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Inst # 1994-01494

01/13/1994-01494  
03:16 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
166.00  
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**MORTGAGE INDENTURE**

**between**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM**

**and**

**NATIONAL BANK OF COMMERCE  
OF BIRMINGHAM**

**Dated December 21, 1993**

**Relating to**

**\$750,000  
First Mortgage Industrial Revenue Bonds  
(Wilkerson Project)  
Series 1993**

**Inst # 1994-01494**

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03:16 PM CERTIFIED**

**SHELBY COUNTY JUDGE OF PROBATE**

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**MORTGAGE INDENTURE** between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM**, a public corporation under the laws of the State of Alabama, party of the first part, and **NATIONAL BANK OF COMMERCE OF BIRMINGHAM**, a national banking association having its principal place of business in the City of Birmingham, Alabama, party of the second part,

## **R E C I T A L S**

The party of the first part makes the following recitals of fact as the basis for the undertaking following: it is duly incorporated under the laws of Alabama, by Certificate of Incorporation duly filed for record in the office of the Judge of Probate of Shelby County, Alabama; its Certificate of Incorporation has not been amended or revoked; by proper official action it has duly authorized the issuance of the Series 1993 Bonds hereinafter referred to; and to secure payment of the principal of and the interest and premium (if any) on all the bonds that shall be issued hereunder, it has by proper official action duly authorized the execution and delivery of this Indenture.

## **NOW, THEREFORE, THIS MORTGAGE INDENTURE**

## **W I T N E S S E T H:**

For the aforesaid purpose and in consideration of the respective agreements herein contained, it is hereby agreed between the parties signatory hereto and the holders of all the Bonds issued hereunder (the holders of said Bonds evidencing their consent hereto by their acceptance of the said Bonds and the parties signatory hereto evidencing their consent hereto by their execution hereof), each with each of the others, as follows (provided, that in the performance of any of the agreements of the party of the first part herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part but shall be payable solely from the sources of payment hereinafter specified):

## **ARTICLE I**

### **DEFINITIONS AND USE OF PHRASES**

**Section 1.1 Definitions.** Unless the context clearly indicates a different meaning, the following words and phrases, as used herein, shall have the following respective meanings:

"Act" means the statutes codified as Code of Alabama of 1975, Title 11, Chapter 54, Article 4, as the same shall be hereafter otherwise amended and supplemented and at the time in force and effect.



**"Additional Bonds"** means the bonds of the Board authorized in Article VIII hereof to be issued hereunder and secured hereby on a parity of lien and pledge with the Series 1993 Bonds.

**"Affiliate"** of any designated person means any person which, directly or indirectly, controls, or is controlled by, or is under common control with, such designated person.

**"Authorized Board Representative"** means the person or persons at the time designated as such by written certificate furnished to the Lessee and the Bank, containing the specimen signature or signatures of such person or persons and signed on behalf of the Board by the Chairman or the Vice Chairman of its Board of Directors; provided however, that neither the Lessee nor any employee of the Lessee nor any Affiliate thereof may at any time be designated as an Authorized Board Representative.

**"Bank"** means the party of the second part hereto and its successors and any national banking association or banking corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

**"Basic Rent"** means (i) the moneys payable by the Lessee pursuant to the provisions of Section 5.2 of the Lease, (ii) any other moneys payable by the Lessee pursuant to the Lease to provide for the payment of the principal of and the interest and premium (if any) on the Series 1993 Bonds (other than the aforesaid moneys payable pursuant to Section 5.2 of the Lease), and (iii) any other moneys payable by the Lessee pursuant to the Lease that are therein referred to as Basic Rent.

**"Board"** means the party of the first part hereto and, subject to the provisions of Section 11.6 hereof, includes its successors and assigns and any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

**"Bond Counsel"** means Independent Counsel whose opinions respecting the legality or validity of securities issued by or on behalf of states or political subdivisions thereof are nationally recognized.

**"Bond Fund"** means the Wilkerson Bond Principal and Interest Fund created in Section 10.1 hereof.

**"Bond Payment Date"** means the 15th day of each calendar month commencing with January 15, 1994, on which any principal or interest with respect to the Series 1993 Bonds shall mature and be due and payable or on which any principal amount of the Series 1993 Bonds shall be required by the Indenture to be redeemed or paid prior to the stated maturity thereof.

**"Bondholder"** means the Holder of any Bond.

**"Bonds"** means all bonds of the Board issued under this Indenture; i.e., the Series 1993 Bonds and all Additional Bonds.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Completion Date"** means the date on which the completion of the Project Development Work and the satisfaction of the other conditions referred to in Section 4.6 of the Lease are certified to the Bank in accordance with the provisions of said Section 4.6.

**"Construction Fund"** means the Wilkerson Project Construction Fund created in Section 9.2 hereof.

**"Counsel"** means any attorney duly admitted to practice before the highest court of any state of the United States of America or the District of Columbia (including any officer or full-time employee of the Board, the Lessee or an Affiliate of any of them who is so admitted to practice), it being understood that "Counsel" may also mean a firm of attorneys all of whose members are so admitted to practice.

**"Directors"** means the Board of Directors of the Board.

**"Eligible Deposits"** means certificates of deposit issued by, or money market funds secured by certificates of deposit issued by, or any acceptance by, any bank organized under the laws of the United States of America or any state thereof.

**"Eligible Investments"** means Eligible Deposits and Federal Securities and any other securities in which the Board may legally invest its funds.

**"Event of Default"** means an "Event of Default" as specified in Section 13.1 hereof.

**"Federal Securities"** means (i) any debt securities that are direct obligations of the United States of America, (ii) any debt securities payment of the principal of and the interest on which is unconditionally guaranteed by the United States of America, (iii) repurchase agreements that are secured by debt securities that are direct obligations of the United States of America, and (iv) money market funds secured by investments listed in (i), (ii) or (iii) above.

**"Holder"** means the person in whose name any such Bond is registered on the registry books of the Bank pertaining to the Bonds.

**"Indenture"** means this Mortgage Indenture, as supplemented and amended by any Supplemental Indenture executed by the Board and the Bank in accordance with the applicable provisions of Article XIV hereof.

**"Indenture Indebtedness"** means all indebtedness of the Board at the time secured by the Indenture, including, without limitation, (i) all principal of and interest and premium (if any) on the Series 1993 Bonds and (ii) all reasonable and proper fees, charges and disbursements of the Bank for disbursements made under the Indenture.

**"Independent Appraiser"** means a person, firm or corporation not regularly employed or retained by the Board, the Lessee or an Affiliate of any of them and regularly engaged in the business of appraising real or personal property (as appropriate to the property being appraised or valued) and otherwise competent, in the opinion of the Bank, to determine the value of the property in question.



**"Independent Counsel"**, when used to describe Counsel who is an individual attorney, means that he is not an officer or full-time employee of the Board, the Lessee or an Affiliate of any of them and, when used to describe Counsel consisting of a firm of attorneys, means that none of the members of such firm is an officer or full-time employee of the Board, the Lessee or an Affiliate of any of them.

**"Independent Engineer"** means an engineer or engineering firm licensed to engage in the independent practice of engineering under the laws of the State of Alabama and not regularly employed or retained by the Board, the Lessee or an Affiliate of any of them.

**"Lease"** means that certain Lease Agreement dated December 21, 1993, between the Board, as lessor, and the Lessee, as lessee, as said Lease Agreement now exists and as it may from time to time be modified or amended in accordance with the provisions of Article XV hereof.

**"Lease Default"** means an "Event of Default" under the Lease, as such term is defined in Section 10.1 of the Lease.

**"Lessee"** means Eugene Wilkerson, an individual resident of the State of Alabama, and includes his successors and assigns.

**"Municipality"** means the City of Pelham, Alabama, and any municipal corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

**"Permitted Encumbrances"** means, as of any particular time, any of the following: (i) the Lease and the Indenture; (ii) liens imposed by law, such as mechanics', workmen's, materialmen's, carriers' and other like liens arising in the ordinary course of business, securing obligations which are not overdue or which are being contested in good faith and by appropriate proceedings; (iii) liens for property taxes not delinquent or for taxes which are being contested in good faith and by appropriate proceedings; and (iv) utility, access, drainage and other easements and rights-of-way, mineral rights, covenants running with the land, zoning restrictions, environmental regulations and other restrictions and encumbrances affecting the use of real property, or minor irregularities in the title to real property, none of the foregoing of which, individually or in the aggregate, materially impair the title of the Board to any part of the Project or the use of the Project for the purpose for which it was acquired or is held by the Board.

**"Prime Rate"** means that rate from time to time announced by the Bank as its prime rate, which is a reference rate established by the Bank for computing and adjusting interest on loans making reference thereto, and is subject to change (increase or decrease) at the discretion of the Bank. It is understood that the Bank may from time to time make loans at rates of interest greater or lesser than the prime rate and loans at rates of interest using indices other than the said prime rate.

**"Project"** means the Project Site and the Project Building, as they may at any time exist, and all other property and rights of every kind that are or become subject to the lien of the Indenture.

**"Project Building"** means the building to be constructed on the Project Site containing approximately 42,200 square feet of enclosed floor space, as such building and related improvements may at any time exist.

**"Project Development Costs"** means the following: (i) all costs and expenses incurred in connection with the planning, development and design of the Project Building, including the costs of preliminary investigations, surveys, estimates and plans and specifications; (ii) all costs of acquiring the Project Site; (iii) all costs and expenses of construction, including the cost to the Lessee of supervising construction, payments to contractors and materialmen and fees for professional or other specialized services; (iv) the costs of contract bonds and of insurance of all kinds which may be necessary or desirable in connection with the Project Development Work and which are not paid by any contractor or otherwise provided for; (v) all expenses incurred in connection with the issuance and sale of the Series 1993 Bonds, including (without limitation) all legal, accounting, financial, underwriting, printing, recording and filing fees and expenses and the initial charge of the Bank; (vi) interest on moneys borrowed by the Lessee to pay Project Development Costs; (vii) all other costs which the Board has hitherto agreed to pay, under the terms of any contract or contracts, in connection with the Project Development Work; and (viii) the reimbursement to the Lessee of all amounts paid directly by the Lessee in respect of any of the aforesaid costs and expenses and of all amounts advanced by either of them to the Board for the payment of such costs and expenses.

**"Project Development Work"** means all work necessary or useful in connection with the acquisition and construction of the Project for operation as a rental facility, including (i) the acquisition of the Project Site, and (ii) the planning, design and construction of the Project Building in accordance with the provisions of the Lease.

**"Project Site"** means (i) the parcel of land specifically described under the heading "T" in Section 2.1 hereof (to the extent that such parcel is at the time subject to the lien hereof) and (ii) any other land that, at the time and under the terms hereof, constitutes a part of the Project Site.

**"Redemption Fund"** means the Wilkerson Bond Redemption Fund created in Section 10.2 hereof.

**"Resolution"** means a resolution duly adopted by the Directors.

**"Series 1993 Bonds"** means the First Mortgage Industrial Revenue Bonds (Wilkerson Project), Series 1993, authorized to be issued under Article VII hereof.

**"Series 1993 Original Purchaser"** means National Bank of Commerce of Birmingham, Birmingham, Alabama, the original purchaser of the Series 1993 Bonds from the Board.

**"Supplemental Indenture"** means an agreement supplemental hereto.



**Section 1.2 Definitions Contained in the Lease.** Unless the context clearly indicates a different meaning, any words, terms or phrases that are used in the Indenture as defined terms without being herein defined and that are defined in the Lease shall have the meanings respectively given them in the Lease.

**Section 1.3 Use of Phrases.** "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to the Indenture and not solely to the particular portion thereof in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders. Any percentage of Series 1993 Bonds, specified herein for any purpose, is to be figured on the principal amount thereof then outstanding.

## **ARTICLE II**

### **GRANTING CLAUSES**

**Section 2.1 Granting Clauses.** In order to secure to the Holders thereof payment of the principal of and the interest and premium (if any) on the Bonds and the performance and observance of the covenants and conditions herein and therein contained, and in consideration of their purchase and acceptance of the Bonds and of the acceptance by the Bank of the trusts herein provided, the Board does hereby grant, bargain, sell and convey, assign, transfer and pledge to and with the Bank the following described properties of the Board, whether the same are now owned by it or may be hereafter acquired:

#### **I**

The following described parcel of land situated in Shelby County, Alabama, inside the now existing corporate limits of the Municipality:

Part of Block 4 of Cahaba Valley Park North, as recorded in Map Book 13, Page 140, in the Office of the Judge of Probate of Shelby County, Alabama, situated in the North 1/2 of Section 31, Township 19 South, Range 2 West, and being more particularly described as follows:

Begin at the Northwest corner of Lot 0-14A, Block 4, of Cahaba Valley Business Park, as recorded in Map Book 17, Page 23, in the Office of the Judge of Probate of Shelby County, Alabama, said point being on the East right of way line of Cahaba Valley Parkway and also being the Southwest corner of the property herein described; thence run North along the East line of said Cahaba Valley Parkway for 64.32 feet to the beginning of a curve to the right, said curve subtending a central angle of 89°-09'-21" and having a radius of 223.71 feet; thence run northeasterly along the arc of said curve and along said right of way line for 348.10 feet to the end of said curve; thence at tangent to said curve run Easterly along the South right of way line of said Cahaba Valley



Parkway for 374.68 feet to a point at the intersection of the Westerly right of way line of Cahaba Valley Circle, said point being at the beginning of a curve to the right, said curve subtending a central angle of 90°-00'-00" and having a radius of 50.00 feet; thence run Southeasterly along the arc of said curve and along said Westerly right of way line of Cahaba Valley Circle for 78.54 feet to the end of said curve; thence at tangent to said curve run South along the West right of way line of said Cahaba Valley Circle for 200.00 feet to the Northeast corner of said Lot 0-14A, Block 4, Cahaba Valley Business Park; thence 90°-00'-00" right and run West along the North property line of said Lot 0-14A and along the centerline of a 30 foot wide drainage easement for 378.84 feet to a point; thence 07°-18'-59" left and continue along said North property line of Lot 0-14A and along the centerline of said easement for 272.69 feet to the point of beginning.

## II

The Project Building and all other buildings, structures and other improvements now or hereafter situated on the Project Site (to the extent of the Board's interest therein), all permits, easements, licenses, rights-of-way, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Project Site and all fixtures now or hereafter owned by the Board and installed on the Project Site or in any of such other buildings, structures and improvements now or hereafter located on the Project Site, it being the intention hereof that all property, rights and privileges hereafter acquired for use as a part of or in connection with or as an improvement to the Project Site (to the extent of the Board's interest therein) shall be as fully covered hereby as if such property, rights and privileges were now owned by the Board and were specifically described herein;

## III

The moneys required by the Lease or the Indenture to be deposited into the Construction Fund, together with any investments and reinvestments of such moneys and the proceeds thereof, subject, however, to the disbursement and use thereof for the payment of Project Development Costs in accordance with the provisions of the Lease and the Indenture;

## IV

The Basic Rent and all other revenues and receipts derived by the Board from the leasing or sale of the Project (excluding, however, moneys paid by the Lessee pursuant to Section 5.4 or 10.4 of the Lease to reimburse the Board for its expenses or to pay such expenses directly for its account), all other moneys required by the Lease or the Indenture to be deposited from time to time in the Bond Fund, and all other moneys from time to time held by the Bank for the benefit of the Bondholders pursuant to the Indenture, together in each case with any investments and reinvestments of such moneys and the proceeds thereof, but subject, however, to the uses thereof provided for in the Indenture;

## V

All right, title and interest of the Board in and to the Lease [except (i) the right to require the Lessee to pay certain expenses incurred by the Board as provided in Sections 5.4 and 10.4 of the Lease, (ii) the release and indemnification rights of the Board contained in Section 8.2 of the Lease and (iii) any other rights personal to the Board which are expressly provided in the Lease to be exercised by the Board], but not including, however, any of the obligations of the Board thereunder; and

## VI

Any and all moneys, rights and properties of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with, the Bank by the Board or anyone on its part as additional security for the payment of all or any specified series of the Bonds, or which pursuant to any of the provisions hereof or of the Lease, may come into the possession or control of the Bank as such additional security; and the Bank is hereby authorized and directed to receive any and all such moneys, rights and properties as and for additional security for the payment of all or any specified series of the Bonds and to hold and apply the same subject to the terms hereof and of the Lease.

