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MORTGAGE AND INDENTURE OF TRUST

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Dated as of November 1, 1993

THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE TOWN OF PELHAM

To

FIRST COMMERCIAL BANK

As Trustee

(Peltown-Vulcan Second Project)

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This Mortgage and Indenture of Trust was prepared by R. H.  
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01/24/1994-02580  
04:00 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

071 MCD 184.50

Inst # 1994-02580

# MORTGAGE AND INDENTURE OF TRUST

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

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EXHIBIT A  
EXHIBIT B

STATE OF ALABAMA  
SHELBY COUNTY

THIS MORTGAGE AND INDENTURE OF TRUST made and entered into as of November 1, 1993, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM, a public corporation duly organized and existing under the laws of the State of Alabama (the "Borrower"), as party of the first part, and FIRST COMMERCIAL BANK, a state banking corporation authorized to accept and execute trusts of the character herein set out with its principal office in Birmingham, Alabama (the "Trustee"), party of the second part;

W I T N E S S E T H:

WHEREAS, the Borrower has been heretofore organized under the laws of Alabama and is authorized by Division 1 of Article 4 of Chapter 54 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-54-80 et seq.) to acquire, own, lease and dispose of the properties hereinafter described for the purposes set forth therein; and

WHEREAS, the Borrower has entered into a Lease Agreement with Peltown Realty Company, as Lessee, dated as of the date hereof, specifying the terms and conditions of the leasing of the Project, hereinafter defined, to the Lessee (the "Lease Agreement"); and

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

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

WHEREAS, it has been determined that the amount necessary to finance the cost of the Project will require the issuance, sale and delivery of Bonds as hereinafter provided; and

WHEREAS, the Lessee has caused First Commercial Bank to issue an irrevocable direct pay letter of credit (the "Letter of Credit") in favor of the Trustee authorizing the Trustee to draw on said Bank in an amount sufficient to pay the principal of and premium, if any, on the Bonds and up to 195 days of the interest on the Bonds; and

WHEREAS, the Bonds to be issued hereunder and the authentication and registration certificate and assignment applicable thereto are to be substantially in the following forms, respectively, with appropriate omissions, insertions and variations permitted or required by this Indenture; provided,

that for the purpose of printing the Bonds, the face of the Bonds need not include the entire text so long as the paragraphs not appearing on the face of the printed Bonds appear on the reverse side thereof; provided, further, that a legal opinion of bond counsel may also be printed on the Bonds:

UNITED STATES OF AMERICA  
STATE OF ALABAMA  
THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE TOWN OF PELHAM  
INDUSTRIAL DEVELOPMENT REVENUE BOND  
(PELTOWN-VULCAN SECOND PROJECT)

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

INTEREST  
RATE

MATURITY  
DATE

CUSIP

KNOW ALL MEN BY THESE PRESENTS that The Industrial Development Board of the Town of Pelham, a public corporation organized and existing under the laws of the State of Alabama (the "Board"), for value received, hereby promises to pay, from the source and as hereinafter provided, to the registered owner hereof, \_\_\_\_\_ or registered assigns, the principal sum of

\_\_\_\_\_ DOLLARS

on the Maturity Date specified above, and in like manner to pay interest on said principal sum from the date hereof (computed on the basis of a 360-day year of 12 consecutive 30-day months) at the per annum Interest Rate specified above, on the first day of May and the first day of November in each year, first interest payable May 1, 1994, until said principal sum is paid, except as the provisions hereof with respect to redemption or prepayment prior to maturity may become applicable hereto. The principal of and premium (if any) on this Bond shall be payable only upon presentation and surrender of this Bond at the principal office of the Trustee (First Commercial Bank, in Birmingham, Alabama) or of its successor in trust under the Indenture hereinafter described. Payments of interest on this Bond shall be made by check or draft of the Trustee mailed or otherwise delivered to the then registered owner of this Bond at the address of said owner shown on the registration books of the Trustee. Payments of interest shall be deemed timely made if mailed on the interest payment date (or if such interest payment date is not a business day, then on the next succeeding business day). The principal of, premium (if any) and interest on this Bond shall be payable in lawful money of the United States of America.



This Bond is one of an issue of bonds (the "Bonds") limited in aggregate principal amount to \$1,450,000 authorized to be issued for the purpose of acquiring and constructing and equipping a plant building, building addition, facilities and improvements on real estate owned by the Board (such real estate, the buildings, improvements and facilities thereon, and the equipment financed with the Bonds, as they may now or at any time exist, being herein called the "Project"). The Project is leased to Peltown Realty Company, an Alabama general partnership (the "Lessee"), under a Lease Agreement dated as of November 1, 1993 (the "Lease Agreement") and by it subleased to Vulcan Threaded Products, Inc., an Alabama corporation. The Bonds are all issued or may be issued under and are to be ratably secured and entitled to the protection given by a Mortgage and Indenture of Trust dated as of November 1, 1993 (the "Indenture") duly executed and delivered by the Board to First Commercial Bank, as trustee (the "Trustee", which term also includes any successor trustee under the Indenture). Reference is hereby made to the Indenture and to all indentures supplemental thereto for a statement of the respective rights thereunder of the Board, the Trustee and the holders of the Bonds, and the terms upon which the Bonds are, and are to be, authenticated, delivered and secured, and to all of the provisions of which the registered owner hereof, by the acceptance of this Bond, hereby assents. In addition, payment of the principal of the Bonds and the interest and any optional and mandatory prepayment premium on the Bonds is secured by an irrevocable direct pay letter of credit issued to the Trustee by First Commercial Bank (the "Bank").

The Bonds are issuable only as fully registered Bonds in the denomination of \$5,000 or any integral multiple thereof for each maturity. Provision is made in the Indenture for the exchange of Bonds for a like aggregate principal amount of Bonds of the same maturity and in any authorized denomination, all upon the terms and subject to the conditions set forth in the Indenture.

This Bond is transferable by the registered owner hereof, in person or by authorized attorney, only on the books of the Trustee (the registrar and transfer agent of the Board) and only upon surrender of this Bond to the Trustee for cancellation, and upon any such transfer a new Bond of like tenor will be issued to the transferee in exchange therefor, all as more particularly described in the Indenture. The registered owner of this Bond, by receiving or accepting this Bond, shall consent and agree and shall be estopped to deny that, insofar as the Board and the Trustee are concerned, this Bond may be transferred or exchanged only in accordance with the provisions of the Indenture.

The Trustee shall not be required to transfer or exchange this Bond during the period of fifteen days next preceding any interest payment date with respect thereto; and, in the event



that this Bond (or any principal portion hereof) is duly called for redemption or prepayment, the Trustee shall not be required to transfer or exchange this Bond during the period of forty-five days next preceding the date fixed for such redemption or prepayment. No charge shall be made for the privilege of transfer or exchange, but the registered owner of this Bond shall pay any tax or other governmental charge required to be paid with respect thereto.

The Bonds are subject to redemption or prepayment prior to maturity as follows:

(1) The Bonds with stated maturities on November 1, 2008 will be subject to mandatory redemption on November 1, 2004 and on each November 1 thereafter, until and including November 1, 2007, at and for a redemption price for each Bond or \$5,000 principal portion thereof redeemed equal to the principal amount redeemed plus accrued interest thereon to the date of redemption (with those Bonds to be redeemed to be selected by the Trustee by lot in such manner as the Trustee shall determine), without premium or penalty, in accordance with the following schedule:

<u>Mandatory Redemption Date</u>	<u>Principal Amount to be Mandatorily Redeemed</u>
November 1, 2004	\$125,000
November 1, 2005	\$135,000
November 1, 2006	\$145,000
November 1, 2007	\$150,000

(2) The Bonds are subject to redemption in the event there are moneys remaining in the Construction Fund upon completion of the Project, as provided in Section 3.4 of the Indenture. If called for redemption in such event, the Bonds shall be subject to redemption by the Board on any interest payment date in part in \$5,000 multiples, to the extent such moneys in the Construction Fund are available therefor, in the inverse order of their maturities (less than all of said Bonds of a single maturity to be selected by lot in such manner as the Trustee may determine), at a redemption price for each Bond or \$5,000 principal portion thereof redeemed equal to the principal amount redeemed plus accrued interest thereon to the date of redemption, without premium or penalty.

(3) Any Bonds which mature on or after November 1, 2001, are subject to optional redemption by the Board, at the direction of the Lessee and with the prior written consent of the Bank, prior to maturity on November 1, 2000, or on any date thereafter, in whole or in part in \$5,000 multiples, in the inverse order of their maturities (less than all of said Bonds of a single maturity to be selected by lot in such manner as the Trustee may determine), at the applicable redemption price (expressed as a percentage of principal amount redeemed) set

forth in the table below plus accrued interest to the redemption date:

<u>Redemption Date</u> <u>(dates inclusive)</u>	<u>Redemption Price</u>
November 1, 2000 through October 31, 2001	103%
November 1, 2001 through October 31, 2002	102%
November 1, 2002 through October 31, 2003	101%
November 1, 2003 and thereafter	100%

(4) The Bonds are subject to redemption in the event of (a) damage to or condemnation of the Project or any part thereof to the extent provided in Article V of the Lease Agreement or (b) exercise by the Lessee of its option to purchase the Project as provided in Section 9.2 of the Lease Agreement or (c) receipt by the Trustee of title insurance proceeds as provided in Section 3.5 of the Indenture and Section 3.4 of the Lease Agreement. If called for redemption in any of such events, the Bonds shall be subject to redemption by the Board on any interest payment date in whole or (in the case of redemption pursuant to Article V of the Lease Agreement) in part in \$5,000 multiples in the inverse order of their maturities (less than all of said Bonds of a single maturity to be selected by lot in such manner as the Trustee may determine), at a redemption price for each Bond or \$5,000 principal portion thereof redeemed equal to the principal amount redeemed, plus accrued interest thereon to the date of redemption, without premium or penalty.

(5) The Bonds are subject to prepayment prior to maturity and will be prepaid if interest on the Bonds is determined to be includable in gross income for federal income taxation, as provided in Article X of the Lease Agreement. In such event the Bonds shall be prepaid in whole on any interest payment date upon notice thereof as hereinafter provided at a prepayment price for each Bond being prepaid equal to the principal amount thereof, plus accrued interest thereon to the prepayment date, plus a premium equal to 2% of the principal amount thereof. Moreover, the last registered owner of any Bond which has matured or been redeemed prior to such prepayment date and the interest on which has been determined to be includable in gross income for federal income taxation, shall also be entitled to receive such a 2% premium, upon establishing to the satisfaction of the Trustee that he was such registered owner.

Not less than thirty days' notice of the intended redemption or prepayment of any Bond or any part thereof shall be given by registered mail to the registered owner of such Bond at the address of such registered owner as shown on the Bond Registrar's books. All Bonds or portions thereof so called for redemption or prepayment will cease to bear interest on the specified redemption or prepayment date, provided funds



for their redemption or prepayment are on deposit at the place of payment on that date, and, upon such deposit, the Bonds or such portions shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Alabama, particularly Division 1 of Article 4 of Chapter 54 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-54-80 et seq.) and pursuant to a resolution adopted and approved by the Board, which resolution authorizes the execution and delivery of the Indenture. The Bonds are limited obligations of the Board and are payable solely out of the revenues and receipts derived from the leasing or sale of the Project. Rental payments under the Lease Agreement sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid to the Trustee for the account created by the Board under the Indenture and have been duly pledged for that purpose, and in addition the Project has been mortgaged to secure payment of such principal and interest under the Indenture. The City of Pelham, Alabama (the "City") shall not in any event be liable for the payment of the principal of or interest on this Bond or any other bonds of the Board, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Board, and none of the bonds of the Board or any of its agreements or obligations shall be construed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provision whatsoever.

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

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



in the manner and with the effect provided in the Indenture. The Indenture permits, with certain exceptions as therein provided: (a) the amendment thereof and the modification of the rights and obligations of the Board and the rights of the registered owners of the Bonds under the Indenture and the amendment of the Lease Agreement and the modification of the rights and obligations of the parties to the Lease Agreement, in certain instances without the consent of the registered owners of the Bonds and in others with the consent of the registered owners of a specified percentage of the aggregate principal amount of the Bonds at the time outstanding, as defined in the Indenture, and (b) the waiver of past defaults under the Lease Agreement or Indenture with the consent of the registered owners of a specified percentage of the aggregate principal amount of the Bonds at the time outstanding, as defined in the Indenture. Any such consent by the registered owner of this Bond shall be conclusive and binding upon such registered owner and upon all future registered owners of this Bond and of any bond issued in lieu hereof, or in lieu of any part hereof, whether or not notation of such consent or waiver is made upon this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the Lease Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; that the issuance of this Bond and the issue of which it forms a part, together with all other obligations of the Board, do not exceed or violate any constitutional or statutory limitation; and that the lease rentals, revenues and receipts pledged to the payment of the principal of and interest on this Bond and the issue of which it forms a part, as the same become due, will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication and registration hereon shall have been executed by the Trustee by the manual signature of one of its authorized officers.

