

---

---

AMENDED LEASE AGREEMENT

Dated May 1, 1994

Between

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

and

PELHAM INDUSTRIAL ENTERPRISES, L.L.C.

---

---

05/26/1994-16976  
09:47 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
034 MCD 91.00

st # 1994-16976  
# 1994-16976

*Cabana Title*

## TABLE OF CONTENTS

	<u>Page</u>
Parties . . . . .	1
Recitals . . . . .	1

### ARTICLE 1

#### Definitions and Other Provisions of General Application

SECTION 1.01	Definitions . . . . .	3
SECTION 1.02	Effect of Headings and Table of Contents . . . . .	4
SECTION 1.03	Date of Lease Agreement . . . . .	4
SECTION 1.04	Separability Clause . . . . .	4
SECTION 1.05	Governing Law . . . . .	4
SECTION 1.06	Counterparts . . . . .	5

### ARTICLE 2

<u>Demising Clause</u> . . . . .	5
----------------------------------	---

### ARTICLE 3

<u>Suitability of the Project</u> . . . . .	5
---	---

### ARTICLE 4

#### Lease Term and Rental Payments

SECTION 4.01	Lease Term . . . . .	5
SECTION 4.02	Basic Rental Payments . . . . .	6
SECTION 4.03	Additional Rental Payments . . . . .	7
SECTION 4.04	Overdue Rental Payments . . . . .	8
SECTION 4.05	Unconditional Obligation of User . . . . .	8

### ARTICLE 5

#### Concerning the Bonds, the Indenture and the Trustee

SECTION 5.01	Assignment of Lease Agreement and Rental Payments by Issuer . . . . .	8
SECTION 5.02	Redemption of Bonds . . . . .	9
SECTION 5.03	Amendment of Indenture . . . . .	9
SECTION 5.04	The Special Funds . . . . .	9
SECTION 5.05	Effect of Full Payment of Indebtedness . . . . .	9

## ARTICLE 6

### Provisions Respecting the Project

SECTION 6.01	Possession and Use of Project . . . . .	10
SECTION 6.02	Maintenance and Other Operating Expenses . . . . .	10
SECTION 6.03	Taxes, Assessments, Etc. . . . .	10
SECTION 6.04	Improvements, Alterations, Etc. . . . .	11
SECTION 6.05	Utility Easements . . . . .	11
SECTION 6.06	Transfer or Encumbrance Created by Issuer . . . . .	11
SECTION 6.07	Assignment, etc. of Leasehold Interest . . . . .	12
SECTION 6.08	Insurance . . . . .	12
SECTION 6.09	Damage and Destruction . . . . .	13
SECTION 6.10	Condemnation . . . . .	13

## ARTICLE 7

### Representations and Covenants

SECTION 7.01	General Representations . . . . .	14
SECTION 7.02	Eligibility of Project for Financing . . . . .	15
SECTION 7.03	Company Existence . . . . .	16
SECTION 7.04	Further Assurances . . . . .	16
SECTION 7.05	Inspection of Records . . . . .	17
SECTION 7.06	Advances by Issuer or Trustee . . . . .	17
SECTION 7.07	Indemnity of Issuer and Trustee . . . . .	17

## ARTICLE 8

### Remedies

SECTION 8.01	Events of Default . . . . .	18
SECTION 8.02	Remedies on Default . . . . .	18
SECTION 8.03	No Remedy Exclusive . . . . .	19
SECTION 8.04	Agreement to Pay Attorneys' Fees and Expenses . . . . .	20
SECTION 8.05	No Additional Waiver Implied by One Waiver . . . . .	20
SECTION 8.06	Remedies Subject to Applicable Law . . . . .	20

## ARTICLE 9

### Options

SECTION 9.01	Option to Terminate . . . . .	20
SECTION 9.02	Option to Purchase Project . . . . .	20
SECTION 9.03	Option to Purchase Part of Project . . . . .	21
SECTION 9.03	Conveyance on Exercise of Option to Purchase . . . . .	21

## ARTICLE 10

### Miscellaneous

SECTION 10.01	Issuer's Liabilities Limited . . . . .	22
SECTION 10.02	Corporate Existence of Issuer . . . . .	22
SECTION 10.03	Notices . . . . .	22
SECTION 10.04	Successors and Assigns . . . . .	23
SECTION 10.05	Benefits of Lease Agreement . . . . .	23
SECTION 10.06	Municipal Public Service Payment . . . . .	23
SECTION 10.07	Prior Agreements Canceled . . . . .	24
SECTION 10.08	Prior Leases to Remain in Effect; Construction of Lease Agreement . . . . .	24
Testimonium . . . . .		24
Signatures . . . . .		25
Acknowledgments . . . . .		26

### EXHIBIT A - Description of Real Property



## AMENDED LEASE AGREEMENT

THIS AMENDED LEASE AGREEMENT dated May 1, 1994 is entered into by THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation organized under the laws of the State of Alabama (the "Issuer"), and PELHAM INDUSTRIAL ENTERPRISES, L.L.C., an Alabama limited liability company (the "User") as an amendment of the Prior Leases hereinafter defined.