TO HAVE AND TO HOLD the same unto the Bank, its successors and assigns forever, subject to Permitted Encumbrances, upon the terms and trusts herein set forth, for the equal and pro rata protection and benefit of the Holders, present and future, of the Bonds equally and ratably, without preference, priority or distinction of any over others, subject, however, to the right and duty of the Bank to apply solely for the benefit of the Holders of any particular series of the Bonds all moneys, rights and properties that are pledged or otherwise contractually obligated for the sole and exclusive benefit of the Holders of such particular series of the Bonds;

PROVIDED HOWEVER, that these presents are upon the condition that if the Board shall pay or cause to be paid the principal of and the interest and premium (if any) on all Bonds secured hereby at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or shall provide for such payment as specified in Section 15.1 hereof, and shall pay or cause to be paid all other Indenture Indebtedness, then the Indenture and the estate and rights granted hereby shall cease, determine and be void; otherwise the Indenture shall be and remain in full force and effect.

## ARTICLE III

### DESCRIPTION OF BONDS

**Section 3.1 Issuance of Bonds in Series.** The Bonds may be issued in different series, and each Bond shall have an appropriate series designation. All the Bonds shall be equally and ratably secured by the Indenture and by the pledge herein contained, it being expressly understood and agreed that no Bonds issued hereunder shall be prior to any other



Bonds thereafter issued hereunder, but shall be on a parity therewith with respect to the security afforded by the Indenture. All the Bonds shall be issued in fully registered form, viz., registered as to both principal and interest on the registry books of the Bank pertaining to the Bonds in the names of the respective Holders thereof.

**Section 3.2 Dates and Places of Payment of Bonds.** Subject to any applicable provisions pertaining to the dating of Bonds issued pursuant to the provisions of either Section 5.1 or 5.3 hereof, the Bonds of each series shall bear such date or dates as shall be specified in the Indenture or Supplemental Indenture under which such series is issued, and the Bonds of each such series shall mature. In the event that all or any part of the Bonds of any series are required (by the terms of the Indenture or any Supplemental Indenture) to be redeemed prior to maturity through the operation of a sinking or other similar fund, such redemption shall be required to be effected on one or both of the calendar days on which any Bonds issued hereunder are permitted to have a stated maturity date, in such years and amounts as shall be specified prior to the issuance of such Bonds. Interest on the Bonds of each series from their respective dates until their respective maturities shall be payable, at such per annum rate or rates as shall be fixed therefor prior to their issuance. All installments of principal of and interest and premium (if any) on each series of the Bonds shall bear interest after the respective due dates of such principal, interest and premium (if any) until paid or until moneys sufficient for payment thereof shall have been deposited for that purpose with the Bank, whichever first occurs, at such per annum rate and subject to such grace period (if any) as shall be specified prior to their issuance. The principal of and the interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America.

Subject to the provisions of Section 3.4 hereof, the principal of and the interest and premium (if any) on the Bonds shall be paid by check or draft mailed or otherwise delivered by the Bank to the respective Holders thereof at their addresses as they appear on the registry books of the Bank pertaining to the Bonds; provided that the final payment of such interest shall be made only upon surrender of the appropriate Bond to the Bank.

**Section 3.3 Form of Bonds, Etc.** The Series 1993 Bonds and the authentication certificate applicable thereto shall be in substantially the forms respectively provided therefor in Section 7.5 hereof. The Bonds of each series of Additional Bonds and the various certificates and endorsements applicable thereto shall be in substantially the forms respectively provided therefor in the Supplemental Indenture under which each such series of Additional Bonds is issued.

## **ARTICLE IV**

### **EXECUTION, AUTHENTICATION AND REPLACEMENT OF THE BONDS**

**Section 4.1 Execution of Bonds.** The Bonds shall be executed by the Chairman of the Directors, and the seal of the Board shall be affixed thereto and attested by the Secretary of the Board; provided that either the signature of the Chairman of the Directors or the signature of the Secretary of the Board, or both of them, on the Bonds may be a facsimile of the signature of such officer; and provided further that a facsimile of the seal of the Board may be imprinted thereon rather than manually affixed thereto. Signatures on the Bonds by persons who were officers of the Board at the time such signatures were written or printed shall continue effective although such persons cease to be such officers prior to the authentication of the Bonds or the delivery of the Bonds.

**Section 4.2 Authentication Certificate of Bank.** A duly executed authentication certificate by the Bank in substantially the applicable form hereinafter recited shall be manually endorsed on each of the Bonds and shall be essential to its validity. Such certificate shall be conclusive of the due issue of such Bond hereunder.

**Section 4.3 Replacement of Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Board may execute, and the Bank shall thereupon authenticate and deliver, a new Bond of like tenor as that mutilated, lost, stolen or destroyed, which such new Bond shall correspond in all respects to the Bond mutilated, lost, stolen or destroyed; provided that (i) in the case of any such mutilated Bond, such Bond is first surrendered to the Board and the Bank, and (ii) in the case of any such lost, stolen or destroyed Bond, there is first furnished to the Board, the Bank and to the Lessee evidence of such loss, theft or destruction satisfactory to the Bank, together with indemnity satisfactory to each of them. The Board may charge the Holder with the expense of issuing any such new Bond. In lieu of issuing a new Bond to replace any mutilated, lost, stolen or destroyed Bond which shall have already matured, the Bank may pay such Bond at or after the maturity thereof if the owner of such Bond satisfies the same terms and conditions as those provided in the preceding provisions of this section for the replacement thereof.

## **ARTICLE V**

### **REGISTRATION, TRANSFERS AND EXCHANGES OF THE BONDS**

**Section 5.1 Registration and Transfer of Bonds.** The Bank shall be the registrar and transfer agent of the Board and shall keep at its office proper registry and transfer books



in which it will note the registration and transfer of such Bonds as are presented for those purposes, all in the manner and to the extent hereinafter specified.

The Bonds shall be transferable only on the transfer books of the Bank. No transfer of any Bond shall be valid hereunder unless such Bond is presented at the office of the Bank with written power to transfer signed by the registered owner thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the Bank, whereupon the Board shall execute, and the Bank shall authenticate and deliver to the transferee a new Bond, registered in the name of such transferee and of like tenor as that presented for transfer. The person in whose name any Bond is registered on the books of the Bank shall be the sole person to whom or on whose order payments on account of the principal thereof and of the interest and premium (if any) thereon may be made.

Any Bond authenticated and delivered pursuant to the provisions of this section shall be dated as of the interest payment date next preceding the date of its authentication by the Bank or, if the date of such authentication is an interest payment date, as of such date; provided that if any Bond is to be authenticated and delivered pursuant to this section prior to the first interest payment date with respect to the Bond or Bonds presented for transfer for which it is to be issued in lieu of, such Bond shall be dated the date of the Bond or Bonds for which it is to be so issued in lieu of; and provided further that if at the time of such authentication, the Board is in default in payment of the interest on the Bonds, such Bond shall be dated as of the interest payment date to which interest has previously been paid or made available for payment on the Bonds. In any case, any Bond issued in lieu of other Bonds presented for transfer shall bear interest at the rate borne by the Bonds so presented for transfer and shall bear interest from such date as is necessary to assure that no gain or loss of interest shall result from the transfer of any Bonds.

The Bank shall not be required to register or transfer any Bond during the period of fifteen (15) days next preceding any interest payment date with respect thereto; and if any Bond shall be duly called for redemption (in whole or in part), the Bank shall not be required to register or transfer such Bond during the period of forty-five (45) days next preceding the date fixed for such redemption.

**Section 5.2 Persons Deemed Owners of the Bonds.** The Board, the Bank and any institution at which the Bonds are or may be payable may deem and treat the person in whose name a Bond is registered as the absolute owner thereof for all purposes; they shall not be affected by notice to the contrary; and all payments by any of them to the person in whose name any Bond is registered, shall to the extent thereof fully discharge and satisfy all liability for the same.

**Section 5.3 Exchange of Bonds.** The Bonds of each series shall be freely exchangeable within the limits provided in the Indenture or Supplemental Indenture under which such series is issued; provided however, that under no circumstances shall any Bond be issuable in exchange for any other Bond or Bonds unless the Bond or Bonds being so exchanged are of the same series, bear interest at the same rate and have the same stated



maturity. Upon the request of a Holder of any Bond or Bonds aggregating not less than \$5,000 in face or principal amount, the Board shall execute, and the Bank shall thereupon authenticate and deliver, upon surrender to the Bank of such Bond or Bonds and in exchange therefor, a Bond of like tenor as the Bond or Bonds so surrendered, aggregating the same principal amount as the Bond or Bonds so surrendered. Thereafter and upon the request of the Holder of one or more Bonds so authenticated and delivered, the Board shall execute, and the Bank shall thereupon authenticate and deliver, upon surrender to the Bank of such Bond or Bonds and in exchange therefor, a Bond or Bonds of like tenor and aggregating the same principal amount as the then unpaid principal amount of the Bond or Bonds so surrendered, all as may be requested by the person surrendering such Bond or Bonds. Any Bond or Bonds surrendered for exchange pursuant to the provisions of this Section 5.3 shall be accompanied by a written power to transfer signed by the registered owner thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the Bank.

Any Bond authenticated and delivered pursuant to the provisions of this section shall be dated as of the interest payment date next preceding the date of its authentication by the Bank or, if the date of such authentication is an interest payment date, as of such date; provided that if any Bond is to be authenticated and delivered pursuant to this section prior to the first interest payment date with respect to the Bond or Bonds for which it is to be issued in exchange, such Bond shall be dated the date of the Bond or Bonds for which it is to be so issued in exchange; and provided further that if at the time of such authentication, the Board is in default in payment of the interest on the Bonds, such Bond shall be dated as of the interest payment date to which interest has previously been paid or made available for payment on the Bonds. In any case, any Bond issued in exchange for one or more Bonds shall bear interest at the rate of the Bonds so surrendered for exchange and shall be dated in accordance with the applicable provisions of the next preceding sentence, all to the end that no gain or loss of interest shall result from the exchange of any Bond.

Upon the issuance of any Bond or Bonds in exchange for any other Bond or Bonds hereunder there shall be assigned to the Bond or Bonds issued as a result of any such exchange a serial number or numbers. In each such case, the serial number or numbers of the Bonds so assigned shall be endorsed on such Bond.

The Bank shall not be required to exchange any Bond or Bonds for other Bonds pursuant to the provisions of this Section 5.3 during the period of fifteen (15) days next preceding any interest payment date with respect thereto; and if any Bond shall be duly called for redemption (in whole or in part), the Bank shall not be required so to exchange such Bond during the period of forty-five (45) days next preceding the date fixed for such redemption.

**Section 5.4 Expenses of Registration, Transfer and Exchange.** The Board and the Bank may charge the Holder with their reasonable fees and expenses in connection with any transfer, registration or exchange of any of the Bonds (including, without limitation, the expenses of printing any new Bonds that may be necessitated by any transfer, registration or exchange), except that no charge shall be made for the issuance of a new Bond issued, pursuant to the provisions of Section 6.2 hereof, as a result of a call for partial redemption of a Bond. In every case involving any transfer, registration or exchange of any of the Bonds

that is requested by the Holder thereof, such Holder shall pay all taxes and other governmental charges required to be paid in connection with such transfer, registration or exchange.

## **ARTICLE VI**

### **GENERAL PROVISIONS RESPECTING REDEMPTION OF BONDS**

**Section 6.1 Manner of Effecting Redemption of Bonds.** Any redemption of any Bonds of any series shall be effected in the following manner:

(a) Call. The Directors shall adopt a Resolution containing the following: (1) a call for redemption, on a specified date when they are by their terms subject to redemption, of Bonds bearing a stated series designation or designations (and, in the case that a portion but less than all of any Bond or Bonds are to be redeemed, the principal amount or amounts thereof to be redeemed); and (2) unless all the Bonds then outstanding are to be redeemed (or unless a portion of all such outstanding Bonds are to be redeemed and the remainder are, simultaneously with or prior to such redemption, to be otherwise retired), a statement that no Event of Default has occurred and is continuing; provided however, that it shall not be necessary for the Directors to adopt any such Resolution in the case of any redemption of the Bonds of any series of Additional Bonds, if such redemption is required by the terms of the Supplemental Indenture under which such series of Additional Bonds is issued or if, in such Supplemental Indenture, the adoption of such Resolution is expressly stated to be unnecessary.

(b) Notice by Registered or Certified Mail. The Bank (on behalf of the Board) shall cause to be forwarded by United States registered or certified mail to the Holder thereof, at the address of such Holder as such address appears on the registry books of the Bank pertaining to the registration of the Bonds, a notice stating the following: that Bonds bearing stated numbers and a stated series designation or designations (and, in the case that a portion but less than all of any Bond or Bonds are to be redeemed, the principal amount or amounts thereof to be redeemed) have been called for redemption and will become due and payable at the redemption price or prices on a specified redemption date, and that all interest thereon will cease after such redemption date. The notice provided for in this subsection (b) shall be mailed to all persons entitled to receive the same not more than sixty (60) nor less than thirty (30) days prior to the date fixed for redemption. The Holder or Holders of any Bond or Bonds may waive the requirements of this subsection with respect to the Bond or Bonds held by them without affecting the validity of the call for redemption of any other Bonds.

(c) Deposit. Prior to the date fixed for redemption the Board shall deposit or cause to be deposited with the Bank the total redemption price of



the Bonds (or portions thereof) so called for redemption and shall further furnish or cause to be furnished to the Bank the following: (1) a certified copy of the Resolution required by subsection (a) of this section (if, under the circumstances, the adoption of any such Resolution is required); and (2) in the case of the redemption of any Bonds on a date when such Bonds may be redeemed only with funds from a specified source or when such redemption is made subject, by the terms of the Indenture or any Supplemental Indenture, to any other restriction or requirement, evidence satisfactory to the Bank showing compliance with such restriction or requirement.

