

STATE OF ALABAMA

SHELBY COUNTY

THIRD AMENDATORY AND SUPPLEMENTAL MORTGAGE AND INDENTURE

This instrument is amendatory of and supplemental to the Mortgage and Indenture between The Industrial Development Board of the Town of Pelham and AmSouth Bank N.A. dated as of October 1, 1988 recorded in Volume 218 at Page 715 in the Office of the Judge of Probate of Shelby County, Alabama (the "Original Mortgage") and the Amendatory and Supplemental Mortgage and Indenture thereto dated as of August 1, 1990 recorded in the said office in Book 317 at Page 37 (the "Supplemental Mortgage") and the Second Amendatory and Supplemental Mortgage and Indenture thereto dated as of July 1, 1991 recorded in the said office in Book 367 at Page 732 (the "Second Supplemental Mortgage"), and is entered into for the purpose of authorizing a new bond to refund the Industrial Development Revenue Bond (Valleydale Business Center Completion Project), now outstanding in the principal amount of \$620,804, issued pursuant to the Supplemental Mortgage and the Second Supplemental Mortgage (the "Completion Bond").

1. Definitions and Confirmation. All terms used herein with initial capitalization shall have the meanings ascribed to them in the Original Mortgage except that (a) the word "Bond" shall mean the bond authorized under the Original Mortgage as well as the bond authorized herein and all references to the Bond in the Original Mortgage shall be construed to include both of the said bonds, and (b) the word "Guaranty" shall be expanded to mean both the Bond Guaranty Agreement defined in the Original Mortgage and the Bond Guaranty Agreement of even date herewith by and among the Guarantors and AmSouth Bank N.A., as Mortgagee, and references to the Guaranty shall include both such agreements. Except as amended or supplemented hereby, all provisions of the Original Mortgage, and all provisions of the Supplemental Mortgage and the Second Supplemental Mortgage are hereby ratified, approved and confirmed in all respects.

2. Recitals. Simultaneously herewith the Borrower and the Lessee have entered into a Second Supplemental and Amendatory Lease Agreement pursuant to which the Borrower has agreed to issue its Industrial Development Revenue Refunding Bond (Valleydale Business Center Completion Project) in the principal amount of \$620,804 to refund the Completion Bond, the payment of the outstanding principal of which, in the amount of \$620,804, is now in default. The Borrower hereby renews and confirms each of the representations in Section 1.8 of the Original Mortgage.

3. The 1994 Bond. A single, fully registered Bond shall be issued hereunder (the "1994 Bond") in the principal amount of \$620,804. The 1994 Bond shall be in the form, shall bear interest at the rate or rates, shall be payable as to principal

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and interest at such time or times, in such amounts, shall be subject to prepayment at such times and under such circumstances, and contain such other terms as are set forth in the form of 1994 Bond hereafter. Except for the provisions hereof, all conditions of the Original Mortgage shall be applicable to the 1994 Bond. The 1994 Bond shall be secured by and payable on a parity of lien with the bond issued under the Original Mortgage. The 1994 Bond shall be exchanged for the Completion Bond, which shall thereupon be cancelled and not reissued. At the time of such exchange, the Lessee shall pay to the holder of the Completion Bond all then accrued and unpaid interest thereon. The form of the 1994 Bond shall be substantially as follows:

UNITED STATES OF AMERICA
STATE OF ALABAMA

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BOND
(VALLEYDALE BUSINESS CENTER COMPLETION PROJECT)

KNOW ALL MEN BY THESE PRESENTS that The Industrial Development Board of the Town of Pelham, a public corporation created and existing under the laws of the State of Alabama (herein called the "Board"), for value received, hereby promises to pay from the source hereinafter described and to the registered owner hereof the principal sum of

SIX HUNDRED TWENTY THOUSAND, EIGHT HUNDRED FOUR DOLLARS
(\$620,804)

such principal being payable in installments as follows:

(a) On the first day of the calendar month next succeeding the date of issuance of this Bond, and on the first day of each calendar month thereafter, the following sums: \$1,300 for 12 months; then \$1,450 for the next 12 months; and \$1,600 for the last 12 months; and

(b) On the third anniversary of the date of issuance of this Bond, unless sooner paid, an amount equal to the entire unpaid principal balance hereof;

and to pay (but solely from the source hereinafter described) interest on the unpaid principal amount of this bond from the date hereof (computed on the basis of a 360-day year for the actual number of days elapsed) at a per annum rate of interest equal to the Prime Rate (as such term is hereinafter defined) plus 1/2% per annum, payable on the first day of the first month next following the issuance hereof, and on the first day of each calendar month thereafter and on the final maturity hereof, until the principal of this bond is paid in full.