IN WITNESS WHEREOF, the Board has caused this Bond to be executed in its name with a facsimile of the signature of its Chairman of the Board of Directors and attested by a facsimile of the signature of its Secretary, has caused a facsimile of

its corporate seal to be imprinted hereon and has caused this Bond to be dated November 1, 1993.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

By \_\_\_\_\_ (facsimile)  
Chairman of the Board of  
Directors

S E A L

Attest: \_\_\_\_\_ (facsimile)  
Secretary

Date of Authentication and Registration:

**AUTHENTICATION AND REGISTRATION CERTIFICATE**

This Bond is one of the Bonds referred to in the within-mentioned Mortgage and Indenture of Trust and has been registered on the registration books maintained with the Trustee in the name of the above registered owner on the date of authentication and registration specified above.

FIRST COMMERCIAL BANK, as Trustee

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

**ASSIGNMENT**

For value received, \_\_\_\_\_  
hereby sell(s), assigns(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  
this Bond on the books of the within-mentioned Trustee, as bond  
registrar.

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

NOTE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Broker or Firm\*)

By \_\_\_\_\_  
Its \_\_\_\_\_

Medallion Number: \_\_\_\_\_

\* Signature(s) must be guaranteed by an eligible guarantor institution which is a member of a recognized signature guarantee program, i.e., Securities Transfer Agents Medallion Program (STAMP), Stock Exchanges Medallion Program (SEMP), or New York Stock Exchange Medallion Signature Program (MSP).

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

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

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

#### GRANTING CLAUSES

For and in consideration of the premises, the mutual covenants of the Borrower and the Trustee and the purchase of the Bonds by the Bondholders and in order to secure the payment of the principal of, premium (if any) and interest on the Bonds according to their tenor and effect and the performance and observance by the Borrower of all the covenants expressed or implied herein and in the Bonds, the Borrower does hereby grant, bargain, sell, convey, assign, transfer, mortgage, pledge and grant a security interest therein unto the Trustee and unto its successors in trust, and to it and its assigns forever:

#### I.

The real estate and premises described on Exhibit A attached hereto and made a part hereof, located within Shelby County, Alabama, together with all buildings, structures and



fixtures now or hereafter located thereon or therein, with the tenements, hereditaments, appurtenances, easements, rights, privileges and immunities thereunto belonging or appertaining.

II.

All machinery, equipment and personal property acquired with the proceeds of the Bonds and installed or located in or about the Buildings or on the Mortgaged Realty, as described or referred to on Exhibit B attached hereto and made a part hereof, and any machinery, equipment and personal property acquired in substitution therefor or as a renewal or replacement thereof pursuant to the terms of the Lease Agreement and this Indenture; and

III.

The rights of the Borrower under and pursuant to the Lease Agreement (other than its rights to indemnification and reimbursement) and all lease rentals, revenues and receipts derived by the Borrower from the leasing or sale of the Project, including without limitation all rentals, revenues and receipts to be received by the Borrower (other than for indemnification or reimbursement) under and pursuant to the Lease Agreement; and

IV.

All awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Board with respect to the Project as a result of the exercise of the right of eminent domain, any damage to or destruction of the Project or any part thereof, or any other injury to or decrease in the value of the Project, and all right, title and interest of the Board in and to any policies of insurance with respect to any damage to or destruction of the Project; and

V.

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

THIS MORTGAGE AND INDENTURE OF TRUST AND THE LIEN HEREOF IS AND SHALL BE SUBJECT, HOWEVER, to Permitted Encumbrances (as defined in Section 1.1) and junior and subordinate to the Bank Mortgage (as defined in Section 1.1) and the lien thereof in all respects, which Bank Mortgage is recorded in the office of

the Judge of Probate of Shelby County, Alabama on the same date on which this Mortgage and Indenture of Trust is so recorded in said office.

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

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the proportionate benefit, security and protection of all present and future Bondholders without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others of the Bonds;

PROVIDED, HOWEVER, that if the Borrower, its successors or assigns, shall well and truly pay, or cause to be paid, the principal, premium (if any) of the Bonds and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required hereunder, or shall provide, as permitted by Section 10.1 hereof, for the payment thereof, and shall well and truly keep, perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture to be and remain in full force and effect.

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

## ARTICLE I

### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

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

"Authorized Investments" means (i) Government Obligations, (ii) certificates of deposit issued by the Trustee or by any bank organized under the laws of the United States of America

or any state thereof having at the time of issuance of such certificate of deposit combined capital, surplus and undivided profits of not less than \$20,000,000, or (iii) any other investment, to the extent then permitted by law.

"Bank" means First Commercial Bank, a state banking corporation with its principal office in the City of Birmingham, Alabama, in its capacity as issuer of the Letter of Credit.

"Bank Mortgage" means the Mortgage, Assignment of Leases and Security Agreement dated as of November 1, 1993, from the Borrower, the Lessee and Vulcan to the Bank, which will be recorded in the office of the Judge of Probate of Shelby County, Alabama, at the same time this Indenture is so filed in said office.

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

"Bond Counsel" means Walston, Stabler, Wells, Anderson & Bains, Attorneys, Birmingham, Alabama, or such other firm of attorneys experienced in the field of municipal financing as shall be designated by the Borrower with the approval of the Trustee.

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

"Bondholder" or "holder" or "Owner" means the registered owner of any outstanding Bond.

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

"Buildings" means all buildings, structures and fixtures now or hereafter located on the Mortgaged Realty, as they may at any time exist.

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

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

"Construction Fund" means the fund established under Section 3.3 hereof.

"Credit Guaranty Agreement" means that certain Credit Guaranty Agreement dated as of November 1, 1993 from W. D.



Upton, Jr. to the Bank as security for the Reimbursement Agreement.

"Enabling Law" means Division 1 of Article 4 of Chapter 54 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-54-80 et seq.).

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

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

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

"Government Obligations" means (i) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, or (ii) obligations issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of, premium (if any) and interest on which is fully and unconditionally guaranteed as a full faith and credit obligation by the United States of America.

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

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

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

"Lessee" means Peltown Realty Company, an Alabama general partnership, and includes its successors and assigns.

"Letter of Credit" means the Irrevocable Direct Pay Letter of Credit dated as of November 1, 1993, issued by the Bank to the Trustee with respect to the Bonds.

"Mortgaged Property" means (i) the Project, (ii) the rights of the Borrower under and pursuant to the Lease Agreement (except as stated in granting clause III hereof), (iii) all lease rentals, revenues and receipts derived by the Borrower from the leasing or sale of the Project, including without limitation all rentals, revenues and receipts derived

by the Borrower under and pursuant to the Lease Agreement, and (iv) all properties which, under the terms hereof (except as stated in granting clause III hereof), are or subsequently become subject to the lien of this Indenture.

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

"1993 Improvements" means the building addition on the Mortgaged Realty containing approximately 5,000 square feet, the new building to be located on the Mortgaged Realty containing approximately 60,000 square feet, and all machinery, equipment furniture and furnishings acquired with the proceeds from the sale of the Bonds.

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

The term "Outstanding Bonds" or "Bonds Outstanding" means all Bonds which have been authenticated by the Trustee and delivered under this Indenture, except:

(a) Bonds canceled or surrendered to the Trustee for cancellation;

(b) Bonds deemed to be no longer outstanding under the provisions of Section 10.1 hereof; and

(c) Bonds in lieu of which others have been authenticated and delivered in accordance with the provisions of this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Borrower or the Lessee or Vulcan or any other obligor upon the Bonds or any affiliate of the Borrower or the Lessee or Vulcan or of such other obligor shall, during the time so owned, be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be disregarded.

"Permitted Encumbrances" means, as of any particular time, (i) the Lease Agreement and all subleases and other use agreements with respect to the Project or any part thereof to which Vulcan is a party as sublessee, (ii) liens for taxes, assessments or other governmental charges or levies not due and payable or which are currently being contested in good faith by appropriate proceedings as permitted in the Lease Agreement, (iii) utility, access and other easements and rights of way,



party walls, restrictions and exceptions that may be granted or are permitted under the Lease Agreement, (iv) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right or purchase money security interest if payment is not yet due and payable under the contract in question, (v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as do not, in the opinion of an Independent Counsel, materially impair the Project for the purpose for which it was acquired or is held by the Borrower, (vi) the Bank Mortgage, (vii) the Mortgage and Security Agreement from the Borrower and the Lessee to First National Bank of Jasper recorded in Volume 100 at Page 247 in the office of the Judge of Probate of Shelby County, Alabama, (viii) the Mortgage and Indenture of Trust from the Borrower to First Commercial Bank recorded in the said office in Volume 100 at Page 170 (the said two mortgages being herein together called the "1986 Mortgages"), and (ix) such encumbrances and other matters which appear of public record prior to the date of recording of this Indenture.

"Prime Rate" shall have the meaning ascribed in the Lease Agreement.

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

"Project Costs" means all costs of acquiring, constructing and installing the 1993 Improvements and includes the expenses (subject to the applicable limitation thereon) of issuance of the Bonds.

"Qualified Deposits" means the following amounts on deposit in the Bond Fund: (i) amounts drawn by the Trustee under the Letter of Credit; (ii) the accrued interest on the Bonds originally deposited in the Bond Fund from the proceeds of the sale of the Bonds; (iii) amounts from payments by the Lessee under the Lease Agreement or otherwise, in each case deposited in the Bond Fund by the Trustee for a period of not less than 91 days, provided no proceedings under the United States Bankruptcy Code are instituted with respect to the Lessee during the 91-day period following the date of such deposit; and (iv) any investment income on any of the amounts specified in the foregoing clauses (i) through (iii).

"Redemption Fund" means the fund established under Section 4.6 hereof.

"Reimbursement Agreement" means the Reimbursement Agreement dated as of November 1, 1993, between the Lessee and the Bank, pursuant to which the Letter of Credit has been issued.



"State" means the State of Alabama.

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

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

"Vulcan" means Vulcan Threaded Products, Inc., an Alabama corporation, and its successors and assigns.

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

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

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

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

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

Section 1.7 Limitation of Rights. Nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any person other than the parties hereto and their successors hereunder and the Bondholders, the Lessee and the Bank any benefit or any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein

contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and their successors hereunder, the Lessee, the Bondholders and the Bank as herein provided.

Section 1.8 Computation of Percentage of Bonds Outstanding. Any percentage of Bonds specified herein for any purpose is to be figured on the unpaid principal amount thereof then Outstanding.

Section 1.9 Notices; Publication of Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed as provided in the Lease Agreement. A duplicate copy of each notice required to be given hereunder by either the Borrower or the Trustee shall also be given to the Lessee, and a duplicate copy of each notice required to be given hereunder by the Trustee to either the Borrower or the Lessee shall also be given to the other. The Borrower, the Lessee and the Trustee may, by notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. If, because of the temporary or permanent suspension of the mails or for any other reason, it is impossible or impractical to give any notice required in this Indenture, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of notice.

Section 1.10 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1.11 Severability Clause. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs hereof shall not affect the remaining portions of this Indenture or any part thereof, all of which are inserted conditionally on being held valid in law; and in the event that one or more of the phrases, sentences, clauses, sections or paragraphs contained herein should be invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, section or sections, paragraph or paragraphs had not been inserted.

## ARTICLE II

### THE BONDS

Section 2.1 Source of Payment of Bonds; City not Liable. The Bonds herein authorized and all payments by the Borrower hereunder are limited obligations payable solely from revenues and receipts derived from the leasing or sale of the Project



and as authorized by the Enabling Law and provided herein. No covenant or agreement contained in this Indenture or the Bonds nor any obligation herein or therein imposed upon the Borrower, or the breach thereof, shall constitute or give rise to or impose upon the Borrower a pecuniary liability or a charge upon its general credit or property other than the Mortgaged Property. All obligations for the payment of money incurred by the Borrower are payable solely from and are limited to the proper application of the proceeds of the sale of the Bonds, the rentals, revenues and receipts derived from the leasing or sale of the Project, and nothing in the Bonds or in this Indenture shall be considered as pledging any other funds or assets of the Borrower.