**Section 6.2 Presentation of Bonds for Redemption. Bonds Called for Redemption to Cease to Bear Interest.** Upon compliance by the Board and the Bank with the applicable requirements of Section 6.1 hereof [and, unless all the Bonds then outstanding are to be redeemed (or unless a portion of such outstanding Bonds are to be redeemed and the remainder are, simultaneously with or prior to such redemption, to be otherwise retired), if the Board is not on the date fixed for redemption in default in payment of the principal of or the interest or premium (if any) on any of the Bonds], the Bonds so called for redemption (or, in the case of any Bonds called for redemption in part, the portions thereof called for redemption) shall become due and payable at the place or places at which the same shall be payable at the redemption price or prices and on the redemption date specified in such notice, anything herein or in such Bonds to the contrary notwithstanding, and the Holders thereof shall then and there surrender them for redemption; provided however, that with respect to any Bond called for partial redemption, (i) the Holder thereof shall surrender such Bond to the Bank in exchange for one or more Bonds in authorized denominations or any authorized combination thereof, in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered or (ii) such Holder shall, in lieu of surrendering such Bond in exchange for one or more Bonds, present the same to the Bank for endorsement thereon (or on any record of partial redemptions appertaining thereto and constituting a part thereof) of the payment of the portion of the principal thereof so redeemed, all as shall be requested by the Holder of such Bond so called for partial redemption. All future interest on the Bonds so called for redemption (or, in the case of any Bonds called for redemption in part, the portions thereof called for redemption) shall cease to accrue after the date fixed for redemption. The Bonds so called (or, in the case of any Bonds called for redemption in part, the portions thereof called for redemption) shall, subject to such deposit having been made, be entitled to no security under the Indenture other than the moneys deposited with the Bank under the provisions of this article; and out of the moneys so deposited with it, the Bank shall pay on the redemption date the applicable redemption price or prices of the Bonds so called for redemption (or, in the case of any Bonds called for redemption in part, the portions thereof called for redemption).

**Section 6.3 Pro Rata Redemption of Bonds of Different Series Not Required.** Nothing contained in the Indenture shall be construed as requiring pro rata redemption of Bonds of different series, even though at the time that any redemption of Bonds is to be effected there are then outstanding under the Indenture Bonds of two or more series then subject to redemption.

**Section 6.4 Termination of Lease or Exercise by the Lessee of Option to Purchase Project.** In the event that the Lease terminates pursuant to Section 7.2(a) thereof, or in the event the Lessee exercises the option to terminate the Lease granted in Section 11.1(a) thereof, or in the event that the Lessee is entitled to exercise the option to purchase the Project granted in Section 11.2 of the Lease and duly does so in accordance with the applicable provisions of said Section 11.2, then, in any of such events, the Bank (i) shall segregate and set aside in the Bond Fund [out of moneys therein, any moneys then on deposit in the Construction Fund and the Redemption Fund, any insurance proceeds or condemnation awards then held by the Bank that are referable to the Project and that are available for the retirement of Bonds, and any moneys payable by the Lessee pursuant to the provisions of any of Sections 7.2(a), 11.1(a) and 11.2 of the Lease, in the order named] moneys sufficient to retire the Bonds and pay all other Indenture Indebtedness as provided in Sections 7.2(a), 11.1(a) or 11.2 of the Lease, as the case may be, and (ii) shall, in accordance with the applicable provisions of the Lease, dispose of any balance of such moneys not needed for the retirement of the Bonds and the payment of all other Indenture Indebtedness.

## **ARTICLE VII**

### **THE SERIES 1993 BONDS**

**Section 7.1 Amount and Maturity of Series 1993 Bonds.** There is hereby authorized to be issued under the Indenture an issue or series of Bonds designated First Mortgage Industrial Revenue Bonds (Wilkerson Project), Series 1993, limited in aggregate principal amount to \$750,000. The Series 1993 Bonds shall be initially issued as a single fully registered bond in the denomination of \$750,000, shall be numbered R-1, shall be payable to National Bank of Commerce of Birmingham, Birmingham, Alabama, and shall mature and become payable as to principal on January 15, 1994, and on the fifteenth (15th) day of each calendar month thereafter in installments of principal in the following respective amounts on the fifteenth (15th) day of each calendar month as follows:

In each month from January 1994 to December 1994, inclusive	\$ 2,500.00
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In each month from January 1995 to December 1995, inclusive	2,750.00
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In each month from January 1996 to December 1996, inclusive	2,916.67
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In each month from January 1997 to December 1997, inclusive	3,083.33
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In each month from January 1998 to December 1998, inclusive	3,333.33
In each month from January 1999 to December 1999, inclusive	3,500.00
In each month from January 2000 to December 2000, inclusive	3,750.00
In each month from January 2001 to December 2001, inclusive	4,000.00
In each month from January 2002 to December 2002, inclusive	4,333.33
In each month from January 2003 to December 2003, inclusive	4,583.33
In each month from January 2004 to December 2004, inclusive	4,916.67
In each month from January 2005 to December 2005, inclusive	5,250.00
In each month from January 2006 to December 2006, inclusive	5,583.33
In each month from January 2007 to December 2007, inclusive	5,833.33
In each month from January 2008 to November 2008, inclusive	6,166.67

with the balance becoming due on December 15, 2008. The said single fully registered bond in the form of which the Series 1993 Bonds shall be initially issued may be exchanged for other Series 1993 Bonds as provided in Section 5.3 hereof. All Series 1993 Bonds shall be dated in accordance with the applicable provisions of Section 5.3 hereof, shall be in the



denomination of \$1.00 or any integral multiple thereof, and shall be numbered from R-1 up, in the order in which issued.

**Section 7.2 Interest Rate and Places of Payment.** The Series 1993 Bonds shall bear interest from their date until the Series 1993 Bonds shall have been fully paid and retired (whether by acceleration, redemption prior to maturity or otherwise) at the rate of one-half percent (1/2%) in excess of the Prime Rate as the same shall be established from time to time. The said interest on the Series 1993 Bonds shall be payable on January 15, 1994, and on each Bond Payment Date thereafter for so long as any of the Series 1993 Bonds shall remain outstanding. Overdue installments of principal of and the interest and premium (if any) on the Series 1993 Bonds, including all installments becoming due as a result of acceleration or mandatory redemption, shall bear interest from their respective due dates until paid at a rate of Two and One-Half Percent (2 1/2%) in excess of the Prime Rate as the same shall be established from time to time. The principal of and the interest and premium (if any) on the Series 1993 Bonds shall be payable in accordance with the provisions of Section 3.2 hereof.

**Section 7.3 Optional Redemption of Series 1993 Bonds.** At the option of the Board (which option shall be exercisable only upon request by the Lessee and if at the time no Lease Default shall have occurred and be continuing), the Series 1993 Bonds shall be subject to redemption and payment on January 15, 1994, and on any Bond Payment Date thereafter, as a whole or in part, but if in part in the inverse order of their maturity or due dates, such redemption, whether in whole or in part, to be at and for a redemption price (equal to the par or face amount thereof for each Series 1993 Bond or portion thereof to be redeemed) plus accrued interest to the date fixed for redemption, without premium or penalty of any kind. If less than all the Series 1993 Bonds shall be called for prepayment and redemption at any one time, then the principal amount of Series 1993 Bonds to be prepaid and redeemed shall be allocated among all the Holders of the Series 1993 Bonds in proportion to the aggregate principal amount of outstanding Series 1993 Bonds owned by each such Holder.

**Section 7.4 Extraordinary Redemption of Series 1993 Bonds.** The Series 1993 Bonds shall be subject to extraordinary mandatory redemption prior to their respective maturities in the event (i) that all or substantially all of the Project is taken through the exercise of the power of eminent domain with the consequences described in Section 7.2(a) of the Lease or (ii) in the event that the Lessee exercises the option granted in Section 11.2 of the Lease to purchase the Project, at and for a redemption price, with respect to each Series 1993 Bond, equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption. In case all the Series 1993 Bonds are required to be redeemed pursuant to clause (i) of the first sentence of this subsection (a), the date fixed for such redemption shall be the date on which the Lease terminates as provided in said Section 7.2(a) thereof (or such later date as may be required by the provisions of Section 16.4 hereof). In case all the Series 1993 Bonds are required to be redeemed pursuant to clause (ii) of the first sentence of this subsection (a), the date fixed for such redemption shall be the business day

next succeeding the date of purchase of the Project determined by the Lessee in accordance with the provisions of clause (2) of Section 11.2 of the Lease.

**Section 7.5 Form of the Series 1993 Bonds.** The Series 1993 Bonds, the Bank's authentication certificate applicable thereto and the form of assignment therefor shall be in substantially the following forms, respectively, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof:

**[Form of Series 1993 Bond]**

No. R-1

**\$750,000**

**UNITED STATES OF AMERICA**

**STATE OF ALABAMA**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM**

**FIRST MORTGAGE INDUSTRIAL REVENUE BOND  
(Wilkerson Manufacturing Facility Project)  
Series 1993**

For value received, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation under the laws of the State of Alabama (herein called the "Board"), will pay to \_\_\_\_\_, or registered assigns, solely out of the sources of payment hereinafter referred to, the sum of

**SEVEN HUNDRED FIFTY THOUSAND DOLLARS**

in installments of principal in the following respective amounts on the fifteenth (15th) day of each calendar month as follows:

In each month from January 1994 to December 1994, inclusive	\$ 2,500.00
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In each month from January 1995 to December 1995, inclusive	2,750.00
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In each month from January 1996 to December 1996, inclusive	2,916.67
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In each month from January 1997 to December 1997, inclusive	3,083.33
In each month from January 1998 to December 1998, inclusive	3,333.33
In each month from January 1999 to December 1999, inclusive	3,500.00
In each month from January 2000 to December 2000, inclusive	3,750.00
In each month from January 2001 to December 2001, inclusive	4,000.00
In each month from January 2002 to December 2002, inclusive	4,333.33
In each month from January 2003 to December 2003, inclusive	4,583.33
In each month from January 2004 to December 2004, inclusive	4,916.67
In each month from January 2005 to December 2005, inclusive	5,250.00
In each month from January 2006 to December 2006, inclusive	5,583.33
In each month from January 2007 to December 2007, inclusive	5,833.33
In each month from January 2008 to November 2008, inclusive	6,166.67



and with the balance becoming due on December 15, 2008. The Board will also pay interest on the unpaid principal balance hereof from the date hereof at a rate equal to one-half of one percent (1/2%) in excess of the prime rate of interest of National Bank of Commerce of Birmingham, Birmingham, Alabama, as said prime rate shall be established from time to time. The said interest shall be payable on January 15, 1994, and on the 15th day of each calendar month thereafter until and at the maturity hereof. The principal of, as well as the interest and premium (if any) on this bond shall (except for the final payment of such principal, interest and premium, which shall be made only upon the surrender of this bond) be remitted, by the Bank hereinafter referred to, by check or draft mailed or otherwise delivered to the then registered holder hereof at the address of such holder as shown on the registry books of the said Bank. Overdue installments of principal of and the interest and premium (if any) on this bond shall bear interest after the respective due dates until paid at a rate equal to Two and One-Half Percent (2 1/2%) in excess of the aforesaid prime rate of National Bank of Commerce of Birmingham, Birmingham, Alabama, from time to time in effect.

This bond evidences a duly authorized issue or series of bonds authorized to be issued in the aggregate principal amount of \$750,000 and designated First Mortgage Industrial Revenue Bonds (Wilkerson Project), Series 1993 (herein called the "Series 1993 Bonds"). The Series 1993 Bonds have been issued under a Mortgage Indenture dated as of December 21, 1993 (herein called the "Indenture"), from the Board to National Bank of Commerce of Birmingham, Birmingham, Alabama (herein, together with its successors in trust, called the "Bank"), for the purpose of financing the costs of acquiring and constructing a facility for the general warehousing of products of industry and agriculture that is located within the corporate limits of the City of Pelham, Alabama (said facility, as so equipped, as well as all land and leasehold interests therein, improvements, machinery, equipment and other property acquired by the Board in connection therewith, as they may at any time exist, being herein together called the "Project"). In connection with the issuance of the Series 1993 Bonds, the Board has leased the Project to Eugene Wilkerson, an individual resident of the State of Alabama (herein called the "Lessee") under a Lease Agreement dated December 21, 1993 (herein called the "Lease"). The Lease obligates the Lessee to pay rent directly to the Bank, for the account of the Board, on such dates and in such amounts as will provide moneys sufficient to pay, when due, the principal of and the interest on the Series 1993 Bonds.

The Series 1993 Bonds are subject to redemption prior to their respective maturities as follows:

(1) The Series 1993 Bonds are subject to redemption prior to their respective maturities, at the option of the Board (which option may be exercisable only at the request of the Lessee), as a whole or in part (but, if in part, in the inverse order of their maturity or due dates), on January 15, 1994, and on any interest payment date thereafter, at and for a redemption price, with respect to each Series 1993 Bond (or portion of the principal thereof) called for redemption, equal to the par or face amount thereof plus accrued interest thereon to the date fixed for redemption, without premium or penalty of any kind, so long as no event of default shall have occurred under the Lease.

(2) The Series 1993 Bonds are subject to mandatory redemption as a whole on any date, at and for a redemption price, with respect to each Series

(2) The Series 1993 Bonds are subject to mandatory redemption as a whole on any date, at and for a redemption price, with respect to each Series 1993 Bond, equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption, but only in the event of the taking through the exercise of the power of eminent domain of all or substantially all the Project or in the event of the exercise by the Lessee of an option to purchase the Project granted in the Lease, which option shall be exercisable only if (a) any part of the Project is damaged or destroyed, by fire or other casualty, to such extent that, in the opinion of the Lessee, the restoration or repair of the property damaged or destroyed to the condition thereof immediately preceding such damage or destruction would not be economically practicable or desirable, or (b) under the exercise of the power of eminent domain, (i) title to all or substantially all the Project is taken, or (ii) the temporary use of all or part of the Project, or title to part of the Project, is taken to such extent that, in the opinion of the Lessee, the Lessee will thereby be prevented, or is likely to be thereby prevented, from making normal use of the Project for a period of not less than four (4) consecutive months, or (c) as a result of any changes in the Constitution of the United States of America or the Constitution of the State of Alabama, any legislative or administrative action (whether state or federal), or any final decree or judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Lessee in good faith, the Lease becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties thereto as expressed therein or unreasonable burdens or excessive liabilities are imposed on the Board or the Lessee, including any changes in the tax laws of the United States of America or the State of Alabama that will render the operation of the Project significantly less economically advantageous to the Lessee.

The Indenture requires written notice of the call for redemption of this bond (or portion of the principal thereof) to be forwarded by United States registered or certified mail to the registered owner of such Series 1993 Bond, not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption. In the event that less than all the outstanding principal of this bond is to be redeemed, (i) the registered holder thereof shall surrender this bond to the Bank in exchange for a new bond or like tenor herewith except in a principal amount equal to the unredeemed portion of this bond or (ii) such holder shall, in lieu of surrendering this bond in exchange for a new bond, present the same to the Bank for endorsement hereon, or on the record of partial redemptions appertaining hereto, of the payment of the portion of the principal hereof so redeemed. If any special payment agreement is at the time in effect with respect to this bond, the Indenture does not require written notice of the partial redemption of this bond to be given to the holder hereof in connection with any redemption described in subparagraph (2) of the preceding paragraph.

The Board, with the consent of the Lessee, and with the express written consent of the holders of not less than seventy-five percent (75%) of all the Bonds issued under the Indenture and otherwise upon the terms and conditions therein specified, is authorized by the Indenture to issue additional bonds thereunder that are secured on a parity with the Series 1993 Bonds as respects the security afforded by the Indenture. Such additional parity



bonds may be issued, at any time and from time to time, for the purposes of (i) obtaining funds, if additional funds are needed, to pay the costs of completing the acquisition, construction and equipment of the Project, (ii) obtaining funds to pay the costs of making additions and improvements to the Project, (iii) refunding and retiring all or any portion of any one or more series of bonds then outstanding under the Indenture and (iv) any combination of the foregoing purposes (the Series 1993 Bonds and all such additional parity bonds being herein together called the "Bonds").