The term "Prime Rate" shall mean the per annum rate of interest announced from time to time by AmSouth Bank N.A., a national banking association with its principal office in the City of Birmingham, Alabama (herein called the "Bank"), as its prime rate, with the understanding that the Bank's prime rate is one of its base rates established from time to time for lending purposes and is evidenced by the recording thereof after its announcement in such internal publication or publications as the Bank may designate.

Interest on overdue principal and (to the extent legally enforceable) on any overdue installment of interest on this bond shall be payable at the Prime Rate, as adjusted from time to time, plus 4% per annum. For the purpose of determining the amount of interest payable on each interest payment date occurring prior to the final maturity or the redemption of this bond in whole, the Prime Rate in effect on the fifteenth day (whether or not a business day) of the calendar month next preceding such interest payment date shall be deemed to be the Prime Rate in effect until the day prior to such interest payment date. If the Prime Rate changes during such period, the difference between the amount of interest that in fact accrued during such period and the amount of interest actually paid shall be added to or subtracted from, as the case may be, the interest otherwise payable for the next succeeding interest period. For the purpose of determining the amount of interest payable at the final maturity or upon redemption of this bond in whole, all changes in the Prime Rate occurring on or prior to the day before the final maturity or such redemption date shall be taken into account.

Both the principal of and interest on this bond shall be payable at the principal office of the Mortgagee (AmSouth Bank N.A., in the City of Birmingham, Alabama) or of its successors, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

This bond is issued for the purpose of refunding a bond issued for financing a part of the cost of constructing on real property owned by the Board buildings, facilities and improvements, and paying necessary expenses incidental thereto (such land, buildings, improvements and facilities, and the buildings, facilities and improvements already on the said land, as they may at any time exist, being herein called the "Project"). The Project is leased to Valleydale Business Center, an Alabama general partnership (herein called the "Lessee"), under a Lease Agreement dated as of October 1, 1988 and amended and supplemented as of August 1, 1990 and February 1, 1994 (herein as so supplemented and amended called the "Lease Agreement"). This bond is issued under and is secured and entitled to the protection given by a Mortgage and Indenture dated as of October 1, 1988 and amended and supplemented as of August 1, 1990, July 1, 1991, and February

1, 1994 (herein as so amended and supplemented called the "Indenture") duly executed and delivered by the Board to AmSouth Bank N.A., as mortgagee (herein called the "Mortgagee"), which term also includes any successor mortgagee under the Indenture) on a parity of lien with a bond already issued under the said Mortgage and Indenture dated as of October 1, 1988. 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 Mortgagee and the holder of this bond, and the terms upon which this bond is authenticated and delivered. Pursuant to a Bond Guaranty Agreement dated as of February 1, 1994 (herein called the "Guaranty"), the general partners of the Lessee (herein referred to together as the "Guarantors"), have guaranteed the payment of this bond.

This bond is registered as to principal and interest on the registration books of the Board at the principal office of the Mortgagee as Bond Registrar, and, subject to the provisions of the Indenture, this bond may only be transferred on such books by the registered owner in person or by duly authorized attorney, evidence of such transfer to be in like manner endorsed hereon. The principal of and interest on this bond shall be payable only to the registered owner or his legal representative. Interest accruing on this bond will be paid by check or draft of the paying agent at the times provided herein to the registered owner of this bond by mail to the address shown on the registration books. Upon any transfer of this bond the Mortgagee shall endorse on the record made a part hereof the then unpaid principal amount hereof and the accrued interest thereon on the date of transfer and such record by the Mortgagee shall be conclusive of the amount then owing on this Bond, and each holder hereof shall take the same subject to such entry by the Mortgagee.

This bond is subject to prepayment as follows:

(1) The principal of this bond is subject to prepayment (without premium or penalty) in whole or in part on any interest installment payment date in the event of (a) condemnation of the Project, or any part thereof, to the extent provided in Section 5.2 of the Lease Agreement, or (b) exercise by the Lessee of its option to purchase the Project, or parts thereof, as provided in Section 9.3 of the Lease Agreement.

(2) The entire unpaid principal balance of this bond or any lesser portion thereof not less than \$1,000 is subject to prepayment (without premium or penalty) at the option of the Board, on any interest installment payment date.

Any redemption of less than all of the then outstanding principal of this bond shall be credited against the then last

maturing installment of principal hereof and shall not reduce the amount of any prior principal installments required hereby.