The City is not liable for payment of the principal of or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Borrower. Neither the Bonds nor any agreement of the Borrower shall be construed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provision whatever.

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

Section 2.2 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total aggregate principal amount of Bonds that may be issued is hereby expressly limited to \$1,450,000 (exclusive of Bonds issued in substitution for any of the Bonds in accordance with the provisions of this Indenture).

Section 2.3 Issuance of Bonds. The Bonds shall be designated "Industrial Development Revenue Bonds (Peltown-Vulcan Second Project)", shall be dated November 1, 1993, and shall be issued as fully registered bonds in the denomination of \$5000 each or any integral multiple thereof for each maturity. The Bonds shall be numbered in such manner as the Trustee may determine. The Bonds shall mature on November 1 in each of the years and in the principal amounts set forth in the



schedule below, and shall bear interest from the date thereof, payable on May 1 and November 1 in each year, first interest payable May 1, 1994, until the principal amount thereof has been paid, at the following per annum rates for all Bonds maturing in the year set opposite each such rate:

<u>Year of Maturity</u>	<u>Principal Amount Maturing</u>	<u>Applicable Interest Rate</u>
1997	\$ 90,000	4.50%
1998	95,000	4.75
1999	100,000	5.00
2000	105,000	5.20
2001	110,000	5.30
2002	115,000	5.40
2003	120,000	5.50
2008	715,000	6.00

The principal of and premium (if any) on each Bond shall be payable only upon presentation and surrender of the Bond at the principal office of the Trustee. Interest on each Bond shall be remitted by the Trustee to the then registered owner of the Bond at the address thereof shown on the registration books of the Trustee. Payments of interest shall be deemed timely made if mailed on the interest payment date (or if not a business day, then on the next succeeding business day). The principal of, premium (if any) and interest on the Bonds shall be payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

Section 2.4 Form of Bonds. The Bonds shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture.

Section 2.5 Execution of Bonds. The Bonds shall be executed on behalf of the Borrower with a facsimile of the signature of its Chairman of the Board of Directors, and attested by a facsimile of the signature of the Secretary of the Borrower, and shall have imprinted thereon a facsimile of the corporate seal of the Borrower. Such facsimiles shall have the same force and effect as if said Chairman and Secretary had manually signed each Bond and as if the corporate seal had been manually impressed on each Bond. In case any officer a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the authentication and delivery of such Bonds, such facsimile shall nevertheless be valid and

sufficient for all purposes as if he had remained in office until authentication and delivery.

Section 2.6 Authentication of Bonds. Only such Bonds as shall have endorsed thereon a certificate of authentication and registration substantially in the form hereinabove set forth duly executed by an officer of the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication and registration shall have been duly executed by an officer of the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and registered and delivered under this Indenture. The Trustee's certificate of authentication and registration on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication and registration on all of the Bonds.

Section 2.7 Redemption and Prepayment Provisions. The Bonds shall be subject to redemption and prepayment at the times and subject to the provisions in the form of the Bonds hereinabove set forth. The notice to any Bondholder of any intended redemption or prepayment shall state the number or numbers of the Bond or Bonds all or a part of which have been called for redemption or prepayment, shall state that all or a part of the Bond or Bonds bearing such number or numbers will become due and payable on the date specified, at the redemption or prepayment price, and shall state that all interest thereon will cease to accrue after such date. The principal of all Bonds or portions thereof so called for redemption or prepayment shall become due and payable at the redemption or prepayment price and on the redemption or prepayment date specified in such notice, and the respective Bondholders shall then and there surrender them for redemption or prepayment. In case of the partial redemption of any Bond in the denomination of \$10,000 or more, the Trustee shall authenticate and deliver a new Bond evidencing the unredeemed principal amount of the Bond so called for redemption. Notice of redemption or prepayment having been given as required in the Indenture and funds for the payment of the redemption or prepayment price having been set aside and made available for the payment of such redemption or prepayment price, each of the Bonds or portions thereof so called for redemption or prepayment shall cease to bear interest from and after the date fixed for redemption or prepayment, and shall no longer be entitled to the benefit of this Indenture unless default shall be made in the payment of the redemption or prepayment price.

Section 2.8 Replacement of Mutilated, Destroyed, Stolen or Lost Bonds. In case any of the Bonds shall be or become mutilated, destroyed, stolen or lost, then upon the surrender of such mutilated Bond to the Trustee, or the presentation to



the Borrower and to the Trustee of evidence satisfactory to them, respectively, of the destruction, theft or loss of such Bond, and that the claimant was the owner thereof at the time of such event, and, in any event, upon being furnished with indemnity satisfactory to them, respectively, and upon the payment of all necessary expenses, including counsel fees, incurred by the Borrower and the Trustee in investigating such claim, the Trustee shall thereafter authenticate, register and deliver to or upon the order of such claimant a Bond of like tenor, date, unpaid principal amount and maturity as the Bond so mutilated, destroyed, stolen or lost, with such notation thereon as the Borrower and the Trustee shall determine. The Trustee shall forthwith cancel by perforation or otherwise any mutilated Bonds so surrendered and deliver a certificate of cancellation to the Borrower.

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

Section 2.9 Registration, Transfer and Exchange of Bonds. Each of the Bonds shall be registered as to principal and interest in the name of the owner thereof in the book of registration to be maintained for that purpose by the Borrower in the principal office of the Trustee as Registrar. The person in whose name a Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of the principal, premium (if any) and interest on each Bond shall be made only to or upon the order of the registered owner thereof, or his legal representative, and neither the Borrower, the Trustee, nor any agent of the Borrower shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability of the Borrower upon the Bonds to the extent of the sum or sums so paid.

A Bond may be transferred by the Bondholder in person or by authorized attorney, only on the books of the Borrower to be maintained by the Trustee and only upon surrender of the Bond to the Trustee for transfer, accompanied by a written instrument of transfer executed by the Bondholder or his duly authorized attorney, and a guaranty of signature satisfactory to the Trustee, and upon any such transfer, a new Bond of like tenor shall be issued in the name of the transferee or transferees in exchange therefor.

At the option of the Bondholder and upon the surrender thereof to the Trustee, Bonds may be exchanged for an equal principal amount of Bonds having the same maturity date as follows: (a) Bonds in the denomination of \$5,000 may be exchanged for a Bond or Bonds of a larger denomination in integral multiples of \$5,000, or (b) a Bond in a larger



denomination than \$5,000 may be exchanged for Bonds in the denomination of \$5,000 or any integral multiple thereof.

All Bonds authenticated by the Trustee upon any transfer or exchange of Bonds shall be the valid obligations of the Borrower and entitled to the same security and benefits under the Indenture as the Bonds surrendered upon such transfer or exchange. All Bonds surrendered upon any exchange or transfer provided for in the Indenture shall be promptly canceled by the Trustee and a certificate of cancellation issued to the Borrower.

The Trustee shall not be required to transfer or exchange any Bond during the period of fifteen days next preceding any interest payment date with respect thereto; and in the event that any Bond (or any part thereof) is duly called for redemption or prepayment, the Trustee shall not be required to transfer or exchange any such Bond during the period of forty-five days next preceding the date fixed for such redemption or prepayment. No charge shall be made for the privilege of transfer or exchange, but any Bondholder requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto.

Section 2.10 Payments Due on Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption or prepayment of any Bonds shall be in the place of payment, a Saturday, Sunday or legal holiday or a day on which banking institutions are authorized or obligated by law to close, then payment of interest or principal and 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 the date of maturity or the date fixed for redemption or prepayment, and no interest shall accrue for the period after the date of maturity.

Section 2.11 Trustee as Paying Agent and Registrar. The Trustee is hereby designated and agrees to act as a paying agent and as Bond Registrar for and in respect to the Bonds.

### ARTICLE III

#### DELIVERY OF THE BONDS; CUSTODY AND APPLICATION OF PROCEEDS OF BONDS

Section 3.1 Delivery of Bonds. The Borrower shall execute and deliver all of the Bonds to the Trustee for authentication and registration. The Trustee shall authenticate and register the Bonds and deliver them upon the order of the Borrower to the purchaser or purchasers thereof upon the payment by such purchaser or purchasers to the

Borrower of the purchase price thereof. The Bonds may be executed by the Borrower and authenticated and registered by the Trustee and delivered prior to any recordation of the Indenture. The receipt of the Chairman or Treasurer of the Borrower shall be full acquittal to the purchaser or purchasers for the purchase price of the Bonds, and such purchaser or purchasers shall be under no obligation to see to the application thereof. The proceeds of the sale of any of the Bonds shall, however, be held in trust and disposed of only as hereinafter provided.

Section 3.2 Deposits in the Bond Fund. From the proceeds of the sale of the Bonds there shall be deposited in the Bond Fund all accrued interest received upon the sale of the Bonds.

Section 3.3 Construction Fund; Disbursements. There is hereby established with the Trustee a trust fund in the name of the Borrower to be designated the "Peltown-Vulcan Second Project Construction Fund". The balance of the proceeds of the Bonds remaining after the deduction provided by the foregoing Section has been made shall be deposited in the Construction Fund. The moneys in the Construction Fund shall be paid out by the Trustee from time to time for the purpose of paying the Project Costs or complying with the provisions of Article XI of this Indenture and Section 10.3 of the Lease Agreement, but only upon receipt of

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

(b) An endorsement on such requisition or payment request signed by the Lessee in which the Lessee shall (i) approve the payment thereby requested to be made, (ii) describe in reasonable detail the particular Project Costs, (iii) state that the purpose for which such payment is to be made is one for which Construction Fund moneys are authorized under the Lease Agreement and the Indenture to be expended, (iv) certify that such payment is for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation or for paying expenses incurred in connection with the issuance, sale and delivery of the Bonds, provided that no more than two percent (2%) of the aggregate face amount of the Bonds shall be used to finance the issuance costs of the Bonds, (v) certify that any property for which payment is to be made has been installed or is located on the Mortgaged Realty, (vi) certify that such payment will not result in any part of the proceeds of the Bonds being used for the acquisition (directly or indirectly) in whole or in part, of any land (or any interest therein) to be used for farming purposes, (vii) certify that such payment will not result in twenty-five percent (25%) or



more of the proceeds of the Bonds being used to acquire the Mortgaged Realty or used to acquire any other land (or interest therein) not described in clause (vi) above, (viii) certify that such payment will not result in any part of the net proceeds of the Bonds being used to acquire any property or any interest therein (including, without limitation, any buildings, structures, facilities, improvements, equipment, machinery, or other personal property) the first use of which property was not pursuant to such acquisition with the proceeds of the Bonds, (ix) certify that no event of default exists under the Indenture or the Lease Agreement and that such payment will not cause or result in the violation of any covenant contained in Section 10.1 of the Lease Agreement, (x) certify that such payment is not for the acquisition, construction, reconstruction or improvement of any property which would cause the average maturity of the Bonds to exceed 120 percent of the average reasonably expected economic life of the facilities financed with the proceeds of the Bonds within the meaning of Section 147(b) of the Code, and (xi) certify that such payment is not for the cost of acquiring any real or personal property the commitment to obtain which was made prior to October 5, 1993. If the payment requested to be made is for the cost of acquiring real or personal property the commitment to obtain which was made prior to October 5, 1993, the Lessee may, in lieu of the certification required by clause (xi) of this paragraph (b), file with the Trustee an opinion of Bond Counsel stating that such payment will not cause or result in the interest on the Bonds becoming includable in the gross income of the registered owners thereof for federal income taxation.

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

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



In addition to the documents required by this Section, the Trustee may require as a condition precedent to any payment or withdrawal further evidence with respect thereto or with respect to the application of any moneys previously disbursed or as to the correctness of any statement made in any requisition, payment request or endorsement. Upon the written request of the registered owners of at least ten percent of the Bonds, the Trustee shall require such evidence. The Trustee shall, however, be under no duty to require such evidence unless so requested. The Trustee shall not be liable for any misapplication of moneys in the Construction Fund if disbursed pursuant to the provisions of this Section and without knowledge or reason to believe that such disbursement constitutes a misapplication of funds.

Section 3.4 Completion of the 1993 Improvements. The completion of the 1993 Improvements and the payment of all costs and expenses incidental thereto shall be evidenced by the filing with the Trustee of the certificate of the Borrower and of the Project Supervisor as required by the provisions of the Lease Agreement. Upon receipt of such certificate by the Trustee, any balance remaining in the Construction Fund shall be held in escrow by the Trustee and shall be applied, subject to Article XI of this Indenture and Section 10.3 of the Lease Agreement, to the redemption of as many of the Bonds as possible on the next ensuing interest payment date for which the required notice of redemption may be given, and the balance remaining, if any, after such redemption shall be paid into the Redemption Fund. Pending such application, the moneys so held in escrow by the Trustee may be invested in Government Obligations, provided that the yield on such investments may not exceed the yield on the Bonds, computed in accordance with Section 148 of the Code.