The principal of and the interest and premium (if any) on the Bonds are payable solely from the revenues and receipts to be derived from the leasing or sale of the Project and certain other moneys pledged under the Indenture. The payment of the principal of and the interest and premium (if any) on the Bonds is secured, pro rata and without preference or priority of one Bond over another or of the Bonds of any one series over the Bonds of any other, by a valid pledge of the aforesaid revenues, receipts and moneys out of which the Bonds are solely payable (including specifically the "Basic Rent" payable to the Board by the Lessee under the Lease), by the Indenture, which constitutes a lien on the Project, and by an assignment to the Bank of all right, title and interest of the Board in and to the Lease (except certain expense reimbursement and indemnification rights of the Board and certain other rights which are expressly reserved to the Board). Reference is hereby made to the Lease and the Indenture for complete information respecting the nature and extent of the security afforded by each of such instruments, the rights and duties of the Board and the Bank with respect thereto, the rights of the holders of the Series 1993 Bonds and the terms and conditions on which additional series of Bonds may be issued.

The Indenture provides, inter alia, (a) that upon the occurrence and continuation of certain events of default as therein provided, the Bank may declare the principal of and the interest accrued on this bond immediately due and payable, whereupon the same shall thereupon become immediately due and payable and the Bank shall be entitled to pursue the remedies provided in the Indenture, (b) that the holder of this bond shall have no right to enforce the provisions of the Indenture except as provided therein and then only for the equal and pro rata benefit of the holders of all the Bonds, and (c) that if this bond shall not be presented for payment when due (whether by maturity or otherwise) and if funds sufficient for such payment shall have been made available to the Bank therefor, all liability of the Board to the holder of such bond and all rights of such holder against the Board under such bond or under the Indenture shall cease and terminate and that the sole right of such holder shall thereafter be against the said funds so made available, which the Bank is required to set aside and hold, subject to any applicable escheat or other similar law, for the benefit of such holder. The Indenture also provides that the Board and the Bank, with the written consent of the holders of a majority in aggregate principal amount of the Bonds then outstanding under the Indenture, may at any time and from time to time amend the Indenture or any indenture supplemental thereto, provided that no such amendment shall (1) without the consent of the holder of each Bond, reduce the principal of, the rate of interest on, or the premium (if any) payable on redemption of, any Bond, or (2) without the consent of the holders of all the Bonds then outstanding under the Indenture, extend the maturity of any installment of principal of or interest on any of the Bonds, make any change in the provisions of the Indenture that require the redemption of any of the Bonds prior to maturity, create a lien or charge on the property mortgaged under the Indenture or the revenues and receipts pledged thereunder ranking prior to or on a parity with the lien and charge thereon contained

in the Indenture, effect a preference or priority of any Bond over any other Bond or reduce the aggregate principal amount of Bonds the holders of which are required to consent to any such amendment. The Indenture further provides that the Board and the Lessee, with the written consent of the holders of a majority in aggregate principal amount of the Bonds then outstanding under the Indenture, may at any time and from time to time amend, change or modify the Lease, provided that no such amendment, change or modification shall, without the consent of the holders of all the Bonds then outstanding under the Indenture, permit (i) a reduction in the amount of "Basic Rent" payable under the Lease [other than a reduction resulting from, and directly proportional to, a reduction in the amounts required for payment of the principal of or the interest or premium (if any) on the Bonds], (ii) any change in the due dates of the installments of such "Basic Rent", or (iii) any other change that, in the reasonable judgment of the Bank, might adversely affect the interests of the holders of the Bonds.

The Board is a public corporation organized under the provisions of Code of Alabama 1975, Title 11, Chapter 54, Article 4, and the Series 1993 Bonds are authorized to be issued for the purposes for which bonds are authorized to be issued under the specified provisions of said code, as supplemented as aforesaid. The Series 1993 Bonds and the covenants and representations contained in the Indenture do not and shall never constitute a general liability or charge against the general credit of the Board. Neither the State of Alabama nor the City of Pelham therein nor any other political subdivision of said state shall in any manner be liable for payment of the principal of or the interest or premium (if any) on the Series 1993 Bonds or for the performance of the undertakings of the Board contained herein or in the Indenture.

It is hereby certified that all conditions, actions and things required by the Constitution and laws of the State of Alabama to exist, be performed and happen precedent to or in the issuance of this bond do exist, have been performed and have happened in due and legal form.

The Series 1993 Bonds are issuable only as fully registered bonds without coupons in the denomination of \$1.00 or any integral multiple thereof. Provision is made in the Indenture for the exchange of the Series 1993 Bonds for a like aggregate principal amount of other Series 1993 Bonds in authorized denominations, all as may be requested by the holder surrendering the Series 1993 Bond or Bonds to be so exchanged and upon the terms and conditions specified in the Indenture.

This bond is transferable by the registered holder hereof in person, or by duly authorized attorney, only on the books of the Bank and only upon surrender of this bond to the Bank for cancellation, and upon any such transfer a new fully registered bond of like tenor hereof will be issued to the transferee in exchange therefor, all as more particularly provided in the Indenture. Any assignee or transferee of this bond takes it subject to all payments of principal, interest and premium in fact made with respect hereto, whether or not such payments are reflected by endorsement on this bond or any payment record pertaining hereto.

The Bank shall not be required to transfer or exchange this bond during the period of fifteen (15) days next preceding any interest payment date with respect thereto; and in the



Bank shall not be required to transfer or exchange it during the period of forty-five (45) days next preceding the date fixed for such redemption.

Execution by the Bank of its authentication certificate hereon is essential to the validity hereof and is conclusive of the due issue hereof under the Indenture.

IN WITNESS WHEREOF, the Board has caused this bond to be executed in its name and behalf by the Chairman of its Board of Directors, has caused an impression of its corporate seal to be hereunto affixed, has caused this bond to be attested by its Secretary, and has caused this bond to be dated December 21, 1993.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

By \_\_\_\_\_  
Chairman of the Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary  
[ S E A L ]

[Form of Bank's Authentication Certificate]

The within bond is one of those described in the within-mentioned Mortgage Indenture.

NATIONAL BANK OF COMMERCE  
OF BIRMINGHAM

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

[Form of Assignment]

For value received, \_\_\_\_\_  
hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_  
the within bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_  
\_\_\_\_\_, attorney, with full power of substitution in the  
premises, to transfer such bond on the books of the within-mentioned Bank.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.



DATED this \_\_\_\_\_ day of \_\_\_\_\_.

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

**Section 7.6 Execution and Delivery of the Series 1993 Bonds.** The Series 1993 Bonds shall be forthwith executed and delivered to the Bank and shall be authenticated and delivered by the Bank from time to time upon receipt by the Bank of an order signed on behalf of the Board by the Chairman of the Directors, requesting such authentication and delivery and designating the person or persons to receive the same or any part thereof.

**Section 7.7 Application of Proceeds from Sale of Series 1993 Bonds.** The entire proceeds derived by the Board from the sale of the Series 1993 Bonds shall be paid to the Bank and promptly thereafter applied by the Bank for the following purposes and in the following order:

- (a) payment into the Bond Fund of that portion of such proceeds that is allocable to premium (if any) and accrued interest; and
- (b) payment of the balance of such proceeds into the Construction Fund.

## **ARTICLE VIII**

### **ADDITIONAL BONDS**

**Section 8.1 Additional Bonds — In General.** If no Event of Default shall have occurred and be continuing, the Board shall at any time and from time to time, if requested by the Lessee, issue Additional Bonds, within the limitations of and upon compliance with the provisions of this Article VIII, for any one or more of the following purposes:

- (a) in the event the available proceeds from the sale of the Series 1993 Bonds are insufficient to pay all the Project Development Costs, for the purpose of obtaining funds with which to pay such costs;
- (b) for the purpose of acquiring or constructing any additions, improvements or modifications (including, without limitation, any additional land, buildings or machinery, equipment or other personal property) to the facilities at the time forming part of the Project;

(c) for the purpose of refunding or otherwise retiring all or any portion of any one or more series of Bonds then outstanding under the Indenture; and

(d) for any combination of the foregoing purposes.

The Additional Bonds may be in such denomination or denominations, shall bear interest at such rate or rates, shall bear such dates not inconsistent with the provisions hereof, shall mature in such amounts and at such times as are not in conflict with the provisions hereof, shall be in such form and may contain such provisions for redemption prior to maturity, all as may be provided in the Supplemental Indenture under which they are issued; provided that all such Additional Bonds shall be subject to redemption at any time, at such redemption price or prices as shall be fixed prior to their issuance, if (i) the Lessee shall exercise the option to purchase the Project granted in Section 11.2 of the Lease or (ii) all or substantially all of the Project shall be taken under the exercise of the power of eminent domain. Any redemption of Additional Bonds prior to maturity shall be effected in the manner set forth in and shall be subject to the provisions of Article VI hereof. All Additional Bonds so issued shall contain an appropriate series designation.

**Section 8.2 Conditions Precedent to Issuance of Additional Bonds.** Prior to the issuance of any Additional Bonds, the Board shall deliver to the Bank those of the Additional Bonds proposed to be issued, duly executed and sealed, accompanied by the following:

(a) Supplemental Indenture. A Supplemental Indenture duly executed, sealed and acknowledged on behalf of the Board and containing the following [to the extent applicable in the case of clause (ii) below]: (i) a description of such Additional Bonds, including the aggregate principal amount, the numbers and series designation, the denomination or denominations, the date, the interest rate or rates and the maturity or maturities thereof, the provisions for redemption thereof prior to maturity and the forms of such Additional Bonds and various certificates applicable thereto, (ii) provisions subjecting to the lien of the Indenture all properties acquired and to be acquired in connection with any additions, improvements and modifications to the Project, including any additional land not theretofore constituting part of the Project Site on which any such additions, improvements and modifications are, or are to be located, (iii) a confirmation of the lien of the Indenture on all properties then constituting a part of the Project, including specifically, without limiting the generality of the foregoing, all such properties acquired since the execution of the Indenture or Supplemental Indenture most recently executed, and (iv) any other provisions that do not conflict with the provisions hereof;

(b) Proceedings. A certified copy of the proceedings taken by the Directors authorizing the issuance of such Additional Bonds and the execution and delivery of the Supplemental Indenture providing therefor, which said proceedings shall include a Resolution requesting the Bank to authenticate and deliver such Additional Bonds and reciting the following: (i) that no Event of



Default has occurred and is continuing and that no event which, with the giving of notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing, (ii) the person or persons to whom such Additional Bonds have been sold and awarded and shall be delivered, (iii) the purchase price of such Additional Bonds, and (iv) a list of all Additional Bonds previously issued by the Board hereunder and at the time outstanding and of the Supplemental Indentures under which they were issued;

(c) Supplemental Lease. A fully executed and acknowledged copy of an agreement between the Board and the Lessee supplemental to the Lease containing the following [to the extent applicable in the case of clauses (ii) and (iii) below]: (i) an agreement by the Lessee to pay additional, supplemental or changed Basic Rent in amounts that will result in there being on deposit in the Bond Fund sums at least sufficient to pay, on or prior to the respective due dates thereof, the principal of and the interest and premium (if any) on all Bonds that will be outstanding hereunder immediately following the issuance of such Additional Bonds, (ii) in the event the last maturity of such Additional Bonds is subsequent to the date of expiration of the then current "Lease Term" of the Lease, an extension of such "Lease Term" until or beyond the last maturity of such Additional Bonds, (iii) provisions subjecting to the demise of the Lease all properties acquired and to be acquired in connection with any additions, improvements and modifications to the Project, including any additional land not theretofore constituting part of the Project Site on which any such additions, improvements and modifications are, or are to be located, and (iv) any other provisions not in conflict with the Indenture or the Lease;

(d) Bondholder Consent. An instrument or instruments in writing by or on behalf of the Holders of not less than seventy-five percent (75%) in principal amount of each series of Bonds then outstanding (provided, that if any series of Bonds is to be refunded or otherwise retired in whole out of the proceeds from the sale of such Additional Bonds, then the consent of the holders of any such series of Bonds shall not be required), evidencing their consent to the issuance of such Additional Bonds and the terms under which such Additional Bonds will be issued;

(e) Confirmation of Title to Project Site. An opinion, acceptable to the Bank and dated as of the date of the issuance of such Additional Bonds, of Independent Alabama Counsel acceptable to the Bank stating that the Board has good and marketable title to any land subjected to the lien of the Indenture pursuant to the provisions of clause (ii) of subsection (a) of this section, subject only to Permitted Encumbrances, or, in lieu of such opinion, a policy or binder of title insurance, or an endorsement to a previously issued policy of title insurance, written by an insurer acceptable to the Bank and insuring the mortgage interest of the Bank in such land, except with respect to Permitted Encumbrances, in an amount not less than the principal amount of such of the Additional Bonds as are being issued to pay the costs of acquiring or improving real property (including such land) which constitutes, or is to constitute, part of the Project;



(f) Opinion of Counsel for the Lessee. An opinion, acceptable to the Bank and dated as of the date of the issuance of such Additional Bonds, of Counsel for the Lessee acceptable to the Bank stating in substance that the Lease, as supplemented by the supplemental agreement provided for in subsection (c) of this Section 8.2, constitutes a valid and binding agreement of the Lessee;

(g) Opinion of Independent Counsel. An opinion, acceptable to the Bank and dated as of the date of the issuance of such Additional Bonds, of Independent Counsel acceptable to the Bank [which Independent Counsel may, but need not be, the Bond Counsel rendering the opinion required by subsection (g) of this section] approving the forms of all documents required by the preceding portions of this section to be delivered to the Bank and stating that they comply with the applicable requirements of this Article VIII; and

(h) Opinion of Bond Counsel. An opinion, dated as of the date of the issuance of such Additional Bonds, of Bond Counsel approving the validity of such Additional Bonds.

Upon receipt of the documents required by the provisions of this section to be furnished to it, the Bank shall, unless it has cause to believe any of the statements set out in said documents to be incorrect, thereupon execute the Supplemental Indenture so presented and cause the same to be filed for record at the expense of the Board or the Lessee in the public office or offices in the State of Alabama in which such document is then required by law to be filed in order to constitute constructive notice thereof, and it shall further authenticate the Additional Bonds with respect to which the said documents shall have been provided and shall, upon receipt of evidence satisfactory to it that the Board has received the purchase price or other consideration therefor, deliver such Additional Bonds to the person or persons to whom the Resolution provided for in subsection (b) of this section directed that they be delivered.

## ARTICLE IX

### CONCERNING THE PROJECT DEVELOPMENT WORK AND PAYMENT OF PROJECT DEVELOPMENT COSTS

**Section 9.1 Agreement Respecting Completion of Project Development Work.** The Board will undertake and complete the Project Development Work or will cause the same to be undertaken and completed, all as and to the extent provided in Article IV of the Lease. The Board will complete the Project Development Work, or cause the same to be completed, as soon as may be practicable, delays incident to any condition or event beyond the reasonable control of the Board only excepted, including, without limitation, strikes, riots, acts of God and the public enemy. The Board will promptly pay or cause to be paid, as and when due, all presently unpaid Project Development Costs, but the Board's obligation to pay such costs shall be limited to moneys on deposit in the Construction Fund and such other funds for the

payment of such costs as may be made available by the Lessee under the provisions of the Lease.

The Board will not suffer or permit any mechanics' or materialmen's liens that might be filed or otherwise claimed or established upon or against the Project or any part thereof, and which might be or become a lien superior to the lien hereof, to remain unsatisfied and undischarged for a period exceeding thirty (30) days after the filing or establishment thereof; provided however, that the Board may in good faith contest any such mechanics' or materialmen's lien claims so filed or established and, in the event that such lien claims are so contested, may permit the mechanic's or materialmen's liens so contested to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom, irrespective of whether such period extends beyond the thirty (30) day period after the filing or establishment of such liens, unless the Bank shall be of the opinion that by such action the lien of the Indenture to any part of the Project shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture, in which event such mechanics' or materialmen's liens shall (unless they are bonded or superseded in a manner satisfactory to the Bank) be satisfied prior to the expiration of said thirty (30) day period.