Ten days' notice of the intended prepayment of any part of the principal of this bond shall be given by mail to the registered owner hereof at the address of such owner as shown on the Bond Registrar's books, unless such notice be waived. If and when any part of the principal of this bond is called for prepayment, it will cease to bear interest on the specified prepayment date provided funds for its prepayment are on deposit at the place of payment on that date, and, upon such deposit, such principal shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture. If for any reason it is impossible or impractical to give notice of prepayment in the manner herein provided, then such notice in lieu thereof as shall be made with the approval of the Mortgagee shall constitute a sufficient giving of notice.

This bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Alabama, particularly 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 said supplemental and amendatory indenture. This bond is the limited obligation of the Board and is 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 interest on and principal of this bond are to be paid to the Mortgagee 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 (herein called the "Municipality") 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 Municipality 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 this bond or for any claim based hereon or upon any obligation, covenant or agreement in the Indenture contained, 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 this bond.

The holder 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 this bond may be declared due and payable in the manner and with the effect provided in the Indenture.

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, 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, as the same become due, will be sufficient in amount for that purpose.

THE INTEREST ON THIS BOND IS SUBJECT TO THE FEDERAL INCOME TAX.

IN WITNESS WHEREOF, The Industrial Development Board of the Town of Pelham has caused this bond to be executed in its name with the signature of the Chairman of its Board of Directors and attested by the signature of its Secretary, and has caused its corporate seal to be hereunto affixed, all as of the ____ day of _____, 1994.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

By _____
Chairman of its Board of
Directors

S E A L

Attest: _____
Secretary

CERTIFICATE OF REGISTRATION

This bond is registered on the registry records of The Industrial Development Board of the Town of Pelham, Alabama, in the permanent records of the Board in the name of the last owner named below. The principal of and interest on this bond shall be payable only to or upon the order of such registered owner.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Authorized Officer of Mortgagee</u>
_____	AmSouth Bank N.A.	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ENDORSEMENT OF UNPAID PRINCIPAL AND ACCRUED INTEREST ON DATE OF TRANSFER

<u>Date of Transfer</u>	<u>Principal Unpaid</u>	<u>Accrued Interest on Date of Transfer</u>	<u>Signature of Authorized Officer of Mortgagee</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Assignment Clause. The Borrower hereby assigns to the Mortgagee as security for the 1994 Bond the subleases of the Project or any part thereof assigned to the Borrower by the Lessee in the Assignment of Rents and Leases between the Lessee and the Borrower dated as of October 1, 1988.

5. Consent. The holder of the Bond issued under the Original Mortgage, AmSouth Bank N. A., has evidenced its consent to the issuance of the 1994 Bond and the execution and delivery hereof and of the Second Supplemental and Amendatory Lease dated as of February 1, 1994 between the Lessor and the Lessee by the execution of this instrument.

IN WITNESS WHEREOF, the Borrower has caused this instrument to be signed in its name and on its behalf by the Chairman or Vice Chairman of its Board of Directors and its corporate seal to be hereunto affixed and attested by its

Secretary or its Assistant Secretary, and to evidence its acquiescence in the provisions hereof and in the issuance of the 1994 Bond authorized herein, the Mortgagee has caused this instrument to be signed in its name and on its 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 parties have caused this instrument to be dated as of February 1, 1994.

THE INDUSTRIAL DEVELOPMENT
BOARD OF THE TOWN OF PELHAM

By

[Signature]
Its Chairman of the Board
of Directors

(Seal)

Attest:

Tillman T. Egan
Its Secretary

AMSOUTH BANK N.A.

By

Dean H. Burgess
Its Vice President

(Seal)

Attest:

[Signature]
Its Assistant Vice President

STATE OF ALABAMA

SHELBY COUNTY

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

Given under my hand this the 15th day of February, 1994.

Robert H. Walton

Notary Public

NOTARIAL SEAL

My commission expires: 12-30-94

STATE OF ALABAMA
JEFFERSON COUNTY

I, Joanne Blaikie, a Notary Public in and for said County, in said State, hereby certify that

Dean H. Burgess, whose name as Vice President of AmSouth Bank N.A., a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association.

Given under my hand this the 28th day of February, 1994.

Joanne Blaikie

Notary Public

NOTARIAL SEAL

MY COMMISSION EXPIRES NOVEMBER 10, 1990

My commission expires: _____

This instrument was prepared by:

Robert H. Walston
Walston, Stabler, Wells,
Anderson & Bains
505 20th Street North, Suite 500
Birmingham, Alabama 35203
205-251-9600

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