Section 3.5 Title Insurance. From moneys provided by the Lessee the Borrower shall pay the cost of obtaining a title insurance policy in an amount equal to the maximum amount available to be drawn under the Letter of Credit on the date of issuance of the Bonds insuring the mortgage of the Mortgaged Realty created by the Bank Mortgage and the Indenture. Such policy of insurance shall be taken out in a generally recognized responsible insurance company, qualified under the laws of the State of Alabama to assume the risks undertaken. Such policy shall name the Bank and the Trustee as the insureds as their respective interests shall appear. Any proceeds of such title insurance shall, subject to the Bank Mortgage and the 1986 Mortgages, be deposited with the Trustee and shall be applied, subject to Article XI of this Indenture and Section 10.3 of the Lease Agreement, (together with the moneys in the Bond Fund and Redemption Fund available for such purpose) to the redemption of all Outstanding Bonds on the earliest practicable date for which the required notice may be given or, if such proceeds, together with the moneys in the Bond Fund and the Redemption Fund available for such purpose, are not

sufficient to redeem all Outstanding Bonds, shall be held in trust as additional security for the prorata benefit of the Bondholders until such redemption of all Outstanding Bonds may be effected. Pending such application, the moneys so held in escrow by the Trustee may be invested in Government Obligations, provided that the yield on such investments may not exceed the yield on the Bonds, computed in accordance with Section 148 of the Code.

#### ARTICLE IV

##### BOND FUND AND REDEMPTION FUND; INVESTMENT OF AND SECURITY FOR SPECIAL FUNDS

Section 4.1 The Bond Fund. There is hereby established with the Trustee a trust fund in the name of the Borrower designated the "Peltown-Vulcan Second Project Bond Fund". The Bond Fund shall be maintained until the principal of, premium (if any) and interest on the Bonds shall have been paid in full and the provisions of Section 7.7 hereof are no longer effective.

There shall be deposited into the Bond Fund, as and when received, and the Borrower shall cause to be deposited into the Bond Fund (a) all moneys required by Section 3.2 hereof to be deposited therein, (b) all Basic Rent payments payable under the Lease Agreement, (c) all moneys required to be deposited in the Bond Fund pursuant to any of the provisions of the Lease Agreement, (d) all moneys required by Section 5.3 hereof to be deposited therein, and (e) all moneys collected by the Trustee under the Letter of Credit.

The Trustee shall establish a separate account or subaccount within the Bond Fund corresponding to each source of moneys specified herein for each deposit made into the Bond Fund so that the Trustee may at all times ascertain the source and date of deposit of the funds in each such account or subaccount. All moneys other than Qualified Deposits held to the credit of the Bond Fund shall be held in a separate account therein until such time as such moneys become Qualified Deposits.

The Trustee shall cause all moneys deposited in the Bond Fund to be applied to the payment of principal of or interest on the Bonds within thirteen months from the date of such deposit and shall cause all amounts received from the investment of moneys in the Bond Fund to be applied to the payment of principal of or interest on the Bonds within twelve months from the date of receipt of such investment income.

Section 4.2 Draws Under Letter of Credit. Not less than one business day prior to any date on which any principal of, premium (if any) and interest on the Bonds shall become due and payable, whether at maturity, upon the date fixed for optional,



extraordinary, or mandatory redemption prior to maturity, or upon maturity by declaration of acceleration of the Bonds upon the occurrence of an Event of Default hereunder, or upon mandatory prepayment because interest is determined to be includable in gross income for federal income taxation, as provided in Article X of the Lease Agreement, the Trustee shall draw under the Letter of Credit, to the extent available thereunder:

(i) an amount which, together with Qualified Deposits in the Bond Fund available for the payment of interest on the Bonds, equals the interest on the Bonds payable on such interest payment date or the date the Bonds are declared due, as the case may be, and

(ii) an amount which, together with Qualified Deposits in the Bond Fund available for the payment of principal on the Bonds, equals the principal of the Bonds payable or subject to mandatory redemption or prepayment on such interest payment date or the date the Bonds are declared due, as the case may be, and

(iii) an amount which, together with Qualified Deposits in the Bond Fund available for payment of any redemption or prepayment premium on the Bonds, equals the redemption or prepayment premium due on the Bonds on such optional redemption date or mandatory prepayment date, as the case may be.

Any available Qualified Deposits in the Bond Fund not restricted by the Lease Agreement or this Indenture solely to the payment, prepayment or redemption of either principal of or interest on the Bonds shall be credited first against any draw with respect to the principal of the Bonds, second against any draw with respect to interest on the Bonds, and third against any draw with respect to a redemption or prepayment premium on the Bonds.

Section 4.3 Use of Moneys in the Bond Fund. (a) Moneys in the Bond Fund shall be used solely for the payment of the principal of, premium (if any) and interest on the Bonds; provided, that all available Qualified Deposits shall (subject to any requirements of this Indenture or the Lease Agreement that certain moneys in the Bond Fund are to be applied solely to the payment or redemption of either principal of or interest on the Bonds) be applied to the payment of the principal of, premium (if any) and interest on the Bonds before any other moneys in the Bond Fund are applied to such payment.

(b) On each date on which any principal of, premium (if any) and interest on the Bonds shall become due and payable, whether at maturity, upon the date fixed for optional, extraordinary or mandatory redemption prior to maturity, or upon maturity by declaration of acceleration of the Bonds upon



the occurrence of an Event of Default hereunder, or upon mandatory prepayment because interest thereon is determined to be includable in gross income for federal income taxation, as provided in Article X of the Lease Agreement, the Trustee shall make the required payments of principal of, premium (if any) and interest on the Bonds to the Bondholders in accordance with this Indenture and the Bonds from moneys in the Bond Fund, and any moneys remaining in the Bond Fund after such payment shall be paid and returned to the Bank for the account of the Lessee as reimbursement for all amounts paid by the Bank pursuant to draws under the Letter of Credit upon appropriate verification to the Trustee of such amounts then outstanding and that the Bank has not received payment of such amounts by credit or return or by payment by, or set off against, the Lessee, or otherwise. In no event shall any amounts drawn by the Trustee under the Letter of Credit be applied by the Trustee to the payment of Bonds held by or on behalf of the Borrower or the Lessee or Vulcan.

(c) Whenever the amount in the Bond Fund and Redemption Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding hereunder and to pay interest to accrue thereon on and prior to the date on which the Bonds are to be redeemed, the Borrower covenants and agrees to take and cause to be taken the necessary steps to redeem all of the Bonds on the next succeeding redemption date for which the required redemption notice may be given, and the money in the Bond Fund and Redemption Fund shall be used to pay the redemption price of the Bonds.

Section 4.4 Custody of the Bond Fund. The Bond Fund shall be in the custody of the Trustee but in the name of the Borrower, and the Borrower hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of, premium (if any) and interest on the Bonds as the same become due and payable or subject to redemption or prepayment, which authorization and direction the Trustee by its execution hereof hereby accepts.

Section 4.5 Bonds Not Presented for Payment When Due; Moneys Held for the Bonds after Due Date. Subject to the provisions of the next sentence of this Section, if any Bond shall not be presented for payment when the principal thereof shall become due, whether at maturity or at the date fixed for the redemption or prepayment thereof or upon declaration as provided in Section 7.2(a) hereof or otherwise, and if moneys or Government Obligations which are Qualified Deposits shall at such due date be held by the Trustee in trust for that purpose sufficient and available to pay the principal and premium (if any) of such Bond, together with all interest due on such principal to the due date thereof or to the date fixed for redemption or prepayment thereof, all liability of the Borrower for such payment shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of

the Trustee to hold said moneys or Government Obligations without liability to such Bondholder for interest thereon, in trust for the benefit of such Bondholder, who thereafter shall be restricted exclusively to said moneys or Government Obligations for any claim of whatever nature on his part on or with respect to said Bond, including any claim for the payment thereof. Any such moneys or Government Obligations held by the Trustee remaining unclaimed by such Bondholders for five years after the principal of the respective Bonds with respect to which such moneys or Government Obligations have been so set aside has become due and payable (whether at maturity or upon redemption or prepayment or by declaration as provided in Section 7.2(a) hereof or otherwise) shall upon the written request of the Lessee (if the Lessee is not in default under the Lease Agreement) be paid to the Lessee against its written receipt therefor, and such Bondholders shall thereafter be entitled to look only to the Lessee for payment thereof. Before being required to make any such payment to the Lessee, the Trustee may, at the expense of the Lessee, publish such notice as may be deemed appropriate by the Trustee, listing the Bonds so payable and not presented and stating that such moneys remain unclaimed and that after a date set forth therein any balance thereof then remaining will be returned to the Lessee.

Section 4.6 The Redemption Fund; Use of Moneys in the Redemption Fund. There is hereby established with the Trustee in the name of the Borrower a trust fund to be designated the "Peltown-Vulcan Second Project Redemption Fund". The Redemption Fund shall be maintained until both the principal of, premium (if any) and interest on the Bonds shall have been paid in full. Moneys paid or deposited into the Redemption Fund shall be subject to the provisions of Article XI hereof and Section 10.3 of the Lease Agreement and shall be used only for the purpose of purchasing or redeeming Bonds prior to their respective maturities; provided, however, that if at any time the moneys on deposit in the Bond Fund shall not be sufficient to pay the principal of, premium (if any) or the interest on any of the Bonds at the respective maturities of such principal or interest or to pay on the applicable redemption date the redemption price of any of the Bonds called for redemption, then the moneys on deposit in the Redemption Fund shall be used to pay said principal or interest so maturing or the redemption price of any Bond so required to be redeemed, but only to such extent as may be necessary to prevent a default in the payment thereof, provided that no amounts are required to be maintained in the Redemption Fund for the payment of principal of, premium, if any, and interest on the Bonds.

Whenever and as often as there is on deposit in the Redemption Fund moneys which are Qualified Deposits and which are sufficient to redeem not less than \$5,000 principal amount of Bonds then subject to redemption, the Trustee will so notify the Borrower and the Lessee, whereupon the Borrower shall take such action as may be necessary under the provisions of this



Indenture to exhaust, as nearly as may be practicable, the moneys on deposit in the Redemption Fund by redeeming Bonds on the earliest practicable redemption date thereafter on which, under the terms hereof and of the Bonds, they may be redeemed. At any time and from time to time, the Trustee will, in accordance with written directions of the Lessee, purchase Bonds for cancellation and retirement with moneys which are Qualified Deposits and which are in the Redemption Fund at a purchase price of not more than the principal amount thereof plus accrued interest thereon.

Section 4.7 Security for Funds. The moneys at any time on deposit in the Construction Fund, Redemption Fund and the Bond Fund shall be and at all times remain public funds impressed with a trust for the purpose for which each of said funds was created. The Trustee shall at all times keep the moneys on deposit in each of such funds continuously secured for the benefit of the Borrower and the Bondholders, either (i) by holding on deposit, as collateral security, Government Obligations or other marketable securities eligible as security for the deposit of public trust funds under regulations of the Comptroller of the Currency, United States Treasury, having a market value (exclusive of accrued interest) not less than the amount of moneys on deposit in the fund being secured, or (ii) if the furnishing of security in the manner provided by the foregoing clause (i) is not permitted by the then applicable law and regulations, then in such other manner as may be required or permitted by the then applicable state and federal laws and regulations respecting the security for, or granting a preference in the case of, the deposit of public trust funds; provided, however, that it shall not be necessary for the Trustee to secure any portion of the moneys on deposit in any of said funds that may be secured by the Federal Deposit Insurance Corporation or by any agency of the United States of America that may succeed to its functions, or to secure any portion of such moneys that is invested as hereinafter provided.

Section 4.8 Investment of Construction Fund, Bond Fund, and Redemption Fund Moneys. Any moneys held as part of the Construction Fund, Bond Fund, and Redemption Fund shall be invested and reinvested by the Trustee in Authorized Investments in accordance with the instructions of the Lessee as provided in the Lease Agreement, to the extent that such investment is, in the opinion of the Trustee, feasible and consistent with the purpose for which each of such Funds was created, respectively. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Fund from which such investments were made, and the interest accruing thereon and any profit realized from such investments shall be credited to such Fund, and any loss resulting from such investments shall be charged to such Fund. The Trustee is directed to sell and reduce to cash a sufficient



amount of such investments whenever funds are needed from such Fund for the purposes thereof.