**Section 9.2 Construction Fund.** There is hereby created a special trust fund, the name of which shall be the "Wilkerson Project Construction Fund", for the purpose of providing for the payment of Project Development Costs. The Bank shall be and remain the depository, custodian and disbursing agent for the Construction Fund. As provided in Section 7.7(b) hereof, there shall be deposited in the Construction Fund all proceeds (exclusive of accrued interest and any premium) derived from the sale of the Series 1993 Bonds.

The moneys in the Construction Fund shall be disbursed by the Bank from time to time for the purpose of paying Project Development Costs, but only upon receipt of a requisition signed by or on behalf of any general partner of the Lessee containing, with respect to each payment requested thereby, the following:

(1) a statement of the amount requested to be paid, the name and address of the person (which may be the Bank, the Lessee, or any Affiliate of the Lessee) to whom such payment is due and the particular Project Development Cost which is to be paid pursuant to such requisition;

(2) a certification that no Lease Default and no Event of Default has occurred and is continuing;

(3) a certification that Construction Fund moneys expended pursuant to such requisition will be expended for a purpose authorized in the Indenture;

(4) a certification that the payment requested in such requisition has not formed the basis for any previous requisition for the disbursement of moneys from the Construction Fund or any previous payment out of the proceeds derived by the Board from the sale of the Series 1993 Bonds;



(5) in the case of a requisition for payment of any part of the costs of constructing the Improvements (whether bills or contractors' estimates), a certification that the labor, services or materials represented thereby are located on, or are referable to, the Project Site; and

(6) an endorsement signed on behalf of the Series 1993 Original Purchaser approving such payment.

The requirements of this paragraph shall apply to all disbursements from the Construction Fund, including those made to reimburse the Lessee or any Affiliate of the Lessee for Project Development Costs theretofore paid by it or him.

The Bank will keep and maintain adequate records pertaining to the Construction Fund and all moneys received therein and disbursed therefrom, and when all moneys in the Construction Fund have been exhausted, whether on the Completion Date or (in accordance with the provisions of the next preceding paragraph of this Section 9.2) thereafter, the Bank will file with the Board, with the Lessee and with the Series 1993 Original Purchaser an accounting of all moneys received into and disbursed from the Construction Fund. After payment of all Project Development Costs, the Bank shall transfer any balance therein remaining from the Construction Fund into the Bond Fund.

**Section 9.3 Bank Protected in Construction Fund Payments; Additional Evidence May Be Required.** The Bank shall be fully protected in making payments from the Construction Fund upon presentation to it of requisitions complying with the requirements of Section 9.2 hereof. The Bank may rely as to the completeness and accuracy of all statements and certifications contained in such requisitions, and the Bank shall incur no liability in acting or proceeding in good faith upon such requisitions and shall be under no duty to make any investigation or inquiry as to any statements or certifications contained in any of such requisitions, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements and certifications. Notwithstanding the foregoing provisions of this section, the Bank shall, when requested in writing so to do by the Holders of not less than a majority in principal amount of the Bonds then outstanding, require, as a condition precedent to any payment from the Construction Fund (other than a payment into the Bond Fund pursuant to the last paragraph of Section 9.2 hereof), such additional evidence as it may reasonably deem appropriate respecting the application of any moneys previously disbursed from the Construction Fund or as to the correctness of any estimate or bill presented to it for payment pursuant to the provisions of said Section 9.2.

**Section 9.4 Investment of Construction Fund Moneys.** Following the issuance of the Series 1993 Bonds, the Lessee may thereafter at any time and from time to time request the Bank to invest the moneys held in the Construction Fund by furnishing to the Bank a written certificate signed by or on behalf of the Lessee and stating (i) what portions (if any) of the moneys held in the Construction Fund are not then needed for payment of Project Development Costs and (ii) the approximate dates that such presently unneeded moneys will be needed for the payment of Project Development Costs. Promptly after receipt of each such certificate, the Bank will, to the extent practicable, cause the moneys certified



in said certificate as not then needed for the payment of Project Development Costs to be invested in any Eligible Investments having stated maturities in such amounts and on such dates, prior to or corresponding with the dates and amounts specified in said certificate, as to make available from the Construction Fund cash moneys sufficient to meet the needs of the Construction Fund as specified in said certificate. Such certificate may contain either specific or general instructions from the Lessee as to the kind of Eligible Investments in which the presently unneeded moneys in the Construction Fund are to be invested, and the Bank will comply with such instructions to the extent that they are not inconsistent with the applicable provisions hereof.

All income or profit derived from the investment or reinvestment of moneys in the Construction Fund shall be credited to the Construction Fund and considered a part thereof and, to the extent possible, all losses resulting from such investment or reinvestment shall also be charged to the Construction Fund. The Bank shall convert investments forming a part of the Construction Fund into cash at their respective maturities, may sell or otherwise convert any of such investments into cash if such sale or conversion is necessary to provide for payment of a requisition presented to it pursuant to the provisions of Section 9.2 hereof, and shall, upon written request signed by or on behalf of the Lessee, sell or otherwise convert any of such investments into cash. The Bank shall be fully protected in making any such investment, sale or conversion in accordance with the provisions of this section. In any determination of the amount of moneys at any time forming a part of the Construction Fund, all Eligible Investments in which any portion of such moneys are at the time so invested shall be included therein at their then market value.

## **ARTICLE X**

### **APPLICATION OF REVENUES AND CREATION OF SPECIAL FUNDS**

**Section 10.1 Bond Fund.** There is hereby created a special trust fund, the name of which shall be the "Wilkerson Bond Principal and Interest Fund", for the purpose of providing for payment of the principal of and the interest and premium (if any) on the Series 1993 Bonds and which shall be maintained until such principal, interest and premium (if any) have been paid in full. The Bank shall be and remain the depository, custodian and disbursing agent for the Bond Fund.

So long as any part of the principal of or the interest or premium (if any) on any of the Series 1993 Bonds remains outstanding and unpaid, the Board will pay the following moneys into the Bond Fund:

- (a) so long as the Lease is in full force and effect, no Lease Default shall have occurred and be continuing, and the Board is not in default in the payment of any Indenture Indebtedness, the Board will pay into the Bond Fund, or will cause to be paid therein, promptly as received by it, the Basic Rent, all other moneys that are required by the provisions of the Lease to be

paid therein, and all moneys that are specifically required by the provisions hereof to be paid therein; and

(b) at all times during which the Lease is not in full force and effect or during which a Lease Default shall have occurred and be continuing or during which the Board is in default in the payment of any Indenture Indebtedness, the Board will pay into the Bond Fund, or will cause to be paid therein, promptly as received by it, all revenues and receipts derived by it from the leasing or sale of the Project and all other moneys that are herein or in the Lease expressly required to be paid into the Bond Fund.

Out of the moneys on deposit in the Bond Fund, the Bank shall make provision for payment of the principal of and the interest on the Series 1993 Bonds as said principal and interest respectively become due, as well as for the redemption of any Series 1993 Bonds required by the provisions hereof or of any Supplemental Indenture to be redeemed prior to their respective maturities. Moneys on deposit in the Bond Fund shall, subject to the provisions of Sections 10.3 and 10.4 hereof, be used only for the payment of the principal of and the interest on the Series 1993 Bonds upon or after their respective maturities, for the redemption of Series 1993 Bonds prior to their respective maturities, and for the purpose of Series 1993 Bonds for retirement at a price not greater than their par or face value plus accrued interest thereon.

**Section 10.2 Redemption Fund.** There is hereby created a special trust fund, the name of which shall be the "Wilkerson Bond Redemption Fund" and which shall be maintained as long as any of the Series 1993 Bonds are outstanding. There shall be paid into the Redemption Fund only such moneys as are herein and in the Lease expressly required to be paid therein. The Bank shall, subject to the provisions of Sections 10.3 and 10.4 hereof, use and apply the moneys in the Redemption Fund solely for the purpose of redeeming Series 1993 Bonds prior to their respective maturities or purchasing Series 1993 Bonds for retirement at a price not greater than their par or face value plus accrued interest thereon, or both; provided that if at any time the aggregate of available moneys held in the Bond Fund shall not be sufficient to pay the principal of or the interest on any of the Series 1993 Bonds at the respective maturities of such principal and interest or the redemption price of any of the Series 1993 Bonds on the date on which, under the terms hereof or of any Supplemental Indenture, they are required to be redeemed, then the moneys held in the Redemption Fund shall be used to pay said principal or interest so maturing or the redemption price of any such Series 1993 Bonds, but only to such extent as may be necessary to prevent default in the payment thereof.

Not more than sixty (60) and not less than forty-five (45) days prior to each interest payment date with respect to the Series 1993 Bonds, the Bank will determine the amount then held in the Redemption Fund, and if such amount is sufficient to effect the redemption of any of the Series 1993 Bonds, the Bank shall so notify the Board, whereupon the Board will take such action as may be necessary under the provisions hereof to exhaust, as nearly as may be practicable, the moneys held in the Redemption Fund by effecting the redemption of Series 1993 Bonds on the earliest practicable date thereafter on which such redemption may be effected, by purchasing Series 1993 Bonds for retirement as provided above, or by both



effecting the redemption of Series 1993 Bonds and purchasing Series 1993 Bonds for retirement as aforesaid. If less than all the Series 1993 Bonds are to be so redeemed at any one time, such redemption shall comply with the provisions of Section 7.3 hereof and with the provisions of Article VI hereof.

**Section 10.3 Retirement of Series 1993 Bonds Under Certain Conditions. General Provisions Respecting the Bond Fund and the Redemption Fund.** In the event that at any time the total sum of moneys held in the Bond Fund and the Redemption Fund is sufficient to provide for retirement of all the Series 1993 Bonds (including premium, if any, and the interest that will mature thereon until and on the date or dates they are retired), either by redemption prior to their respective maturities in accordance with the applicable provisions of the Indenture or by payment of a portion thereof at their respective maturities and redemption of the remainder prior to their respective maturities, the Bank will so notify the Board in writing, and the Board and the Bank will thereupon take such action as may be necessary under the provisions of Article VI hereof to call for redemption, on the earliest practicable redemption date thereafter on which under the terms of the Indenture such redemption may be effected, all the Series 1993 Bonds subject to redemption that will come due after such redemption date. On or before the redemption date to be fixed pursuant to the preceding provisions of this paragraph, the Bank will transfer into the Bond Fund all moneys then held in the Redemption Fund, and the moneys so transferred, together with the moneys already held in the Bond Fund, shall be used to retire all the Series 1993 Bonds as aforesaid. Any redemption of Series 1993 Bonds effected pursuant to the requirements of this section shall be subject to the provisions of, and shall be effected in the manner provided by, Article VI hereof and (to the extent applicable) Section 7.3 hereof.

In the event that at any time the moneys held in the Bond Fund and the Redemption Fund are sufficient so to effect retirement of all the Series 1993 Bonds or in the event that at any time the total of the moneys held in the Bond Fund and the Redemption Fund equals or exceeds the aggregate principal of the Series 1993 Bonds then outstanding plus the aggregate interest thereon then due and to become due until the maturity thereof, then and in either of such events no further payments need thereafter be made into the Bond Fund unless (i) further payments are needed to make good moneys paid therein that may have been lost for any reason whatsoever, or (ii) the Series 1993 Bonds thereafter become subject to mandatory redemption under any of the provisions hereof and further payments into the Bond Fund are needed to effect such redemption.

**Section 10.4 Investment of Moneys in Bond Fund and Redemption Fund.** The Bank shall, to the extent practicable, cause all the moneys held in the Bond Fund (exclusive of any amount held therein for payment of matured but unpaid Series 1993 Bonds, Series 1993 Bonds called for redemption but not yet redeemed and matured but unpaid interest) that will not be needed, during the then next ensuing ten days, for payment of any maturing installment of principal of or interest on the Series 1993 Bonds or for payment of the redemption price of any Series 1993 Bond called for redemption, to be kept continuously invested in Eligible Investments having such stated maturities as will assure the availability of cash moneys necessary to provide for payment and redemption of the principal of and the interest on the Series 1993 Bonds, as such principal and interest respectively become due and



payable (whether at maturity, upon earlier call for redemption or otherwise). All securities and certificates in which any portion of the moneys in the Bond Fund are invested, together with all income therefrom, shall become a part of the particular Bond Fund account from which moneys were used to make such investment.

The Bank shall, to the extent practicable, cause all moneys on deposit in the Redemption Fund to be invested in Eligible Investments having stated maturities, or being redeemable at the option of the holder at a stated price and time, not later than the next succeeding date on which any of the Series 1993 Bonds are subject to redemption. All investments in which moneys in the Redemption Fund shall be invested, together with all income therefrom, shall become a part of the Redemption Fund.

In order to comply with the requirements of the Indenture, the Bank may, at any time and from time to time, cause any Federal Securities or Eligible Deposits forming a part of any account of the Bond Fund, or any Eligible Investments forming a part of the Redemption Fund, to be sold or otherwise converted into cash, shall upon written request of the Lessee cause any such securities, certificates or investments to be sold or otherwise converted into cash (but if and only if, in the case of Federal Securities or Eligible Deposits forming a part of the Bond Fund, such sale or other conversion into cash will not jeopardize the payment, when due, of the principal of and the interest on any of the Series 1993 Bonds or of the redemption price of any Series 1993 Bond required, by the provisions hereof or of any Supplemental Indenture, to be redeemed prior to its maturity), and shall cause any such securities, certificates or investments to be sold or otherwise converted into cash if and to the extent that such sale or conversion is necessary to obtain moneys to prevent a default in the payment, when due, of the principal of or the interest on the Series 1993 Bonds or of the redemption price of any Series 1993 Bond required by the provisions hereof or of any Supplemental Indenture, to be redeemed prior to its maturity. The net proceeds from the sale or other conversion into cash of any securities, certificates or investments forming a part of the Redemption Fund or of any account of the Bond Fund shall be paid into and become a part of the fund or account of which such securities, certificates or investments formed a part. In making any investment of moneys forming a part of the Bond Fund or the Redemption Fund, the Bank will follow such written instructions as may be given to it by the Lessee, but if and only to the extent that such instructions are not inconsistent with any applicable provisions of the Indenture. The Bank shall be fully protected in making any such investment, sale or conversion in accordance with the provisions of this section. In any determination of the amount of moneys at any time forming a part of the Redemption Fund or either account of the Bond Fund, all securities, certificates or other investments in which any portion of such fund or account is at the time so invested shall be included therein at their then market value.

**Section 10.5 Security for Bond Fund and Redemption Fund Moneys.** The moneys at any time held in the Bond Fund or the Redemption Fund shall be and at all times remain impressed with a trust for the purposes for which said funds were respectively created. The Bank shall at all times keep the moneys held in each such fund continuously secured, for the benefit of the Board and the Holders of the Series 1993 Bonds, either

(a) 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, having a market value (exclusive of accrued interest) not less than the amount of moneys held in the fund being secured, or

(b) if the furnishing of security in the manner provided in the foregoing clause (a) of this section is not permitted by the then applicable laws 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;

provided however, that it shall not be necessary for the Bank so to secure any portion of the moneys on deposit in any of such trust funds that is invested in Federal Securities or that is insured by the Federal Deposit Insurance Corporation or by any agency of the United States of America that may succeed to its functions.