### Recitals

The Issuer has heretofore issued its \$4,200,000 Industrial Development Revenue Bond (Valleydale Business Center Project) dated May 14, 1988 pursuant to a Mortgage and Indenture dated as of October 1, 1988, its \$620,804 Industrial Development Revenue Refunding Bond (Valleydale Business Center Completion Project) dated February 28, 1994 pursuant to a Third Amendatory and Supplemental Mortgage and Indenture dated as of February 1, 1994, its \$1,850,000 Industrial Development Revenue Bond (Cahaba Valley Business Park Project) dated November 26, 1991 pursuant to a Mortgage and Indenture dated as of November 1, 1991, and its \$1,415,000 Industrial Development Revenue Bond (Cahaba Valley Business Park, Phase II Project) dated July 22, 1993 pursuant to a Mortgage and Indenture dated as of May 1, 1993. All of the aforesaid bonds are herein together called the "Prior Bonds" and all of the aforesaid mortgages and indentures and the said third amendatory and supplemental mortgage and indenture are herein together called the "Prior Indentures." The Prior Bonds were issued for the purpose of financing the construction and acquisition of warehouse facilities (herein together referred to as the "Project").

Different parts of the Project were leased by the Issuer to Alabama general partnerships whose partners and partnership interests were the same as those of the members and the membership interests in Pelham Industrial Enterprises, L.L.C. (the "User") pursuant to Lease Agreements dated as of October 1, 1988, November 1, 1991 and May 1, 1993, and an amendment and supplement dated as of August 1, 1990 and a second amendment and supplement dated as of February 1, 1994, both to the Lease Agreement dated as of October 1, 1988 (together, the "Prior Leases"). Pursuant to the Prior Indentures the Issuer mortgaged its interests in the various components of the Project and assigned its interests in the respective Prior Leases as security for the respective Prior Bonds. Each of the said partnerships has merged into the User, so that the User is now the real party in interest as lessee under each of the Prior Leases.

The Issuer has agreed with the User that the Prior Bonds should be refinanced and refunded in order to achieve debt service savings and provide a more advantageous plan of financing for the Project, and in order to effect such refunding, the Issuer has duly authorized the creation,

execution and delivery of its \$8,000,000 aggregate principal amount of Adjustable/Fixed Rate Industrial Development Revenue Bonds, Series 1994 (Pelham Industrial Enterprises, L.L.C. Project) (the "Bonds"). The proceeds of the Bonds will be used to redeem the Prior Bonds simultaneously with the delivery of the Indenture and the issuance of the Bonds, and to pay expenses of issuance of the Bonds.

Simultaneously with the delivery of the Indenture the rights of the parties to the Prior Leases have been continued and the Issuer and the User have entered into the Amended Lease Agreement dated May 1, 1994 (the "Lease Agreement"), whereby the Issuer has amended the Prior Leases to restate the provisions thereof for the purpose of such refinancing and has confirmed the lease of the Project to the User and the User has agreed to pay rentals to the Issuer at such times and in such amounts as shall be sufficient to pay when due the principal of, premium (if any) and interest ("Debt Service") on the Bonds and the purchase price of Bonds tendered for purchase pursuant to the mandatory or optional tender provisions of the Indenture. The Lease Agreement is an amendment of and substitution for and is a continuation and alteration of the Prior Leases for the purpose of refinancing the Prior Bonds.

The Bonds shall be limited obligations of the Issuer payable solely out of the rentals payable by the User pursuant to the Lease Agreement and any other revenues, rentals or receipts derived by the Issuer from the leasing or sale of the Project (the "Lease Revenues").

As security for the payment of Debt Service on the Bonds, the members of the User will enter into a Guaranty Agreement dated May 1, 1994 (the "Bond Guaranty") in favor of the Trustee, whereby they will guarantee payment when due of Debt Service on the Bonds.

As additional security for the payment of the Bonds, the User will cause Columbus Bank and Trust Company (in its capacity as issuer of the initial letter of credit referred to below, the "Credit Obligor") to issue an irrevocable letter of credit in favor of the Trustee in the amount of (i) the aggregate principal amount of the Bonds, to enable the Trustee to pay the principal amount of the Bonds when due and to pay the principal portion of the purchase price of Bonds tendered (or deemed tendered) for purchase, plus (ii) interest on the Bonds for a period of 105 days at the rate of 12% per annum, to enable the Trustee to pay interest on the Bonds when due and to pay the interest portion of the purchase price of Bonds tendered (or deemed tendered) for purchase. The initial letter of credit to be delivered to the Trustee and any substitute letter of credit delivered to the Trustee pursuant to this Indenture are herein referred to as the "Letter of Credit".



The initial Letter of Credit will be issued by the Credit Obligor pursuant to a Credit Agreement dated May 1, 1994 (the "Credit Agreement") between the Credit Obligor and the User whereby the User will agree, among other things, to reimburse the Credit Obligor for all amounts drawn by the Trustee pursuant to the initial Letter of Credit.