Section 4.9 Trustee's Responsibility; Money Held in Trust. The Trustee shall have no liability or responsibility for any loss resulting from investments made pursuant to this Article except liability for its own negligence or willful misconduct. No investment shall be authorized or permitted under this Article which, if made, would constitute any Bond an "arbitrage bond" within the meaning of Section 148 of the Code. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and as provided in Section 4.1 with respect to moneys received by the Trustee from draws under the Letter of Credit. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Borrower or the Lessee.

## ARTICLE V

### COVENANTS BY THE BORROWER

The Borrower, for itself, its successors and assigns, covenants and agrees with the Trustee and the persons who are from time to time the Bondholders, as follows:

Section 5.1 Application of Proceeds of Bonds. All moneys derived from the sale of the Bonds shall be used solely for the purposes for which the same are authorized under this Indenture and not otherwise.

Section 5.2 Cooperation with Lessee. The Borrower shall cooperate with the Lessee to the end that the 1993 Improvements may be constructed and installed and the Project may be operated by the Lessee in the most successful and productive manner possible.

Section 5.3 Collection and Disposition of Revenues and Receipts; Deposits in Bond Fund. The Borrower shall promptly collect or cause to be collected all revenues and receipts derived from the leasing or sale of the Project as the same become due and will cause all such revenues and receipts as collected to be paid over to and deposited with the Trustee for disposition in accordance with and as provided in this Indenture. The Borrower shall deposit, or cause to be deposited, in the Bond Fund sufficient sums from revenues and receipts derived from the Project (whether or not under and pursuant to the Lease Agreement) promptly to meet and pay the principal of, premium (if any) and interest on the Bonds as the same become due and payable.

Section 5.4 Borrower to Keep Project Leased. The Borrower shall keep the Project leased at all times for a rent sufficient to pay the principal of and interest on the Bonds as

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

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

Section 5.6 Performance of Covenants by Borrower and Lessee; Defaults by Lessee. The Borrower shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder, and in all proceedings of its Board of Directors pertaining thereto. The Borrower shall require the Lessee faithfully to perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Lease Agreement. The Borrower shall promptly notify the Trustee in writing if, to the knowledge of the Borrower, the Lessee fails to perform or observe any of the agreements or covenants on its part contained in the Lease Agreement. The Borrower shall promptly comply with the instructions or directions of the Trustee and



the Bank with respect to the giving of notice of default to the Lessee and the exercise of rights and remedies in the event of default under the Lease Agreement. Unless so instructed or directed the Borrower will not give the Lessee a notice of default or exercise any right or remedy under the Lease Agreement.

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

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

Section 5.9 Borrower Will Not Extend Time of Payment of Bonds Without Consent of Bondholders. The Borrower will not directly or indirectly extend or consent to the extension of the time of payment of any of the Bonds, unless consented to by each Bondholder so affected.

Section 5.10 Title to Project. The Borrower has title in fee simple to and the beneficial interest in and is lawfully possessed of the Project and has the rightful power and lawful authority to mortgage the same, subject only to Permitted Encumbrances. The Borrower will warrant and defend the title thereto and every part thereof to the Trustee, its successors and assigns, for the benefit of those who are the Bondholders, against the claims and demands of all persons whomsoever, except those claiming under Permitted Encumbrances. All of the Project is free and clear of and from all and any liens and encumbrances of every nature and kind, except Permitted Encumbrances, and will be so kept except as herein otherwise permitted, and the Borrower will at all times maintain and preserve the lien and rank of this Indenture as herein provided, subject only to Permitted Encumbrances.

Section 5.11 Title to Pledged Revenues. The Borrower has legal title to and the beneficial interest in the revenues and receipts from the Project and in the Lease Agreement and the rightful power and the lawful authority to pledge and assign the same, subject only to Permitted Encumbrances. The Borrower will warrant and defend such pledge and assignment to the Trustee, its successors and assigns, for the benefit of those who are from time to time the Bondholders, against the claims and demands of all persons whomsoever, other than those claiming under Permitted Encumbrances. The revenues, receipts and the Lease Agreement so pledged and assigned are now and



will be kept free and clear of and from any and all liens and encumbrances of every nature and kind, other than Permitted Encumbrances. The Borrower will at all times maintain and preserve the lien and rank of this Indenture as a first and prior lien upon the revenues, receipts and the Lease Agreement so pledged and assigned, subject to Permitted Encumbrances.

Section 5.12 Further Assurances; Recording Indenture and Lease Agreement. The Borrower will at any time or times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, assignments, pledges, transfers and assurances in law as the Trustee shall reasonably require for the better assuring, assigning, transferring, pledging and confirming unto the Trustee, all and singular, the property and rights herein assigned, transferred and pledged or intended so to be. The Borrower will cause this Indenture, any and all additional instruments executed pursuant to the provisions hereof and all financing statements and other security instruments relative thereto at all times to be recorded and filed and kept recorded and filed in such public offices as may be required by any present or future law in order fully to preserve, continue and protect the security of the Bonds and the rights and remedies of the Trustee and to perfect the security interest created by the Lease Agreement. The Borrower will fully comply with all the requirements of any and every recording law or any other law affecting the due recording and filing of this Indenture or of any such additional instruments. The Borrower will also cause the Lease Agreement, all supplements thereto and all other leases of the Project to be filed and recorded in the office of the Judge of Probate of the county in which the Project is situated and will cause all financing statements and other security instruments relative thereto to be filed and recorded in such manner and in such places as may be required by any present or future law to protect the validity thereof and the lien of this Indenture.

Section 5.13 Covenants Regarding the Code. The Borrower recognizes that the Bonds are being sold on the basis that the interest payable on the Bonds is excludable from the gross income of the Bondholders for federal income taxation under Section 103 of the Code. The Borrower accordingly covenants and agrees with the Trustee and the Bondholders that the Borrower will not take any action, or omit to take any action, permit any action to be taken or fail to require any action to be taken, with respect to the Project or the Bonds, that would cause the interest on the Bonds to be or become includable in the gross income of the registered owners thereof for federal income taxation, and further covenants and agrees that: (i) the proceeds of the Bonds shall not be used or applied by it in such manner as to cause any Bond to be or become an "arbitrage bond" as that term is defined in Section 148 of the Code, and the Borrower will cooperate with and assist the Trustee and the Lessee in complying with the provisions of Article XI of this

Indenture; (ii) ninety-five percent (95%) or more of the net proceeds of the Bonds will be used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation within the meaning of Section 144 of the Code; (iii) the proceeds of the Bonds will be used for the acquisition, construction and equipping of the Project and not more than \$29,000 will be applied for issuance expenses with respect to the Bonds or such proceeds shall be rebated to the United States of America as provided in Article XI of this Indenture, and no part of the proceeds of the Bonds are to be used by the Lessee or Vulcan, directly or indirectly, for working capital, or to finance inventory, or to acquire any facility or asset which may not, under the Code, be financed in whole or in part with the proceeds of obligations the interest on which is excludable from gross income for federal income taxation; (iv) the proceeds of the Bonds shall not be used for the acquisition, construction, reconstruction or improvement of any property which would cause the average maturity of the Bonds to exceed 120 percent of the average reasonably expected economic life of the facilities financed with the net proceeds of the Bonds within the meaning of Section 147(b) of the Code; (v) neither the Bonds nor any of the proceeds therefrom shall ever be federally guaranteed within the meaning of Section 149(b) of the Code, except as expressly provided in said Section 149(b); (vi) none of the proceeds of the Bonds shall be used to acquire (directly or indirectly) any land (or any interest therein) to be used for farming purposes; (vii) less than twenty-five percent (25%) of the proceeds of the Bonds shall be used to acquire (directly or indirectly) the Mortgaged Realty or any other land (or any interest therein) not described in clause (vi) above; (viii) none of the net proceeds of the Bonds shall be used to acquire any property or any interest therein (including without limitation buildings, structures, facilities, improvements, equipment, machinery or other personal property) the first use of which property was not pursuant to such acquisition with the proceeds of the Bonds, unless "rehabilitation expenditures" (as defined in Section 147(d) of the Code) with respect to said property are incurred in the amounts and within the times set forth therefor in said Section 147(d); (ix) no person shall ever be allowed to use, occupy, or otherwise derive any benefit whatsoever from the Project or any part thereof, if the effect thereof shall result in a test period beneficiary (as defined in Section 144(a)(10) of the Code) having allocated to it and outstanding tax-exempt facility-related bonds (as defined in Section 144(a)(10) of the Code) in an aggregate principal amount exceeding \$40,000,000; (x) no more than two percent (2%) of the face amount of the Bonds shall be used to finance the issuance costs of the Bonds; (xi) the 1993 Improvements will constitute and will be used as a "manufacturing facility" as defined in Section 144(a)(12) of the Code; (xii) any office facilities which are part of the 1993 Improvements shall be located on the Mortgaged Realty and not more than a de minimis amount of the



functions to be performed in such office facilities will not be directly related to the day-to-day operations at such manufacturing facility; (xiii) not more than 25% of the net proceeds of the Bonds will be used to provide facilities which are directly related and ancillary to the said manufacturing facility (determined without regard to this clause) and all of such directly related and ancillary facilities will be located on the same site as the said manufacturing facility; (xiv) the Borrower will not change and will not permit a change in the use of the 1993 Improvements which would cause any of the covenants, representations and recitals contained in this Indenture to not be true at any time while the Bonds are issued and outstanding; and (xv) since the Borrower has elected to have the provisions relating to the \$10,000,000 limit in Section 144(a)(4) of the Code apply to the Bonds, the Borrower will not take any action, or permit the Lessee or Vulcan, or any other user of the Project or the 1993 Improvements to take any action, which would cause the \$10,000,000 capital expenditure limitation contained in the said Section 144(a)(4) to be exceeded during the three years next preceding the date of issuance of the Bonds and the three years next following the date of issuance of the Bonds.

## ARTICLE VI

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

Section 6.1 Lessee's Right to Possession of the Project. So long as the Lessee is not in default under the provisions of the Lease Agreement, the Lessee shall be entitled to possession of the Project and all other rights granted to the Lessee under the Lease Agreement.

Section 6.2 Condemnation or Destruction of or Damage to Project. In the event of condemnation or destruction of or damage to the Project, provision is made in the Lease Agreement for the application of the Net Proceeds (as therein defined) of insurance or condemnation awards. All such proceeds shall be held and applied as provided in the Lease Agreement, subject to Article XI of this Indenture and Section 10.3 of the Lease Agreement. Any such proceeds held by the Trustee for the purpose of repairing, rebuilding or restoring the Project shall be deposited in the Construction Fund and withdrawals shall be made therefrom for such purposes upon compliance with the provisions of this Indenture with reference to disbursements from said Fund.

Section 6.3 Prohibition of Mortgages and Pledges. Except for the Bank Mortgage, the Borrower will not mortgage, pledge or otherwise encumber the Mortgaged Property or any part thereof unless the Bank and the Trustee shall consent in writing prior thereto and such mortgage, pledge or other encumbrance is subordinate, junior and secondary in all

respects to the pledge and lien of this Indenture and to all obligations set forth herein. The Borrower shall not incur any obligations nor issue any bonds or other securities payable from the revenues and receipts herein pledged which will have priority to or equality with the Bonds with respect to the payment of the principal or interest from said revenues and receipts or from any moneys in the funds established hereunder.

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

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

If the laws of Alabama at the time shall permit such action to be taken, nothing contained in this Section shall prevent the consolidation of the Borrower with, or merger of the Borrower into, or the transfer by the Borrower of the Project as an entirety to the City or to another public corporation whose property and income are not subject to Federal or State taxation if the City or such public corporation has the authority to carry on the business of owning and leasing the Project; provided that upon any such consolidation, merger or transfer, the due and punctual payment of the principal of and interest on the Bonds according to their tenor and the due and punctual performance and observance of all the agreements and conditions of the Indenture to be kept and performed by the Borrower shall be expressly assumed in writing by the City or the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety; and provided further, that such consolidation, merger or transfer shall not cause or result in any mortgage or other lien being affixed to or imposed on or becoming a lien on the Project or the revenues and receipts therefrom that will be prior to the lien of the Indenture and of the pledge herein made for the benefit of the Bonds or in the interest income on the Bonds becoming subject to Federal or State income taxation to any extent that is greater than the extent of such subjection on the date of delivery hereof.