**Section 10.6 Commingling of Moneys in Separate Trust Funds.** Any provision hereof to the contrary notwithstanding, moneys on deposit in the accounts of the Bond Fund or the Redemption Fund may be commingled and combined for the purpose of making investments under the provisions of Section 10.4 hereof, subject to the following conditions:

(a) all interest, income or profit realized from any such commingled investment shall be credited, and all losses resulting therefrom shall be charged, to each such account or fund in the same respective proportions as the amount invested from each such account or fund bears to the total amount so invested; and

(b) no moneys forming a part of any such account or fund shall be invested in any investments other than such as are expressly authorized herein.

## **ARTICLE XI**

### **PARTICULAR COVENANTS OF THE BOARD**

**Section 11.1 Payment of the Bonds.** The Board will pay or will cause to be paid, out of the revenues and receipts derived from the leasing or sale of the Project and any other moneys deposited in the Bond Fund, the principal of and the interest and premium (if any) on the Bonds as specified therein, and it will otherwise perform all obligations that, either expressly or by reasonable implication, are imposed on it in the Indenture, and it will not default hereunder.



**Section 11.2 Priority of Pledge.** The pledge herein made of the revenues and receipts from any leasing or sale of the Project shall be prior and superior to any pledge thereof hereafter made for the benefit of any other securities hereafter issued (other than Additional Bonds) or any contract hereafter made by the Board. In the event the Board should hereafter issue any other securities (other than Additional Bonds) payable, in whole or in part, out of the revenues or receipts to be derived from the leasing or sale of the Project or for which any part of said revenues or receipts may be pledged or any part of the Project may be mortgaged, or in the event the Board should hereafter make any contract payable, in whole or in part, out of said revenues and receipts or for which any part of said revenues and receipts may be pledged or any part of the Project may be mortgaged, the Board will, in the proceedings under which any such securities or contract are hereafter authorized, recognize the priority of the pledge of said revenues and receipts made herein for the benefit of the Series 1993 Bonds. The Board recognizes that in the Lease it has agreed

(a) not to issue any securities, other than the Series 1993 Bonds, or, subject to the conditions set forth in the Indenture, Additional Bonds, that are payable out of or secured by a pledge of the revenues and receipts derived by the Board from the leasing or sale of the Project or any part thereof, and

(b) not to place any mortgage or other encumbrance (other than the Indenture or any Supplemental Indentures contemplated thereby) on the Project or any part thereof,

without, in either case, the prior written request or consent of the Lessee.

**Section 11.3 Concerning the Lease.** The Indenture and the rights and privileges of the Bank and the Bondholders are specifically made subject to the rights, options and privileges of the Lessee under the Lease, and nothing herein contained shall be construed to impair the rights, options and privileges granted to the Lessee by the Lease. The Board will perform and observe, or cause to be performed and observed, all agreements, covenants, terms and conditions required to be observed and performed by it in the Lease. Without relieving the Board from the consequences hereunder of any default in connection therewith, the Bank (on behalf of the Board) may perform and observe, or cause to be performed and observed, any such agreement, covenant, term or condition, all to the end that the Board's rights under the Lease may be unimpaired and free from default.

The Board will promptly notify the Bank in writing of (i) the occurrence of any Lease Default, provided that the Board has knowledge of such default, and (ii) the giving of any notice of default under the Lease. The Board will also promptly notify the Bank in writing if, to the knowledge of the Board, the Lessee fails to perform or observe any of the agreements or covenants on his part contained in the Lease. In the event of the occurrence of a Lease Default, any such giving of notice of default or any such failure, whether notice thereof is given to the Bank by the Board, as aforesaid, or whether the Bank independently has knowledge thereof, the Bank will promptly give written notice thereof to the Lessee, with a copy to the Board, and shall in such notice expressly require the Lessee to perform or observe the agreement or covenant with respect to which the Lessee is delinquent, all to the end that if the Lessee does not perform or observe such agreement or covenant (or cause such



agreement or covenant to be performed or observed) in the manner and within the time provided by the Lease, a Lease Default may be declared without delay.

So long as the Lease shall remain in effect the Board will cause the Basic Rent to be paid directly to the Bank as provided in the Lease. The Board will not cancel, terminate or modify, or consent to the cancellation, termination or modification of, the Lease (except as is specifically provided, authorized or contemplated herein) unless and until the entire Indenture Indebtedness shall have been paid in full; provided however, that with the written consent of the Bank, the Board may terminate the Lease under those provisions thereof authorizing such termination upon the occurrence of a Lease Default. In the event of a Lease Default, or in the event of a default on the part of the lessee under any subsequent lease entered into by the Board with respect to the Project or any part thereof, the Board will exhaust or cause to be exhausted, as promptly as may be practicable, all legal remedies that it may have against the Lessee or other defaulting lessee, as the case may be, to obtain compliance with the provisions of the Lease or of any subsequent lease, including payment of the rentals therein provided and performance and observance of all agreements and covenants on the part of the Lessee or other lessee therein contained. In the event it should become necessary for the Board to terminate the Lease, or any subsequent lease entered into by the Board with respect to the Project or any part thereof, to cure an Event of Default, the Board and the Bank will, following any such termination (with the consent of the Bank, as aforesaid, for termination of the Lease) as a consequence of any Lease Default or any default by the lessee under the subsequent lease, as the case may be, use their best efforts to lease the Project in such manner and on such terms as shall produce net revenues sufficient to provide for payment of the principal of and the interest and premium (if any) on the Bonds when due (whether at maturity, by redemption or otherwise) and to that end will use their best efforts to provide in any such lease that the lessee thereunder will pay the costs of all repairs, maintenance, alterations and insurance, all utility charges, all taxes and other governmental charges, all fees and expenses of the Bank and any other paying agents for the Bonds and all other operating and incidental costs and expenses, all to the end that all cash rent payable to the Board under such lease may be used for payment of the principal of and the interest and premium (if any) on the Bonds. Any such subsequent lease so made shall be subject to the Indenture.

**Section 11.4 Maintenance, Repairs, Changes, Alterations, Taxes and Other Charges.** Subject to the provisions of Section 16.1 hereof, the Board will continuously maintain the Project Building and any improvements located on the Project Site in good repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary and proper repairs thereto (including, without limitation, exterior and structural repairs), or it will cause the Project Building and said improvements to be so maintained and such repairs to be so made. Without the prior written consent of the Bank, the Board will not itself make, or permit to be made, any change or alteration in the Project other than those permitted or contemplated by the Lease.

Subject to the provisions of Section 16.1 hereof, the Board will pay, or will cause to be paid, as the same respectively become due and payable,

(a) all taxes and governmental charges of any kind whatsoever that may be lawfully assessed or levied against or with respect to the Project or any part thereof, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to any part of the receipts, income or profits of the Board from the Project and other taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project or any part thereof prior to or on a parity with the lien of the Indenture or a charge on the revenues and receipts from the Project prior to or on a parity with the charge thereon and the pledge and assignment thereof created and made in the Indenture, and

(b) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Board shall be obligated to pay, or cause to be paid, only such installments as come due while any part of the Indenture Indebtedness remains outstanding and unpaid.

The Board may, however, defer or cause to be deferred payment of any such taxes, charges or assessments pending the bona fide contest thereof unless the Bank shall be of the opinion that by such action the lien of the Indenture as to any part of the Project shall be materially endangered, or the Project or any part thereof shall be subject to loss or forfeiture, or the revenues of the Board from the Project shall become subject to a lien or charge thereon prior to or on a parity with the pledge and assignment thereof made in the Indenture, in any of which cases any such payment then due shall not be deferred.

The Board will also pay, or cause to be paid, as the same respectively become due, all utility and other similar charges incurred in the operation, maintenance, use and upkeep of the Project.

Nothing contained in this section shall be construed to create or give rise to a general obligation of the Board, and the performance by the Board of the agreements contained in this section shall be limited to the extent that moneys derived from the leasing or sale of the Project are available to pay the costs of performing such obligations.

**Section 11.5 Warranty of Title.** The Board warrants as follows: it has good and marketable title to the property described and mortgaged in Section 2.1 hereof free and clear of every lien, encumbrance, trust or charge prior to the lien of the Indenture, other than Permitted Encumbrances; it has power and authority to subject said property to the lien of the Indenture and has duly done so; and it will forever warrant and defend the title to the Project unto the Bank, for the benefit of the Holders of the Bonds, against the claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

**Section 11.6 Agreement of Board to Maintain Corporate Existence and Not to Dispose of Project.** Except to the extent specifically permitted otherwise by the



provisions of the second paragraph of this Section 11.6, the Board will maintain its corporate existence, will not dissolve or sell, transfer or otherwise dispose of the Project or any part thereof and will not consolidate with or merge into another municipal corporation or permit one or more other corporations to consolidate with or merge into it. Further, the Board will use its best efforts to maintain, preserve and renew all the rights and powers provided to it by the Act and any other applicable laws of the State of Alabama or the United States of America.

If the laws of the State of Alabama at the time shall permit such action to be taken, nothing contained in this section shall prevent (a) the consolidation of the Board with, or the merger of the Board into, any public corporation which has corporate authority to undertake and perform the obligations and agreements of the Board under the Lease and the Indenture or (b) the transfer by the Board of the Project as an entirety to the Municipality or to another public instrumentality which has corporate authority to undertake and perform the obligations and agreements of the Board under the Lease and the Indenture; provided that upon any such consolidation, merger or transfer the following conditions shall be satisfied: (i) the due and punctual payment of the principal of and the interest and premium (if any) on the Bonds according to their tenor and the due and punctual performance and observance of all the agreements and conditions contained in the Lease and the Indenture to be kept and performed by the Board shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or the instrumentality to which the Project shall be transferred as an entirety; (ii) such consolidation, merger or transfer shall not cause or result in any mortgage or other lien being imposed on the Project or the revenues therefrom that will be prior to the lien of the Indenture covering the Project or prior to the pledge of the revenues from the Project made in the Indenture for the benefit of the Bonds; and (iii) such consolidation, merger or transfer shall not cause or result in the Project or the revenues of the Board therefrom becoming subject to any taxation to which the same was not theretofore subject, or in the interest income on any of the Bonds becoming subject to income taxation by the United States of America, the State of Alabama or any political subdivision of either thereof. Nothing contained herein shall, however, be construed to prevent the Board from disposing of any unimproved portion of the Project Site pursuant to the provisions of Section 12.2 hereof.

**Section 11.7 Freedom of Project from Prior Liens.** Subject to the provisions of Section 16.1 hereof, the Board will not knowingly permit the Project or any part thereof to be or remain subject to any liens and encumbrances prior to the lien hereof (other than Permitted Encumbrances), but it may defer payment pending the bona fide contest of any claim unless the Bank shall be of the reasonable opinion that by such action the lien of the Indenture as to the Project or any part thereof shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture, in which event any such payment then due shall not be deferred. Without the consent of the Bank, which consent shall not be unreasonably withheld, the Board will not permit the creation of any lien on all or any part of the Project (other than the Lease) that is junior and subordinate to the lien of the Indenture. Nothing herein contained shall be construed to prevent the Board from hereafter purchasing, for use in connection with the Project, additional property on conditional or lease sale contract or subject to vendor's lien or purchase money mortgage, and as to all property so purchased (other than property that is, under the terms hereof, to constitute part of the



Project), the Indenture shall be subject and subordinate to such conditional or lease sale contract, vendor's lien or purchase money mortgage.

**Section 11.8 Payment of Bank's Charges; Lien Therefor.** Subject to the provisions of Section 16.1 hereof, the Board will discharge, pay or satisfactorily provide to the Bank, or cause to be discharged, paid or provided, all liabilities, expenses, and advances reasonably incurred, disbursed or made by the Bank in the execution of the obligations of the Bank hereby created (including the reasonable compensation and expenses and disbursements of its Counsel and of all other persons not regularly in its employ), and it will from time to time pay to the Bank, or cause to be paid, reasonable compensation for its services hereunder, including extra compensation for unusual or extraordinary services. As security for the payment of such liabilities, expenses, advances and compensation, the Bank shall have a first lien on the Project and the revenues and receipts therefrom pledged hereunder and all funds held or collected by the Bank as such, with right of payment therefrom prior to the rights of the Holders of the Bonds. All such liabilities, expenses, advances and compensation shall bear interest until paid, from and after thirty (30) days after the respective dates on which the Bank makes demand for the payment thereof, at a per annum rate equal to two percent (2%) in excess of the Prime Rate during the period for which such interest shall be payable. The Bank will not make demand for such payment earlier than the date on which such liabilities, expenses and advances shall be incurred, disbursed or made or the date on which such compensation shall be earned, as the case may be.

**Section 11.9 Inspections by Bank.** Subject to the provisions of Section 8.3 of the Lease, the Board will permit the Bank and its duly authorized agents to inspect, at any reasonable time, any and every part of the Project and will permit the Bank and the Holder of any Bond to inspect, at any reasonable time, the books and records of the Board pertaining to the Project. The Board will assist in furnishing facilities for any such inspection.

**Section 11.10 Recordation. Further Assurances.** The Board will cause the Indenture, and all Supplemental Indentures hereafter executed, to be filed for record in such public office or offices in which said documents are required by law to be filed in order to constitute constructive notice thereof and to preserve and protect fully the rights and security afforded thereby to the Bank and the Holders of the Bonds. In addition, the Board

(a) will, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purposes of the Indenture, and in particular (without in any way limiting the generality of the foregoing) to make subject to the lien of the Indenture any property hereafter acquired as a part of the Project and to transfer to any successor trustee or trustees the assets, powers, instruments and funds held in trust hereunder and to confirm the lien of the Indenture with respect to any Bonds issued hereunder, and

(b) will take all actions that at any time and from time to time may be necessary (or, in the opinion of the Bank, may be necessary) to perfect,

preserve, protect and secure the interests of the Board and the Bank, or either, in and to the Project and the Lease.

No failure to request such further instruments or further acts shall be deemed a waiver of any right to the execution and delivery of such instruments or the doing of such acts or to be deemed to affect the interpretation of any provisions of the Indenture.

The obligations of the Board under this section are limited to cooperation with, and the taking of actions requested by, the Bank or other interested parties, and nothing contained in this section shall be construed as imposing upon the Board an affirmative duty to determine whether the filing or recording or the re-filing or re-recording of any instruments (including, without limitation, Uniform Commercial Code financing statements) is at the time necessary to preserve or protect any interest of the Board or the Bank in the Project, the Lease, or any other rights or properties mortgaged or pledged under the Indenture.

## **ARTICLE XII**

### **CERTAIN PROVISIONS RELATING TO THE POSSESSION, USE AND RELEASE OF THE PROJECT AND TO THE DISPOSITION OF INSURANCE PROCEEDS AND CONDEMNATION AWARDS**

**Section 12.1 Retention of Possession of Project by Board.** Unless an Event of Default shall have occurred and be continuing, or except as otherwise provided herein, the Board may retain actual possession of the Project and may manage and lease the same, and may collect, use and enjoy the rents, revenues, income and profits thereof to such extent as does not violate any of the Board's covenants herein contained or contained in the Lease.

**Section 12.2 Release Upon Payment of Condemnation Award to Bank.** If the Project or any part thereof shall be taken through the exercise of the power of eminent domain, the entire condemnation award referable thereto shall be paid directly to the Bank. Upon payment to the Bank of such award, the Bank shall, at the expense of the Board, execute and deliver to the Board or to the person successfully exercising such power of eminent domain any and all instruments that may be necessary (i) to release from the demise of the Lease all property forming part of the Project that shall be so taken and (ii) to release from the lien of the Indenture all property forming part of the Project that shall be so taken.

