfect the security interest of the Bank in such money and investments



granted by the documents executed by Bud's Best Cookies in connection with the issuance of the Letter of Credit; provided, however, that the security interest of the Bank in such money and investments shall be subject and subordinate to the lien of the Indenture, and, until the Bonds have been Fully Paid, such money and investments shall be applied solely as provided in this Indenture and the Lease Agreement.

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IN WITNESS WHEREOF, the Issuer and the Trustee have caused this instrument to be duly executed, and their respective corporate seals to be hereunto affixed and attested.

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HOOVER**

By *Dan Burton*  
Its Chairman of the Board of Directors

[S E A L]

Attest:

*George Armon*  
Its Secretary

**SOUTHTRUST BANK OF ALABAMA,  
NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its \_\_\_\_\_

[S E A L]

Attest:

\_\_\_\_\_  
Its \_\_\_\_\_

This instrument was prepared by:

Kathleen A. Collier  
Maynard, Cooper, Frierson  
& Gale, P.C.  
1901 Sixth Avenue North  
Suite 2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

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IN WITNESS WHEREOF, the Issuer and the Trustee have caused this instrument to be duly executed, and their respective corporate seals to be hereunto affixed and attested.

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HOOVER**

By \_\_\_\_\_  
Its Chairman of the Board of Directors

[S E A L]

Attest:

\_\_\_\_\_  
Its Secretary

**SOUTHTRUST BANK OF ALABAMA,  
NATIONAL ASSOCIATION**

By *Virginia S. Williams*  
Its VICE PRESIDENT-CORPORATE TRUST

[S E A L]

Attest:

*James*  
Its Senior Trust Officer - Corporate

This instrument was prepared by:

Kathleen A. Collier  
Maynard, Cooper, Frierson  
& Gale, P.C.  
1901 Sixth Avenue North  
Suite 2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

STATE OF ALABAMA  
JEFFERSON COUNTY

I, Patricia S. Herring, a Notary Public in and for said County in said State, do hereby certify that Don T. Burton, whose name as Vice-Chairman of the Board of Directors of The Industrial Development Board of the City of Hoover, a public corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, 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 3rd day of January, 1992.

Patricia S. Herring  
Notary Public

NOTARIAL SEAL

My commission expires: My Commission Expires October 28, 1992

STATE OF ALABAMA  
JEFFERSON COUNTY

CATHY C. FRANKLIN

I, Cathy C. Franklin, a Notary Public in and for said County, in said State, hereby certify that Virginia H. Williams, whose name as VICE PRESIDENT-CORPORATE TRUST of SouthTrust Bank of Alabama, National Association, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking association.

Given under my hand this the 3rd day of January, 1992.

Cathy C. Franklin  
Notary Public

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

NOTARIAL SEAL

92 JAN -7 AM 9:13

My commission expires: 6/7/95

JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax	\$	
3. Recording Fee	\$	260.00
4. Indexing Fee	\$	3.00
5. No Tax Fee	\$	
6. Certified Fee	\$	1.00
Total	\$	264.00