Section 6.5 Improvements, Alterations, Fixtures and Personal Property. While the Borrower is not in default hereunder, the Borrower, without procuring the consent of the Trustee, may construct or install additional buildings,



structures and fixtures on the Mortgaged Realty and may alter, repair, replace, change or add to the buildings, structures and fixtures constituting a part of the Buildings or permit a lessee or sublessee of the Project so to do, provided that such action does not materially impair either the value of the Project or its utility for the purpose intended, and provided further that such buildings, structures and fixtures shall be deemed a part of the Project covered by this Indenture. If the Borrower shall not be in default hereunder, either the Borrower or its lessee may dispose of, free from the lien hereof, any machinery, equipment or other personal property constituting a part of the Equipment, but only as and to the extent permitted by the Lease Agreement. Nothing contained herein is intended to limit or restrict any right or privilege granted to the Lessee under the Lease Agreement.

Section 6.6 Release of Mortgaged Realty. Parts of the Mortgaged Realty may be released from the lien of this Indenture as provided in and upon compliance with, the provisions of Section 9.4 of the Lease Agreement, and, upon compliance with said provisions, the Trustee shall execute and deliver to the Borrower and the Lessee any and all instruments that may be necessary to effect such release.

## ARTICLE VII

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

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

(a) Failure by the Borrower to pay the principal of, premium (if any) or the interest on any Bond as and when the same matures or becomes due as therein and herein provided, whether such shall become due by maturity or otherwise;

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

(c) Appointment by a court having jurisdiction of a receiver for the Borrower or approval by a court of competent jurisdiction of any petition for reorganization of the Borrower

or rearrangement or readjustment of the obligations of the Borrower under any provisions of the bankruptcy laws of the United States and the continuation of such appointment or approval unstayed and in effect for a period of sixty consecutive days;

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

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

(f) Receipt by the Trustee of written notice from the Bank that an event of default has occurred and is continuing under the Reimbursement Agreement or the Bank Mortgage or the Credit Guaranty Agreement or any thereof; or

(g) Subsequent to any drawing by the Trustee under the Letter of Credit for the payment of interest on the Bonds, the Trustee shall (i) receive notice from the Bank that the amount available to be drawn by the Trustee under the Letter of Credit has not been reinstated to an amount not less than that provided for in the Reimbursement Agreement and the Letter of Credit, or (ii) fail to receive from the Bank notice of reinstatement of the Letter of Credit required to be given by the Reimbursement Agreement and the Letter of Credit, and thereafter shall determine upon making such reasonable investigation and inquiry of the Bank and the Lessee as the Trustee deems necessary, that the amount available to be drawn by the Trustee under the Letter of Credit has not been reinstated to an amount not less than that provided for in the Reimbursement Agreement and the Letter of Credit. It is understood that the amount required to be available under the Letter of Credit initially and after any such reinstatement is to be an amount not less than the principal of the Bonds Outstanding and 195 days' interest thereon, plus the then maximum applicable redemption and prepayment premiums on the Bonds.

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

(a) In the case of an Event of Default under paragraph (a), (f) or (g) of Section 7.1 hereof the Trustee shall, and in the case of an Event of Default under paragraph (b), (c), (d) or (e) of Section 7.1 hereof the Trustee may, and upon the written request of the registered owners of not less than twenty-five percent in aggregate principal amount of the Outstanding Bonds or the written request of the Bank shall, by notice in writing delivered to the Borrower, with a copy to the Bank, declare the principal of all of the Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable, anything in this



Indenture or the Bonds to the contrary notwithstanding; subject, however, to: (i) with respect to an Event of Default under Section 7.1(f) or (g), the duty of the Trustee, upon written direction to the Trustee by the Bank and the reinstatement by the Bank of the Letter of Credit to an amount not less than the principal of the Bonds Outstanding and 195 days' interest thereon plus the then maximum applicable redemption premium for such principal amount, to annul such declaration and destroy its effect, and (ii) with respect to any other Event of Default, the discretionary right of the Trustee, and upon written direction to the Trustee by the registered owners of a majority in aggregate principal amount of the Outstanding Bonds, the duty of the Trustee, to annul such declaration and destroy its effect at any time before the Project shall have been sold pursuant to any provision of the Indenture, if all covenants with respect to which default shall have been made shall be fully performed.

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

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

(d) The Trustee may, in its discretion, with or without declaring the Bonds due and payable, enter upon and take possession of the Project and lease the same in the name and as the agent of the Borrower and from time to time maintain and restore and insure and keep insured the same, in the manner and to the same extent as is usual with like properties and likewise, from time to time, make all necessary repairs, renewals, replacements, alterations, additions and improvements thereto and thereon as may seem judicious and lease the same or any part thereof, as effectually as the Borrower could do, and the Trustee shall be entitled to collect and receive all rents, revenues and income of the Project and every part thereof and, after paying the expense of leasing the same, including the expenses of maintenance, repairs and insurance or other charges thereon, as well as just and reasonable compensation for the

services of the Trustee and its agents, attorneys, receivers or counsel, the Trustee shall apply the moneys arising as aforesaid as provided in Section 7.9 hereof.

(e) The Trustee, with or without entry, personally or by attorney, may in its discretion either (1) sell, or cause to be sold, all and singular the Project, and all the estate, right, title and interest, claim and demand therein, such sale or sales to be held at such place or places and time or times and upon such notice and otherwise as shall be required by law, or in the absence of such requirement, as the Trustee shall determine, or (2) institute such suit or proceeding for the foreclosure of this Indenture, with or without further, other or incidental relief, such as the appointment of a receiver, the specific enforcement of covenants or obligations or an injunction to prevent violations or threatened violations of any covenant, obligation or agreement provided by the Indenture.

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

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

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

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

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

(e) If no cash bid be received in an amount sufficient to pay all amounts then owing to the Trustee and the Bondholders, the Trustee may, after first readvertising such sale in the manner provided in Section 7.2 hereof, sell such property for an amount less than sufficient to pay all amounts then owing to



the Trustee and the Bondholders or for a consideration consisting of part cash and part purchase money mortgage, or both; provided (1) that such sale and the terms and amount of any purchase money mortgage are approved in writing by the holders of a majority in principal amount of the then Outstanding Bonds, and (2) that in the opinion of the Trustee the price obtained at such sale represents the fair market value of the property sold, as demonstrated by more than one qualified bid thereat or by appraisal by an independent appraiser acceptable to the Trustee.

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

(g) The purchaser 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.

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

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

Section 7.4 Rights and Remedies of Trustee on Default under Lease. The Trustee shall have the right in the name of the Borrower to declare any default and exercise any remedy or remedies under the Lease Agreement or any other lease of the Project, including the right to declare the entire rent reserved under such lease immediately due and payable and to take any available proceedings against any party liable upon any such lease for the payment thereof, including any guarantor, if any, of the Lessee's obligations. If there occurs an event of a default by the Lessee, as defined in Section 8.1 of the Lease Agreement, or if there occurs an event of a default under any other lessee of the Project in the punctual payment of rent sufficient to pay the principal of and

interest on all the Bonds Outstanding as such principal matures or becomes subject to mandatory redemption and such interest becomes due, the Trustee may, and upon the written request of the holders of a majority in aggregate principal amount of the Bonds then Outstanding shall, declare such lease in default and, upon being indemnified to its reasonable satisfaction, shall pursue such proper remedies as may be directed by the holders of such Bonds for the enforcement of the provisions of such lease and the exercise of any remedies available to the Borrower or the Trustee in the event of such default under such lease; subject, however, to the discretionary right of the Trustee, and upon written notice to the Trustee by the holders of a majority in principal amount of the Outstanding Bonds, the duty of the Trustee, to annul such declaration and destroy its effect at any time before action at law or in equity to enforce such right shall have been instituted.

Section 7.5 Rights and Remedies of Trustee in the Event of Bankruptcy, Etc. of a Lessee or Guarantor. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, composition or other judicial proceeding relative to any lessee, guarantor or other person obligated for rent on the Project or for payment of the Bonds, the Trustee (irrespective of whether there has been a default under this Indenture) shall be entitled and empowered to intervene in such proceedings on behalf of the Bondholders, to file and prove a claim or claims for the whole amount owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or bad faith) and of the Bondholders allowed in any such judicial proceedings, to collect and receive any moneys or other property payable or deliverable on any such claims, and to take such other action therein as the Trustee may deem necessary or appropriate to protect the interests of the Bondholders, and any receiver, assignee or trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each of the Bondholders to make payments to the Trustee.

Section 7.6 Rights of Lessee in Event of Default by Borrower under this Indenture. If there has been no event of default under the Lease Agreement and an Event of Default should occur under this Indenture, the Trustee shall notify the Lessee in writing of the occurrence of such default and the Lessee shall have the right to remedy such default hereunder within thirty days after such written notice, provided the Lessee shall pay all expenses of remedying such default. The exercise of the remedies set forth in Section 7.2 hereof is subject to the right of the Lessee under this Section to remedy a default as in this Section provided and limited.



Section 7.7 Special Provisions Concerning the Letter of Credit. (a) Anything in this Indenture to the contrary notwithstanding, upon the occurrence of an Event of Default described in paragraph (a), (f) or (g) of Section 7.1 of this Indenture, the Trustee shall declare the principal of all Bonds Outstanding and the interest accrued thereon immediately due and payable and shall promptly submit to the Bank a draft under the Letter of Credit, together with the certificate required by the Letter of Credit, in an amount equal to the sum of the following:

(i) an amount equal to the total aggregate principal amount of the Bonds then Outstanding, plus

(ii) an amount equal to accrued but unpaid interest on the Bonds, plus

(iii) an amount equal to any redemption premium due and payable on the Bonds in such event.

(b) All amounts collected by the Trustee from the Bank pursuant to subsection (a) of this Section shall be applied to the payment of the principal, premium (if any) and interest on the Bonds with respect to which such amounts were collected by the Trustee.

(c) If the moneys collected pursuant to the Letter of Credit are not sufficient to pay in full the principal of, premium, if any, and interest on the Bonds, or if any amounts due and owing to the Trustee under this Indenture have not been paid in full, the Trustee may proceed to enforce or exercise any other remedies available to it hereunder.

(d) The provisions of this Section 7.7 shall survive the termination of this Indenture and shall remain in effect until the Letter of Credit has expired.

Section 7.8 Subrogation Rights of Bank. If money is collected by the Trustee pursuant to the Letter of Credit, the Bank shall be subrogated to the rights possessed under this Indenture by the registered owners of the Bonds; provided, however, that the Bank shall be precluded from exercising or enforcing such subrogation rights until the principal of, premium, if any, and interest on all Bonds shall have been paid in full. For purposes of the subrogation rights of the Bank hereunder, (i) any reference herein to the registered owners of the Bonds shall mean the Bank, (ii) any principal of, mandatory redemption premium, optional redemption premium and interest on the Bonds paid with moneys collected pursuant to the Letter of Credit shall be deemed to be unpaid hereunder, and (iii) the Bank may exercise any rights it would have hereunder as the holder of the Bonds. The subrogation rights granted to the Bank in this Indenture are not intended to be exclusive of any other remedy or remedies available to the Bank, and such

subrogation rights shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bank Mortgage, the Reimbursement Agreement, the Credit Guaranty Agreement or any other instrument or agreement with respect to the reimbursement of moneys paid by the Bank pursuant to the Letter of Credit, and every other remedy now or hereafter existing at law or in equity or by statute.

Section 7.9 Application of Money Collected. Any money collected by the Trustee pursuant to the Letter of Credit shall be deposited in the Bond Fund and applied as provided in Section 7.7 hereof. Any other money collected by the Trustee pursuant to this Article or pursuant to any right given to it or action taken by it under the provisions of this Article, together with all other funds of the Borrower then held by it or the Trustee hereunder, shall, after payment of all amounts for which the Trustee has a lien under Section 8.7 hereof, be applied in the following order, at the date or dates fixed by the Trustee, and, in case of the distribution of such money on account of principal, premium (if any) or interest, upon presentation of the Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) Unless the principal of all 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 interest then due on the Bonds, with interest on overdue installments of such interest to the extent legally enforceable, and if the amount available shall not be sufficient to pay in full all such installments plus said interest thereon, then to the proportionate payment of all such installments and the interest thereon, according to the amounts thereof, without preference or priority of any installment of interest over any other installment or any discrimination or privilege among the persons entitled thereto.