**Section 12.3 Disposition of Condemnation Award.** Reference is hereby made to the Lease wherein it is provided that if title to all or any part of the Project shall be taken through the exercise of the power of eminent domain, the entire condemnation award referable thereto shall be paid to and held by the Bank and shall thereafter be applied by the Bank in the manner and for the purposes specified in Section 7.2 of the Lease. The Bank



hereby accepts the duties and obligations on its part specified in the Lease with respect to such condemnation award and agrees that such condemnation award shall be applied in accordance with the applicable provisions of the Lease.

**Section 12.4 Disposition of Insurance Proceeds.** Reference is hereby made to the Lease wherein it is provided that if the Project is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Project resulting therefrom is in excess of \$15,000, then all "Net Insurance Proceeds" (as defined in the Lease) recovered by the Board, the Lessee and the Bank shall be paid to and held by the Bank and shall thereafter be applied by the Bank in the manner and for the purposes specified in Section 7.1 of the Lease. The Bank hereby accepts the duties and obligations on its part specified in the Lease with respect to such proceeds and agrees that such proceeds shall be applied in accordance with the applicable provisions of the Lease.

### **ARTICLE XIII**

#### **EVENT OF DEFAULT AND REMEDIES OF BANK AND BONDHOLDERS**

**Section 13.1 Events of Default Defined.** Any of the following shall be "Events of Default" under the Indenture, and the term "Event of Default" shall mean, whenever it is used in the Indenture, any one or more of the following conditions or events:

(a) failure by the Board to pay the principal of or the interest or premium (if any) on any Bond as and when the same become due as therein and herein provided (whether such shall become due at maturity, upon redemption, by acceleration or otherwise);

(b) a Lease Default;

(c) failure by the Board to perform or observe any agreement, covenant or condition required by the Indenture to be performed or observed by it [other than (i) its agreement to pay the principal of and the interest and premium (if any) on the Bonds, and (ii) any other agreement, covenant or condition with respect to which its failure to perform or observe is the result of a Lease Default] after fifteen (15) days' written notice to it of such failure given by the Bank or by the Holders of not less than twenty-five percent (25%) in principal amount of any series of the Bonds then outstanding hereunder;

(d) any material warranty, representation or other statement by or on behalf of the Board or the Lessee contained in the Lease, or by the Board contained in the Indenture, or in any document furnished by the Board in connection with the issuance and sale of any of the Bonds, being false or misleading in any material respect at the time made; or



(e) the filing of any petition by or against the Board under the United States Bankruptcy Code or under any other similar law or statute, the appointment by a court having jurisdiction of a receiver for the Project or for a substantial part thereof, or approval by a court of competent jurisdiction of any petition for rearrangement or readjustment of the obligations of the Board under any provisions of the bankruptcy laws of the United States of America or the State of Alabama.

**Section 13.2 Remedies on Default.** Upon the occurrence and continuation of any Event of Default, the Bank shall have the following rights and remedies, subject to the provisions of Sections 13.6 and 13.8 hereof:

(a) Acceleration. The Bank may, by written notice to the Board and to the Lessee, declare the principal of and the interest accrued on all the Bonds forthwith due and payable, and thereupon they shall so be, anything herein or therein to the contrary notwithstanding.

(b) Possession of Project. The Bank shall have the power to require the Board to surrender possession of the Project to it, and the Board shall, upon demand so to do by the Bank, forthwith surrender to the Bank actual possession of the Project or such part or parts thereof as the Bank may designate, and the Bank shall take possession thereof and may wholly exclude the Board and its agents therefrom. The Bank shall thereafter have the power to operate, lease or otherwise control, use and dispose of the Project in the manner it deems most beneficial to the Bondholders. The Bank shall further have the power to make, at the expense of the trust estate, such repairs, replacements, alterations, additions or improvements to the Project as it may consider advisable, to collect the income therefrom and to pay all proper charges and maintenance expenses thereof, including all proper disbursements by the Bank.

(c) Sale of Project. The Bank shall have the power to sell, at public auction, as a whole or in parcels, at such time and on such terms as it deems best, to the highest bidder, all or any part of the Project and the entire interest and equity of redemption of the Board therein, subject, however, to succeeding provisions of this section and to the provisions of Sections 13.3 and 13.4 hereof.

(d) Other Remedies. The Bank shall have the power to proceed with any other right or remedy independent of or in aid of the foregoing powers, as it may deem best, including the right to foreclose the Indenture by bill in equity or by proceedings at law, the right to enforce any obligation of the Board or the Lessee contained in the Lease or the Indenture, and the right to the appointment, as a matter of right and without regard to the sufficiency of the security afforded by the Project, of a receiver for all or any part of the Project and the earnings, rents and income therefrom. The rights here specified are to be cumulative to all other available rights, remedies or powers and shall not exclude any such.

If, upon the occurrence of an Event of Default, the Board makes good the default which is the reason for such Event of Default and every other default hereunder (except any principal and interest declared payable that would, absent such declaration, not then be payable), with, to the extent legally permissible, interest on all overdue payments of principal, interest and premium (if any), and makes reimbursement of all the reasonable expenses of the Bank, then the Bank may, subject to the provisions of Section 13.6 hereof, in its discretion, and shall upon the written request of the Holders of a majority in principal amount of the then outstanding Bonds, waive such default and its consequences, but no such waiver shall affect any subsequent default or right relative thereto. Further, upon the occurrence of any Event of Default, except a default in the payment of the principal of or the interest or premium (if any) on the Bonds, the Bank may in its discretion, and shall upon the written request of the Holders of a majority in principal amount of the then outstanding Bonds, waive such default and its consequences without the Board having theretofore made good such default, but no such waiver shall affect any subsequent default or right relative thereto. In case any proceeding taken by the Bank on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Bank, then and in every case the Board, the Bank and the Holders of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Bank shall continue as though no such proceeding had been taken.

**Section 13.3 Manner of Sale of the Project.** Notice of any sale by the Bank of any part of the Project pursuant hereto shall state the time and place of such sale [which time shall be between the legal hours of sale and which place shall be before the main entrance of the Courthouse of Shelby County, Alabama], describing briefly the property to be sold, and shall be sufficiently given if published once a week for three successive weeks preceding the date of sale in a newspaper published in Shelby County, Alabama. The Bank may from time to time adjourn any such sale by announcing at the time and place appointed therefor an adjournment to a future time and place specified, at which it may effectively make the sale without further notice.

**Section 13.4 Sale of the Project.** The following conditions shall apply to any sale of the Project or any part thereof by the Bank pursuant to any power granted by the Indenture or pursuant to judicial authority:

(a) The principal of and the interest accrued on all the Bonds not yet matured or declared due shall forthwith become due, anything therein or herein to the contrary notwithstanding.

(b) Any Bondholder or Bondholders or the Bank, or any of them, may bid for and purchase the Project, or any part thereof to be sold, at such sale.

(c) The purchaser of any property sold may make payment, in whole or in part, of the amount by which his bid exceeds the sum necessary to discharge any prior liens and to pay costs, charges, fees and expenses by



receipting for the share of the proceeds of the sale to which as a Bondholder he will be entitled.

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

(e) The purchaser upon paying the purchase money to the Bank and receiving his receipt therefor need not inquire into the authorization, necessity, expediency or regularity of the sale and need not see to or in any way be responsible for the application by the Bank of any part of the purchase money.

**Section 13.5 Application of Moneys Received from Enforcement of Rights Under the Indenture.** Upon the occurrence and continuation of an Event of Default, any moneys derived by the Bank from the leasing or sale of the Project or from the enforcement of the Board's rights under the Lease or from the exercise of any other right or remedy granted to the Bank under the Indenture, together with all other funds held by it hereunder, shall, after payment of all proper costs, expenses and liabilities incurred and disbursements made by the Bank hereunder, and all liens and charges on the Project prior to the rights of the Bank which in the opinion of the Bank it is advisable to pay, be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

**FIRST** — to the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest, with interest on overdue installments of interest, and, if the amount available shall not be sufficient to pay in full any particular installment plus said interest thereon, then to the payment ratably, according to the amounts due on such installments and with respect to said interest, to the persons entitled thereto, without any discrimination or privilege;

**SECOND** — to the payment to the persons entitled thereto of the unpaid principal of and premium (if any) on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of the maturity of such principal and premium, with interest on overdue installments of principal and premium (if any), and, if the amount available shall not be sufficient to pay in full all principal and premium (if any) due on



any particular date, together with the aforesaid interest thereon, then to the payment of such principal and premium (if any) due on such date, together with such interest, ratably, without any discrimination or privilege; and

THIRD — the surplus, if any there be, into the Bond Fund, or in the event the Indenture Indebtedness has been fully paid, to the Board or whomsoever may be entitled thereto.

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

FIRST — to the payment of the principal and interest then due and unpaid upon the Bonds (with interest on overdue principal and interest), without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege; provided, however, that if the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded under the provisions of Section 13.2 hereof, then, subject to the provisions of this subsection (b) in the event that the principal of all the Bonds shall later become or be declared due and payable, such moneys shall be applied in accordance with the provisions of subsection (a) of this section; and

SECOND — the surplus, if any there be, into the Bond Fund, or in the event the Indenture Indebtedness has been fully paid, to the Board or to whomsoever may be entitled thereto.

Whenever moneys are to be applied pursuant to the provisions of this section, such money shall be applied at such time or times, and from time to time, as the Bank shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bank shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal and interest to be paid on such dates shall cease to accrue. The Bank shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the Holder of any unpaid Bond until such Bond shall be presented to the Bank for appropriate endorsement or for cancellation if fully paid.

**Section 13.6 Remedies Vested In Bank.** Subject to the provisions of Section 13.6 hereof, all remedies hereunder are vested exclusively in the Bank for the equal and pro rata benefit of all the Holders of the Bonds, unless the Bank refuses or neglects to act within a reasonable time after written request so to act addressed to the Bank by the Holders of

twenty-five percent (25%) in principal amount of either series of the outstanding Bonds, accompanied by indemnity satisfactory to the Bank, in which event the Holder of any of the Bonds may thereupon so act in the name and behalf of the Bank or may so act in his own name in lieu of action by or in the name and behalf of the Bank. Except as above provided, no Holder of any of the Bonds shall have the right to enforce any remedy hereunder, and then only for the equal and pro rata benefit of the Holders of all the Bonds.

Notwithstanding any other provision hereof, the right of the Holder of any Bond, which is absolute and unconditional, to payment of the principal of and the interest and premium (if any) on such Bond on or after the due date thereof, but solely from the revenues and receipts from the leasing or sale of the Project as therein and herein expressed, or the obligation of the Board, which is also absolute and unconditional, to pay, but solely from said revenues and receipts, the principal of and the interest on the Bonds to the respective Holders thereof at the time and place in the Bonds expressed, shall not be impaired or affected without the consent of such Holder.

**Section 13.7 Rights of the Lessee upon Occurrence of an Event of Default.** If an Event of Default should occur solely by reason of some action or failure to act on the part of the Board, and if at the time there shall have not occurred and be continuing a Lease Default, the Bank shall notify the Lessee in writing of the occurrence of such Event of Default and the Lessee shall have the right to remedy such Event of Default hereunder within sixty (60) days after such written notice, provided that the Lessee is hereby authorized, to the extent permitted by law, to take such actions as may be necessary for and on behalf of the Board to cure such Event of Default, and the Bank shall accept performance of such actions by the Lessee as performance by the Board in such event. The exercise of the remedies set forth in Section 13.2 hereof are subject to the right of the Lessee to cure such Event of Default as provided in this section.

**Section 13.8 Delay No Waiver.** No delay or omission by the Bank or by any Bondholder to exercise any available right, power or remedy hereunder shall impair or be construed a waiver thereof or in acquiescence in the circumstances giving rise thereto; every right, power or remedy given herein to the Bank or to the Bondholders may be exercised from time to time and as often as deemed expedient.

**Section 13.9 Notice to Bondholders upon Occurrence of Event of Default.** If an Event of Default occurs that is known to the Bank, or if any event or condition occurs that is known to the Bank and that with the giving of notice of the passage of time or both would constitute an Event of Default, and if such Event of Default or such event or condition, as the case may be, continues for a period of at least five (5) business days after the Bank first learns thereof, then the Bank will, at or before the end of such period of five (5) business days, give written notice thereof by United States regular mail, postage prepaid, to all Holders of the Bonds at their respective addresses appearing in the records of the Bank pertaining to the registration of the Bonds. Nothing contained in this section shall be deemed to require the Bank to undertake independent inquiries into or investigations of the condition of the Project, the business or condition of the Lessee, or any other circumstances, conditions or information



(whether or not publicly available) which would disclose to it the occurrence of an Event of Default or any event or condition that with the giving of notice of the passage of time or both would constitute an Event of Default, unless the Bank shall have first received, without effort on its part, information which would warrant the undertaking of such independent inquiries or investigations.

## **ARTICLE XIV**

### **SUPPLEMENTAL INDENTURES AND AMENDMENTS TO THE LEASE**

**Section 14.1 Supplemental Indentures without Bondholder Consent.** Without the consent of or notice to any Bondholders but subject to the provisions of Section 9.2 of the Lease, the Board and the Bank may, at any time and from time to time, enter into such Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Board herein contained other covenants and agreements thereafter to be observed and performed by the Board, provided that such other covenants and agreements shall not either expressly or impliedly limit or restrict any of the obligations of the Board contained in the Indenture;

(b) to provide for the surrender by the Board of any right or power conferred in the Indenture on the Board, or to grant to or confer upon the Bondholders or the Bank, for the benefit of the Bondholders, any right, power or authority that may lawfully be granted to or conferred upon the Bondholders or the Bank;

(c) to cure or correct any ambiguity, defect or inconsistent provision contained in the Indenture or in any Supplemental Indenture or to make any provisions with respect to matters arising under the Indenture or any Supplemental Indenture for any other purpose if such provisions are necessary or desirable and are not inconsistent with the provisions of the Indenture or any Supplemental Indenture and do not adversely affect the interests of the Holders of the Bonds; or

(d) to subject to the lien of the Indenture and the pledge herein contained additional property and the revenues therefrom or to identify more precisely any of the property subject to the lien hereof.

**Section 14.2 Supplemental Indenture Requiring Bondholder Consent.** In addition to those Supplemental Indentures permitted by Section 14.1 hereof, the Board and the Bank may, at any time and from time to time, with the written consent of the Holders of a majority in principal amount of the Series 1993 Bonds then outstanding, enter into such



Supplemental Indentures as shall be deemed necessary or desirable by the Board and the Bank for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided that, without the written consent of the Holder of each Bond affected, no reduction in the principal amount of, the rate of interest on, or the premium payable upon the redemption of, any Series 1993 Bond shall be made; and provided further that, without the written consent of the Holders of all the Bonds then outstanding, none of the following shall be permitted:

(a) an extension of the maturity of any installment of principal of or interest on any Bond;

(b) a reduction in principal amount or a postponement in the redemption date of any Bonds required to be redeemed prior to the stated maturities thereof pursuant to any mandatory redemption provisions applicable to such Bonds;

(c) the creation of a lien or charge on the property mortgaged under the Indenture or the revenues pledged thereunder ranking prior to or on a parity with the lien and charge thereon contained in the Indenture;

(d) the establishment of preferences or priorities as between the Bonds; or

(e) a reduction in the aggregate principal amount of Bonds the Holders of which are required to consent to such Supplemental Indenture.