Second. To the payment to the persons entitled thereto of the unpaid principal of the Bonds which shall have matured or shall have become subject to mandatory redemption and shall have been called therefor, with interest on overdue installments of principal from the respective dates upon which they became due or subject to mandatory redemption, and, if the amount available shall not be sufficient to pay in full all such principal together with the aforesaid interest thereon, then to the proportionate payment of such principal and interest, according to the amounts thereof, without preference or priority of any installment of principal over any other installment or any discrimination or privilege among the persons entitled thereto; and



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

(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, in proportion to the amounts for both principal and interest due respectively to the persons entitled thereto, without any discrimination or privilege among such persons; and

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

Section 7.10 Bondholders Need Not be Joined. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as trustee of an express trust without the necessity of joining as plaintiffs or defendants any Bondholders, and any recovery shall (after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) be for the ratable benefit of the holders of the Outstanding Bonds in respect of which such judgment has been recorded.

Section 7.11 Right of Bondholders to Direct Proceedings. The Owners of a majority in aggregate principal amount of the Outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee other than a draft under the Letter of Credit, provided that (1) such direction shall not be in conflict with any rule of law or this Indenture, (2) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Bondholders not taking part in such direction, and (3) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 7.12 Limitation on Suits by Bondholders. No Bondholder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or Trustee, or for any other remedy hereunder, unless (1) such Bondholder has previously given written notice to the Trustee of a continuing Event of Default; (2) the holders of not less than twenty-five percent

of the Bonds shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder; (3) such Bondholder or Bondholders have offered to the Trustee indemnity in the manner provided in Section 8.3(f) hereof; (4) the Trustee for thirty days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (5) no direction inconsistent with such written request has been given to the Trustee during such thirty-day period by the holders of a majority in principal amount of the Outstanding Bonds, it being understood and intended that no one or more Bondholders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Bondholders, or to obtain or to seek to obtain priority or preference over any other Bondholders or to enforce any right under this Indenture, except in the manner herein provided and for the ratable benefit of all the Bondholders.

Notwithstanding any other provision hereof, the right of the Bondholders, which is absolute and unconditional, to receive payment of the principal of and the interest on such Bonds on or after the due date or mandatory redemption or prepayment date thereof, but solely from the revenues and receipts from the leasing or sale of the Project, as therein and herein expressed, or to institute suit for the enforcement of such payment on or after such due date or mandatory redemption or prepayment date, or the obligation of the Borrower, 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 Bondholders at the time and place in said Bonds expressed, shall not be impaired or affected without the consent of such Bondholder; provided, however, that no Bondholder shall be entitled to take any action or institute any such suit to enforce the payment of his Bonds, whether for principal or interest, if and to the extent that the taking of such action or the institution or prosecution of any such suit or the entry of judgment therein would under applicable law result in a surrender, impairment, waiver or loss of the lien hereof upon the Project or any part thereof as security for the Bonds held by any other Bondholder.

Section 7.13 Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 7.14 Delay or Omission Not a Waiver. No delay or omission of the Trustee or of any Bondholder to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an



acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

Section 7.15 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Indenture invalid or unenforceable.

Section 7.16 Waivers of Past Defaults Under the Indenture. The Owners of not less than a majority in principal amount of the Outstanding Bonds may, on behalf of the Owners of all Outstanding Bonds, waive any past default under this Indenture and its consequence, except a default:

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

(2) In respect of any covenant or provision of this Indenture which under Article IX cannot be modified or amended without the consent of the Owner of each Outstanding Bond affected, or

(3) An Event of Default described in paragraph (f) or (g) of Section 7.1 hereof.

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

Section 7.17 Waivers of Past Default Under Lease Agreement. The Owners of not less than a majority in principal amount of the Outstanding Bonds may, on behalf of the Owners of all Outstanding Bonds, waive any past default under the Lease Agreement and its consequence, except an event of default described in paragraph (a) or (d) of Section 8.1 of the Lease Agreement.

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

## ARTICLE VIII

### THE TRUSTEE

#### Section 8.1 Certain Duties and Responsibilities.

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

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

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

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

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

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

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

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



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

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

**Section 8.2 Notice of Defaults.** Within ninety days after the occurrence of any Event of Default hereunder the Trustee shall transmit by mail to the Bondholders notice of such Event of Default known to the Trustee; provided, however, that except in the case of a default in the payment of the principal of (and premium, if any) or interest on any Bonds, the Trustee shall be protected in withholding such notice if and so long as a responsible officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Bondholders.

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

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

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

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

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

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

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

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

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

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



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

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

Section 8.6 Right of Trustee to Perform Certain Acts on Failure of Borrower. In case the Borrower or a lessee of the Project shall fail seasonably to pay or to cause to be paid any tax, assessment or governmental or other charge upon any part of the Project or the premiums on insurance on the Project or the expenses of maintaining or preserving the Project, the Trustee may pay such tax, assessment, governmental charge, premiums or expenses without prejudice, however, to any rights of the Trustee or the Bondholders hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at the Prime Rate plus 2% per annum or the maximum rate of interest allowed by law, whichever is less, shall be repaid by the Borrower upon demand, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds and shall be paid out of the proceeds of any sale of the trust estate if not otherwise paid by the Borrower, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of not less than twenty-five percent of the Bonds and shall have been provided with adequate funds for the purpose of such payment.

Section 8.7 Compensation of Trustee; Lien. Except as set forth hereinafter, the Trustee shall have a first lien (subject to Permitted Encumbrances) on the Mortgaged Property and the revenues and receipts pledged hereunder and all funds held or collected by the Trustee as such with right of payment prior to payment on account of interest, principal or premium (if any) of any Bond, for reasonable compensation for all services rendered by it hereunder and for all reasonable expenses, advances, disbursements and counsel fees incurred or made in and about the execution of the trusts hereby created and exercise and performance of the powers and duties of the Trustee hereunder and the cost and expense incurred in defending against any liability in the premises of any character whatsoever (unless such liability is adjudicated to

have resulted from the gross negligence or willful default of the Trustee). Anything in this Indenture to the contrary notwithstanding, the Trustee shall not have a lien upon or right of payment from the Bond Fund or any funds held in trust for the benefit of particular Bondholders.

Section 8.8 Resignation and Removal; Appointment of Successor.

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

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

(c) The Trustee may be removed at any time by the Owners of a majority in aggregate principal amount of the Outstanding Bonds by an instrument or instruments delivered to the Trustee, the Borrower and the Lessee.

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

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Borrower shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by the Owners of a majority in aggregate principal amount of the Outstanding Bonds by an instrument or instruments delivered to the Borrower, the retiring Trustee and the Lessee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Borrower. If no successor Trustee shall have been so appointed by the Borrower or the Bondholders and accepted appointment in the manner hereinafter provided, any Bondholder may, on behalf of himself and all



others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

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

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

## ARTICLE IX

### AMENDMENTS AND SUPPLEMENTS TO INDENTURE AND LEASE AGREEMENT; CONSENT OF TRUSTEE TO NEW LEASE OF PROJECT

Section 9.1 Supplemental Indentures Without Consent of Bondholders. Without the consent of the Bondholders or any notice to any Bondholder, the Borrower and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to add to the covenants of the Borrower for the benefit of the Bondholders, or to surrender any right or power herein conferred upon the Borrower; or

(2) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions which shall not be inconsistent with the provisions of this Indenture, provided such action shall not adversely affect the interests of the Bondholders; or

(3) to subject to this Indenture additional revenues, properties or collateral; or

(4) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States, and, if they so determine, to add to this Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

Section 9.2 Supplemental Indentures With Consent of Bondholders. With the consent of the Owners of not less than two-thirds in aggregate principal amount of the Outstanding Bonds, by a written instrument or instruments delivered to the Borrower and the Trustee, the Borrower and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Bondholders under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Owner of each Outstanding Bond affected thereby,

(1) change the stated maturity of the principal of, or any installment of interest on, any Bond, or reduce the principal amount thereof or the interest thereon or any premium (if any) payable upon the redemption or prepayment



thereof, or change the coin or currency in which any Bond or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption or prepayment, on or after the redemption or prepayment date), or

(2) reduce the percentage in principal amount of the Outstanding Bonds, the consent of whose Owners is required for any such supplemental indenture, or

(3) eliminate or modify any provision of this Indenture, the elimination or modification of which by its terms requires the consent of the Owner of each Bond affected thereby, or

(4) create a lien or charge on the Project or the revenues therefrom ranking prior to or on a parity of lien with the lien and pledge thereon contained herein, or

(5) establish preference or priority as between the Bonds, or

(6) release any rights under the Letter of Credit.

It shall not be necessary for any written consent of any Bondholder under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

If at any time the Borrower shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed to the Bondholders. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all Bondholders. If the Owners of not less than two-thirds in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Bondholder 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 Trustee or the Borrower from executing the same or from taking any action pursuant to the provisions thereof.

The Trustee shall also cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Lessee. A

supplemental indenture under this Article shall not become effective unless and until the Lessee shall have consented to the execution and delivery thereof. The Lessee shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee does not receive on or before 4:30 o'clock P.M. at the principal office of the Trustee on the fifteenth day after the mailing of said notice a letter of protest or objection thereto signed by or on behalf of the Lessee.

Section 9.3 Amendments, etc. to Lease Agreement Not Requiring Consent of Bondholders. The Borrower and the Trustee shall, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Lease Agreement as may be required (i) by the provisions of the Lease Agreement and this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission or to correct or supplement any provision which may be inconsistent with any other provision, (iii) for the purposes of identifying more precisely any leased property or of adding other leased property or of adding other covenants of the Lessee or surrendering any rights, options or interests conferred on the Lessee, or (iv) in connection with any other change therein which, in the judgment of the Trustee, will not adversely and significantly affect the rights of the Bondholders.

Section 9.4 Amendments, etc. to Lease Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in the preceding Section, neither the Borrower nor the Trustee shall consent to any other amendment, change or modification of the Lease Agreement without giving of notice and the written consent of the Owners of not less than two-thirds in aggregate principal amount of the Bonds at the time Outstanding given and procured as provided in Section 9.2 hereof; provided, however, that neither the Borrower nor the Trustee shall consent to any amendment, change or modification which affects the obligation of the Lessee to make payments in the amounts and at the times required for the payment of the principal of and interest on the Bonds as provided in the Lease Agreement without the written consent of the Owners of all the Outstanding Bonds.

If at any time the Borrower and Lessee shall request the consent of the Trustee to any such proposed amendment, change or modification of the Lease Agreement, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner and with the same effect as provided in Section 9.2 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Bondholders.



Section 9.5 Consent of Bank and Guarantors to Amendment to Lease Agreement or Indenture. The consent of the Bank and any guarantor of the Bonds or of the Lessee's obligations under the Lease Agreement shall be obtained prior to the execution of any amendments or supplements authorized under the provisions of this Article.

Section 9.6 Discretion of The Trustee. In the case of any amendments or supplements authorized under the provisions of this Article, the Trustee shall be entitled to exercise its discretion in determining whether or not any proposed amendment or supplement, or any term or provision therein contained, is proper or desirable, having in view the purposes of such instrument, the needs of the Borrower, the Lessee and the Project and the rights and interests of the Bondholders, and the Trustee shall not be under any responsibility or liability to the Borrower, the Lessee 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 Sections 9.1 through 9.4 hereof. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, a written opinion of Independent Counsel acceptable to it as conclusive evidence that any such amendment or supplement complies with the provisions hereof and that the Trustee is authorized hereunder to join in the execution of or consent to such amendment or supplement. The Trustee may, but shall not be obligated to, enter into any supplemental indenture or consent to any amendment of the Lease Agreement which affects the Trustee's own rights, duties or immunities under this Indenture.

Section 9.7 Effect of Supplement and Amendment. Upon the execution of any supplemental indenture or the consent of the Trustee to any supplement of or an amendment to the Lease Agreement under this Article, this Indenture or the Lease Agreement, as the case may be, shall be modified in accordance therewith, and such supplemental indenture or supplement or amendment shall form a part of this Indenture or the Lease Agreement, as the case may be, for all purposes; and every holder of Bonds theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.8 Consent of Trustee to Lease of Project. The Trustee shall not give its written consent to a lease of the Project as required by Section 5.4 hereof without the giving of notice and the receiving of written consent of the Owners of not less than two-thirds in aggregate principal amount of the Bonds at the time Outstanding given and procured as provided in Section 9.2 hereof; provided that the Trustee shall not consent to any such lease which does not obligate the lessee to pay rents in an amount sufficient to pay the principal of and interest on the Bonds as the same shall mature and become subject to mandatory prepayment or redemption as well as to cover the cost of maintaining and of insuring the Project and the Trustee's fees and expenses without the written consent of

the Owners of all of the Outstanding Bonds. Nothing contained in this Section is intended to limit or restrict the Trustee in the exercise of any right or remedies provided in Section 7.2(d) hereof.

At any time the written consent of the Trustee is required under this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed lease to be given in the same manner and with the same effect as provided in Section 9.2 hereof with respect to supplemental indentures. Such notice shall briefly describe the proposed lease, give the name and address of the proposed lessee and shall state that copies of such lease, together with information with respect to the proposed lessee, are on file at the principal office of the Trustee for inspection by all Bondholders.

The Trustee shall be entitled to receive and shall be fully protected in relying upon a written opinion of Independent Counsel acceptable to it as conclusive evidence that the proposed lease complies with the provisions hereof and that the Trustee is authorized under the provisions hereof to give its written consent to such lease. The Trustee shall not be under any responsibility or liability to the Borrower 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 this Section and Section 5.4 hereof.

## ARTICLE X

### PAYMENT OF BONDS; SATISFACTION OF LIEN OF INDENTURE

Section 10.1 Discharge of Indenture; Bonds Deemed No Longer Outstanding. (a) If (i) the Borrower shall pay or cause to be paid to the Bondholders from Qualified Deposits the principal, premium (if any) and interest to become due thereon at the times and in the manner stipulated therein and herein, (ii) all fees and expenses of the Trustee shall have been paid, and (iii) the Borrower shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Borrower such instruments in writing as shall be requisite to satisfy the lien hereof, and assign and deliver to the Borrower any property at the time subject to the lien of this Indenture which may then be in its possession, except amounts in the Bond Fund or the Redemption Fund required to be paid to the Lessee or the Bank and except cash or securities held by the Trustee for the payment of interest on and retirement of the Bonds.



(b) Bonds for the payment, redemption or prepayment of which moneys which are Qualified Deposits shall have been set aside and held in trust by the Trustee on the maturity, redemption or prepayment date thereof shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section and no longer Outstanding under this Indenture.

(c) All Outstanding Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section and no longer Outstanding under the Indenture if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Borrower shall have given to the Trustee in form satisfactory to it irrevocable instructions to give and publish notice of redemption thereof on such date, (ii) there shall have been deposited with the Trustee either moneys which are Qualified Deposits in an amount which shall be sufficient, or Government Obligations purchased with Qualified Deposits the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time and available for such purpose which are Qualified Deposits, shall be sufficient, to pay when due the principal of, premium (if any) and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event said Bonds are not by their terms subject to redemption or payment within the next succeeding ninety days, the Borrower shall have given the Trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to such Bondholders that the deposit required by clause (ii) of this subsection has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section and no longer Outstanding under this Indenture and stating such maturity or redemption date or dates upon which moneys are to be available for the payment of the principal of and premium (if any) on said Bonds.

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

(e) Anything in Article IX hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Section for the payment of Bonds and such Bonds shall be deemed to have been paid and to be no longer Outstanding hereunder as provided in this Section, but such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section shall be made without the consent of the Owner of each Bond affected thereby.

Section 10.2 Surrender of Bonds by Borrower. The Borrower may at any time surrender to the Trustee for cancellation by it any Bonds previously executed and delivered, which the Borrower may have acquired in any manner whatever, and such Bonds upon such surrender for cancellation shall be deemed to be paid and no longer Outstanding hereunder.

Section 10.3 Release of Funds Upon Payment of Bonds. Any amounts remaining in the Bond Fund and the Redemption Fund after payment in full of the Bonds, the fees, charges and expenses of the Trustee and all other amounts required to be paid hereunder shall be paid to the Bank in satisfaction of all amounts owing thereto under the Reimbursement Agreement, Bank Mortgage, or Credit Guaranty Agreement, and any amount remaining after such payment shall be paid or applied as provided in the Lease Agreement if there is no default hereunder.

## ARTICLE XI

### FEDERAL REBATE PAYMENTS

Section 11.1 Computations and Payments of Rebate. The Lessee, acting on behalf of the Borrower, shall, in a timely manner, make all determinations and calculations, file all reports, forms, and returns, remit all moneys and take all other action necessary for compliance with the provisions of Section 148(f) of the Code, and regulations thereunder, with respect to rebate payments to the United States of America. Upon the direction of the Lessee, the Trustee shall make any and all such rebate payments to the United States of America from any fund established under this Indenture and, pursuant to such direction of the Lessee, shall retain in any fund such amounts as may be necessary to enable the Trustee to make any and all such rebate payments.

Section 11.2 Records. The Trustee shall keep and make available to the Lessee such books and records as are required by Section 148(f) of the Code with respect to the subject matter of this Article and as shall be necessary or desirable to enable the Lessee to make the calculations required hereby or by said Section 148(f). The Trustee shall maintain such records for such time as may at any time be required by law without regard to any of the provisions of this Indenture with

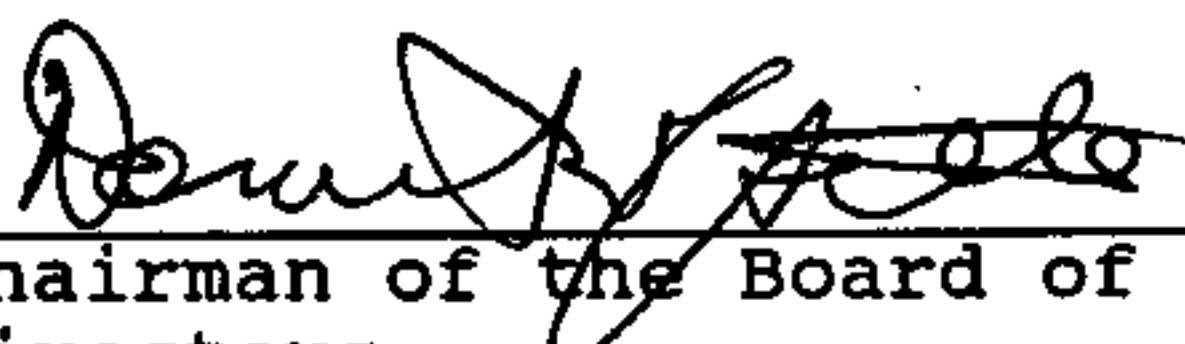


respect to the termination of the Trustee's other obligations under this Indenture.

Section 11.3 Other Matters. All costs and expenses of compliance with the provisions of this Article shall be paid by the Lessee.

IN WITNESS WHEREOF, the Borrower has caused this Indenture to be signed in its name and behalf by its Chairman of the Board of Directors and its corporate seal to be hereunto affixed and attested by its Secretary and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by one of its officers, its official seal to be hereunto affixed and the same to be attested by one of its officers, both of whom are thereunto duly authorized, and the Borrower and the Trustee have caused this Indenture to be dated as of November 1, 1993.


THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

By   
Chairman of the Board of  
Directors

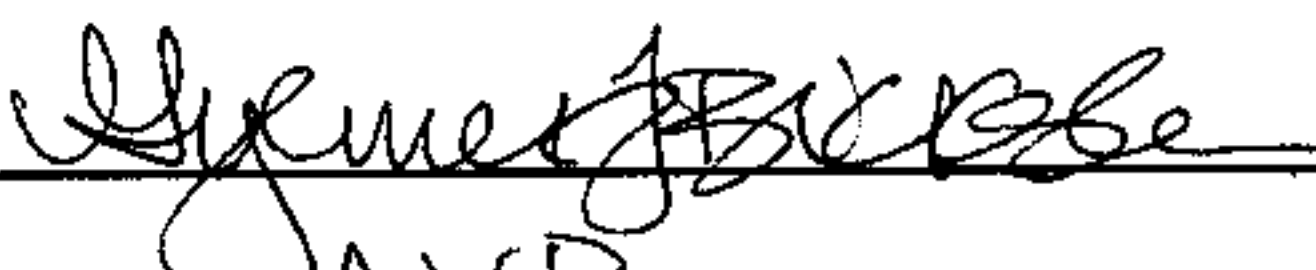
S E A L

Attest:   
Secretary

FIRST COMMERCIAL BANK

By   
Its VP & Trust Officer

S E A L

Attest:   
Its AVP

ACKNOWLEDGMENT OF BORROWER

STATE OF ALABAMA  
SHELBY COUNTY

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

Given under my hand this the 23<sup>rd</sup> day of November, 1993.

Robert Halston  
Notary Public

NOTARIAL SEAL

My commission expires: 12-30-94

ACKNOWLEDGMENT OF TRUSTEE

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Woodie E. Alston whose name as V.P. & Trust Officer of First Commercial Bank is signed to the foregoing Mortgage and Indenture of Trust and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage and Indenture of Trust, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said Bank.

Given under my hand this the 3<sup>rd</sup> day of December, 1993.

Robert Halston  
Notary Public

NOTARIAL SEAL

My commission expires: 12-30-94



## EXHIBIT A

### PARCEL ONE

Commence at the southwest corner of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 12, Township 20 south, Range 3 west, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section a distance of 1,091.42' to a point; Thence turn 69°30'00" left and run northeasterly a distance of 480.00' to an iron (steel) pin; Thence turn 1°30'55" right and continue northeasterly a distance of 331.34' to an "X" in a concrete retaining wall marking the southeastern corner of subject property and the point of beginning of the parcel being described; Thence continue along last described course a distance of 109.72' to a point; Thence turn 12°10'14" right and run a distance of 252.80' to a point on the southerly margin of Crosscreek Trail, a public street in the City of Pelham, Alabama; Thence turn 124°10'04" left and run westerly along said margin of said street a distance of 103.25' to the P.C. (Point of Curvature) of a street curve to the right having a central angle of 29°41'30" and a radius of 662.59'; Thence run along the arc of said curve an arc distance of 343.37' to a point; Thence left 27°18'10" from tangent and run westerly 293.74' to a point; Thence turn 24°15'05" left and run Southwesterly a distance of 278.61' to a point; Thence turn 69°05'03" left and run southerly a distance of 306.66' to a point; Thence turn 89°04'12" left and run easterly a distance of 795.38' to the point of beginning, containing 7.40 acres. Property is marked on each corner with a steel pin, pipe, monument or "X" in concrete.

### PARCEL TWO

Commence at the southwest corner of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 12, Township 20 south, Range 3 west, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section a distance of 1,091.42' to a point; Thence turn 69°30'00" left and run northeasterly a distance of 480.00' to an iron (steel) pin; Thence turn 1°30'55" right and continue northeasterly a distance of 331.34' to a point; Thence turn 112°00'50" left and run westerly a distance of 795.38' to the point of beginning of the parcel being described; Thence turn 89°04'12" right and run northerly a distance of 306.66' to a point; Thence turn 1°18'02" left and continue northerly a distance of 90.51' to a point in the centerline of Bishop Creek; Thence turn 54°48'16" left and run northwesterly along centerline of said creek 30.91' to a point; Thence turn 15°24'04" right and run northwesterly along centerline of said creek 185.97' to a point; Thence turn 11°32'36" left and continue northwesterly along centerline of said creek 91.57' to a point; Thence turn 87°36'20" left and run southwesterly 536.95' to a point; Thence turn 129°35'19" left and run easterly 174.53' to a point; Thence turn 40°30'57" right and run southeasterly 299.32' to a point; Thence turn 40°38'40" left and

run easterly 172.26' to the point of beginning, containing 4.51 acres. Property is marked on each corner with a steel pin, pipe, monument or axle (except those points that fall in the centerline of creek).

ALSO, a non-exclusive easement for ingress and egress, being more particularly described as follows:

Commence at the southwest corner of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 12, Township 20 south, Range 3 west, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section 1,091.42' to a point; Thence turn 69°30'00" left and run northeasterly 480.00' to a point; Thence turn 1°30'55" right and continue northeasterly 331.34' to a point; Thence turn 112°00'50" left and turn westerly 795.38' to a point; Thence turn 89°04'12" right and run northerly 306.66' to a point; Thence 1°18'02" left and run northerly 16.06' to the point of beginning, on the centerline of a thirty foot wide access easement, the centerline being fifteen feet from each side of subject easement; Thence turn 69°05'03" right and run northeasterly 216.88' to a point; Thence turn 15°54'01" left and run northeasterly 219.50' to the southerly margin of Crosscreek Trail, a public road, and the end of easement.

All situated in Shelby County, Alabama.



- 1 Videx Vas-20-BH Specialty Bolt Machine
- 3 Tesker Model 320 Thread Rolling Machines Max 3"  
Ser. #93611-93613
- 1 Ruja Eagle 1-1/2" - 1-1/4" Single End Threader
- 3 Nissan C504 188" Triple Mast/54" Forklifts
- 2 486 Computer Systems
- 2 Tesker Model 35 Thread Rolling Machines

Inst # 1994-02580

EXHIBIT B

Inst # 1994-02580  
01/24/1994-02580  
04:00 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
071 MCD 184.50