**Section 14.3 Execution of Supplemental Indentures.** The Board and the Bank recognize that under the terms of Section 9.2 of the Lease, they may not make any amendment of the Indenture or any Supplemental Indenture without the prior written consent of the Lessee. Subject to such consent (if required by the terms of said Section 9.2), the Bank is authorized to join with the Board in the execution of any Supplemental Indenture authorized under the provisions of this Article XIV and to make the further agreements and stipulations which may be contained therein, but the Bank shall not be obligated to enter into any such Supplemental Indenture which affects its rights, duties or immunities under the Indenture. Upon the execution of any Supplemental Indenture under and pursuant to the provisions of this Article XIV, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Board, the Bank and all Holders of the Bonds then outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments.

**Section 14.4 Amendments to the Lease.** With the prior written consent of the Bank but without the consent of or notice to any Bondholders, the Board and the Lessee may

(a) amend, change or modify the Lease so as to identify more precisely the Project or to add equipment or other property or additional rights and interests in property acquired in accordance with the provisions of the Lease, and

(b) amend, change or modify the Lease to cure or correct any ambiguity, defect or inconsistent provision contained in the Lease or to make provision with respect to matters arising under the Lease for any other purpose if such provisions are necessary or desirable, are not inconsistent with the provisions of the Lease or the Indenture and do not, in the judgment of the Bank, adversely affect the interests of the Bondholders.

The Board and the Lessee may, at any time and from time to time, with the written consent of the Bank and the written consent of the Holders of a majority in principal amount of the Bonds then outstanding, amend, change or modify the Lease to such extent as shall be deemed necessary or desirable by the Board and the Lessee, provided that without the written consent of the Holders of all the Bonds then outstanding, no such amendment, change or modification shall permit (i) any abatement of, or reduction in the amount of, the Basic Rent prior to payment in full of the principal of and the interest and premium (if any) on the Bonds [other than a reduction resulting from, and directly proportional to, a reduction in the amounts required for payment of the principal of or the interest or premium (if any) on the Bonds], (ii) any change in the due dates of the Basic Rent prior to such full payment of the Bonds, and (iii) any other change that, in the judgment of the Bank, might adversely affect the interests of the Bondholders.

**Section 14.5 Notices with Respect to Certain Changes in the Indenture or the Lease.** If at any time the Board shall request the Bank to enter into any Supplemental Indenture requiring the written consent of the Holders of a majority in principal amount of the Bonds then outstanding, or to consent to any amendment, change or modification to the Lease requiring the written consent of the Holders of a majority in principal amount of the Bonds then outstanding, the Bank shall, upon being satisfactorily indemnified with respect to its prospective expenses incident thereto, cause notice of the proposed Supplemental Indenture or the proposed amendment, change or modification to be forwarded by United States registered or certified mail, postage prepaid, to every Holder of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture or the proposed amendment, change or modification to the Lease, as the case may be, and shall state that copies thereof are on file at the principal office of the Bank for inspection by all Bondholders.

If, within sixty days (or such longer period as shall be prescribed by the Bank) following the date on which the notice to Bondholders was mailed as aforesaid, the Holders of a majority in aggregate principal amount of the Bonds outstanding at the time of the execution of any such Supplemental Indenture or at the time of the execution of such proposed amendment, change or modification to the Lease, as the case may be, shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to



enjoin or restrain the Bank or the Board from executing the same or from taking any action pursuant to the provisions thereof.

**Section 14.6 Discretion of the Bank.** In the case of (i) any Supplemental Indenture authorized by either Section 14.1 or 14.2 hereof or (ii) any amendment, change or modification to the Lease authorized by Section 14.4 hereof, the Bank shall be entitled to exercise its discretion in determining whether or not any proposed Supplemental Indenture, or any amendment, change or modification to the Lease, or any term or provision contained in any thereof, is proper or desirable, having in view the purposes of such instrument, the needs of the Board, the Lessee and the Project and the rights and interests of the Bondholders, and the Bank shall not be under any responsibility or liability to the Board or to any Bondholder or to anyone whomsoever for any act or thing which it may in good faith do or decline to do under the provisions of this article. The Bank shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Independent Counsel acceptable to it as conclusive evidence that any such Supplemental Indenture, or any such amendment, change or modification to the Lease, complies with the provisions of the Indenture and that it is proper for the Bank acting under the provisions of this article to join in the execution of such Supplemental Indenture or to consent to such amendment, change or modification to the Lease.

## **ARTICLE XV**

### **PAYMENT AND CANCELLATION OF THE BONDS AND SATISFACTION OF THE INDENTURE**

**Section 15.1 Satisfaction of Indenture.** Whenever the entire Indenture Indebtedness shall have been fully paid and the Board shall have performed and observed all the covenants and promises expressed in the Bonds and in the Indenture to be performed and observed by it or on its part, the Bank shall, at the expense of the Board, cancel, satisfy and discharge the lien of the Indenture and shall execute and deliver to the Board such deeds and instruments as shall be requisite to satisfy of record the lien hereof and to reconvey and transfer the property mortgaged hereunder to the Board. For purposes of the Indenture (except as may herein or in the Lease be expressly provided otherwise), any of the Bonds shall be deemed to have been fully paid when there shall have been irrevocably deposited with the Bank for payment thereof the entire amount (principal, interest and premium, if any) due or to become due thereon until and at maturity, and, further, any Bonds subject to redemption shall also be deemed to have been fully paid when the Board shall have deposited with the Bank the following:

- (a) the applicable redemption price in cash of such Bonds, including the interest that will mature thereon to the earliest date on which they may, under the terms of the Indenture, be redeemed, and



(b) a certified copy of a Resolution calling such Bonds for redemption (if, under the terms of Section 6.1 hereof, the adoption of such a Resolution is required).

**Section 15.2 Destruction of Surrendered Bonds.** Upon the surrender to the Bank of any mutilated Bonds, or Bonds transferred or exchanged for other Bonds, or Bonds redeemed or paid at maturity by the Board, such Bonds shall forthwith be cancelled and destroyed by the Bank, which shall deliver its certificate confirming such destruction to the Board and to the Lessee.

**Section 15.3 Payment to the Lessee of Remaining Trust Fund Moneys.** Subject to the provisions of Section 13.6 hereof, at such time as the entire Indenture Indebtedness shall have been fully paid in accordance with the provisions of Section 16.1 hereof, the Bank shall, if the Lease has not theretofore been terminated as a result of a Lease Default, pay to the Lessee any surplus moneys then remaining in any of the special trust funds created in the Indenture, but not including any amounts held by the Bank for the payment of the principal of and the interest and premium (if any) on the Bonds.

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

**Section 16.1 Disclaimer of General Liability.** It is hereby expressly recognized and made a condition of this Indenture that

(a) the liability of the Board for the payment of the principal of and interest and premium (if any) on the Bonds and the performance and observance of all agreements and covenants, warranties and representations of the Board contained in the Indenture, the Bonds shall be limited to the proper application of the revenues and receipts derived from the leasing or sale of the Project,

(b) the agreements, covenants, warranties or representations contained in the Indenture or in any of the Bonds do not and shall never constitute or give rise to any pecuniary liability or charge against the general credit of the Board, and

(c) in the event of a breach of any such agreement, covenant, warranty or representation, no pecuniary liability or charge payable directly or indirectly from the general revenues of the Board shall arise therefrom.

Neither the State of Alabama nor any political subdivision of said state shall in any manner be liable for the payment of the principal of or the interest or premium (if any) on the Bonds or for the performance or observance of any of the agreements, covenants, warranties or

representations of the Board contained in the Indenture or in any of the Bonds. Further, none of the officers, employees or agents of the Board shall have any personal liability whatever hereunder or any liability for the breach by the Board of any of the agreements, covenants, warranties or representations on its part herein contained. Nothing contained in this section, however, shall relieve the Board from the observance and performance of the several covenants and agreements on its part herein contained or relieve the directors, officers, employees or agents of the Board from performing all duties of their respective offices that may be necessary to enable the Board to perform the covenants and agreements on its part herein contained.

**Section 16.2 Retention of Moneys for Payment of Bonds.** Should any of the Bonds not be presented for payment when due, whether by maturity or otherwise, the Bank shall, subject to the provisions of any applicable escheat or other similar law, retain from any moneys transferred to it for the purpose of paying said Bonds so due, for the benefit of the Holders thereof, a sum of money sufficient to pay such Bonds when the same are presented by the Holders thereof for payment (upon which sum the Bank shall not be required to pay interest). All liability of the Board to the Holders of such Bonds and all rights of such Holders against the Board under the Bonds or under the Indenture shall thereupon cease and terminate, and the sole right of such Holders shall thereafter be against such deposit. If any Bond shall not be presented for payment within a period of five (5) years following the date when such Bond becomes due, whether by maturity or otherwise, the Bank shall, subject to the provisions of any applicable escheat or other similar law, return to the Board any moneys theretofore held by it for payment of such Bond, and such Bond shall be (subject to the defense of any applicable statute of limitation) thereafter be an unsecured obligation of the Board.

**Section 16.3 Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of the principal of or the interest or premium (if any) on the Bonds, or the redemption date of any Bonds, shall be, at the locale of payment, a Saturday, Sunday or legal holiday, or a date on which banking institutions are authorized or obligated by law to close, then payment of such principal, interest or premium (if any) need not be made on such date, but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized or obligated by law to close, with the same force and effect as if made on such date of maturity or such redemption date, and no interest shall accrue for the period after such date, as the case may be.

**Section 16.4 Form of Requests, etc., by Bondholders.** Any request, direction or other instrument required to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor, signed, or executed in person or by agent appointed in writing. Such signature or execution may be proved by the certificate of a notary public or other officer at the time authorized to take acknowledgments to deeds to be recorded in the State of Alabama, stating that the signer was known to him and acknowledged to him the execution thereof.



**Section 16.5 Limitation of Rights.** Nothing herein or in the Bonds shall confer any right on anyone other than the Board, the Bank, the Lessee and the Holders of the Bonds.

**Section 16.6 Manner of Proving Ownership of Bonds.** The ownership at any given time of any Bond may be proved by a certificate of the Bank stating that on the date stated the Bond described was registered on its books in the name of the stated party.

**Section 16.7 Granting of Utility and Access Easements.** Any other provisions hereof to the contrary notwithstanding, the Board may grant such utility, access and other similar easements, permits and rights-of-way over, across or under the Project Site as shall be requested in writing by the Lessee, provided that in connection with the grant of each such easement, permit or right-of-way the Bank is furnished a certificate signed by or on behalf of the Lessee stating that such easement, permit or right-of-way is, or will be, useful or necessary in the operation of the Project and will not materially interfere with or impair the use of the Project for the purpose for which it was acquired or is held by the Board.

**Section 16.8 Indenture Governed by Alabama Law.** The Indenture shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

**Section 16.9 Notices.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or received by certified or registered mail, postage prepaid with return receipt requested, at such addresses:

(a) If to the Board:

The Industrial Development Board  
of the City of Pelham  
City Hall  
Pelham, Alabama 35124  
Attention: Chairman of the Board of Directors

(b) If to the Lessee:

Eugene Wilkerson  
3538 Polo Parc Court  
Birmingham, Alabama 35226



(c) If to the Bank:

National Bank of Commerce of Birmingham  
1927 1st Avenue North  
Birmingham, Alabama 35203  
Attention: President

Any of the above-mentioned parties may, by like notice, designate further or different addresses to which subsequent notices shall be sent. The Bank and the Board will send a copy of each notice that either thereof gives to the other pursuant to the provisions hereof to the Lessee; provided, however, that the failure of either the Board or the Bank to send a copy of any such notice to the Lessee shall not invalidate such notice or render it ineffective unless notice to the Lessee is otherwise expressly required herein. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

**Section 16.10 Severability.** In the event that any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 16.11 Article and Section Captions.** The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

IN WITNESS WHEREOF, the Board has caused this Indenture to be executed in its corporate name and behalf by the Chairman of its Board of Directors, has caused its corporate seal to be hereunto affixed and has caused this Indenture to be attested by its Secretary, and the Bank, to evidence its acceptance of the obligations hereby created, has caused this Indenture to be executed in its name and behalf, has caused its seal to be hereunto affixed and has caused this Indenture to be attested, by its duly authorized officers, all in five (5) counterparts, each of which shall be deemed an original, and the Board and the Bank have caused this Indenture to be dated December 21, 1993.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

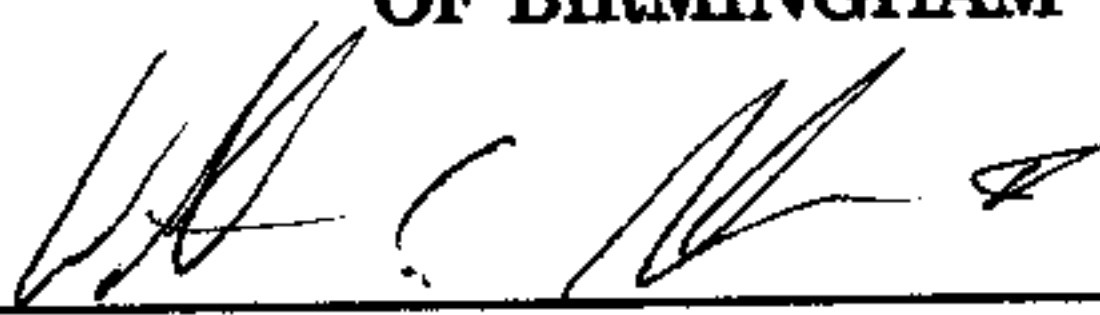
By   
Chairman of its Board of Directors

ATTEST:

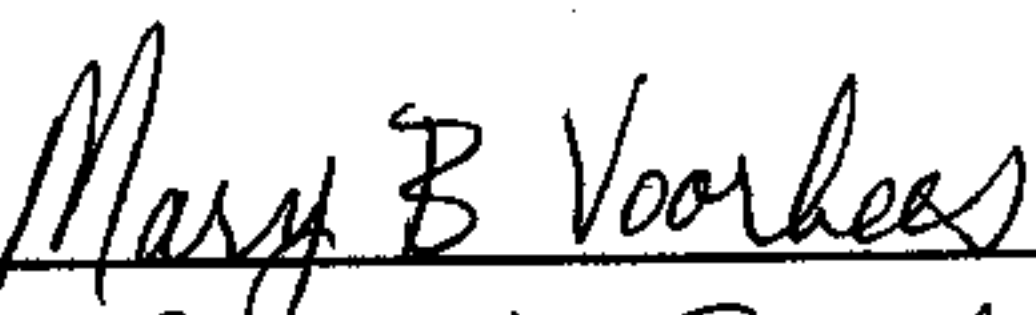
  
Its Secretary

[SEAL]

NATIONAL BANK OF COMMERCE  
OF BIRMINGHAM

By   
Its Vice President

ATTEST:

  
Its Senior Vice President

[SEAL]

STATE OF ALABAMA     )  
                              :  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said county in said state hereby certify that DANIEL M. SPITLER, whose name as Chairman of the Board of Directors of THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation and instrumentality under the laws of the State of Alabama, 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

GIVEN under my hand and official seal of office this 21<sup>st</sup> day of December, 1993.

[ NOTARIAL SEAL ]

Olivia S. Sullivan  
Notary Public

My Commission Expires: 10-30-96

STATE OF ALABAMA     )  
                              :  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said county in said state hereby certify that William E. Matthews, whose name as Vice President of NATIONAL BANK OF COMMERCE OF BIRMINGHAM, a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before on this day that, being informed of the contents of the 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 and official seal of office this 21<sup>st</sup> day of December, 1993.

[ NOTARIAL SEAL ]

Olivia S. Sullivan  
Notary Public

My Commission Expires: 10-30-96