As security for the User's obligations under the Credit Agreement, the members of the User (the "Guarantors"), will enter into a Credit Guaranty Agreement dated May 1, 1994 (the "Credit Guaranty") in favor of the Credit Obligor, whereby the Guarantors will guarantee payment when due of all indebtedness or obligations of the User to the Credit Obligor under the Credit Agreement.

As additional security for the User's obligations under the Credit Agreement, the User and the Issuer shall execute a Mortgage, Assignment of Leases and Security Agreement dated May 1, 1994 (the "Mortgage") in favor of the Credit Obligor, whereby the Credit Obligor will be granted a mortgage, assignment and pledge of, and security interest in, the Project, the rights of the Issuer and the User under the Lease Agreement, the Lease Revenues, and certain other collateral.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties amend and restate each of the Prior Leases to read as follows, and hereto covenant, agree and bind themselves as follows:

## ARTICLE 1

### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

#### SECTION 1.01 Definitions

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

(1) Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Indenture, a copy of which is on file with the Trustee.

(2) The terms defined in this Article shall have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular, and vice versa. Any pronoun shall include both singular and plural and cover all genders.

(3) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to

"generally accepted accounting principles" refer to such principles as they exist at the date of application thereof.

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

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

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

(7) The following word when used in this Lease Agreement, has the following meaning, unless the context clearly indicates a different meaning:

"Buildings" means (i) the buildings, structures and fixtures constructed or installed on the Project Sites, and (ii) all other buildings, structures and fixtures now or hereafter located on the Project Sites, as they may at any time exist.

#### SECTION 1.02 Effect of Headings and Table of Contents

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

#### SECTION 1.03 Date of Lease Agreement

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

#### SECTION 1.04 Separability Clause

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

#### SECTION 1.05 Governing Law

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



## SECTION 1.06 Counterparts

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

## ARTICLE 2

### DEMISING CLAUSE

The Issuer, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the User to be paid, kept and performed, does hereby demise and lease to the User, and the User does hereby lease, take and hire from the Issuer, the real property located in the City of Pelham, Shelby County, Alabama, described in Exhibit A attached hereto and made a part hereof by this reference, together with the Buildings, as they may at any time exist, and all other properties which, under the terms hereof, are or subsequently become a part of the Project. The rights of the User hereunder are junior, subordinate and subject to the rights of the Credit Obligor under the Mortgage. Upon the delivery hereof, this Lease Agreement shall be an amendment of the Prior Leases, which are recorded in Books 218, 317, 376, 1993 and 1994, at Pages 672, 28, 40, 22025 and 6868 in the Probate Office of Shelby County, Alabama.

## ARTICLE 3

### SUITABILITY OF THE PROJECT

The User recognizes that since the plans and specifications for constructing and installing the Buildings were furnished by it, THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, NOR OFFERS ANY ASSURANCES THAT THE PROJECT WILL BE SUITABLE FOR THE USER'S PURPOSES OR NEEDS.

## ARTICLE 4

### LEASE TERM AND RENTAL PAYMENTS

#### SECTION 4.01 Lease Term

The term of this Lease Agreement shall begin on the date of the delivery of this Lease Agreement and, unless renewed and extended in accordance with the terms of this Lease Agreement and the Indenture, shall continue until midnight of the following dates with respect to the real property and improvements thereon described in the following parts of Exhibit A hereto:

<u>Lease Term</u> <u>Ending Date</u>	<u>Parcel #</u> <u>on Exhibit A</u>
November 15, 2003*	1
November 1, 2006	2
May 1, 2008	3

\*provided, that if the User delivers to the Issuer on or before November 15, 2003 a written agreement to pay to the City of Pelham on each October 1 thereafter one-half of the total ad valorem taxes that would otherwise be payable with respect to this parcel, based on the appraised value thereof, as such taxes shall be computed from year to year, rather than and in substitution for the payment required by Section 10.06(a) hereof, the term for this parcel shall be extended until November 15, 2010.

#### SECTION 4.02 Basic Rental Payments

(a) The User shall make Basic Rental Payments to the Trustee, for the account of the Issuer, at times and in amounts as follows:

(1) at or before 10:00 a.m. (Birmingham, Alabama time) on each Bond Payment Date, the User shall pay to the Trustee, for the account of the Issuer, an amount equal to the Debt Service on the Bonds due on such Bond Payment Date; provided, however, that (i) any amount already on deposit in the Bond Fund on the due date of such Basic Rental Payment and available for the payment of Debt Service on such Bond Payment Date shall be credited against the amount of such Basic Rental Payment, and (ii) any amount drawn by the Trustee pursuant to the Letter of Credit for the payment of such Debt Service shall be credited against such Basic Rental Payment; and

(2) at or before 10:00 a.m. (Birmingham, Alabama time) on each Tender Date with respect to the Bonds, the User shall pay to the Trustee, for the account of the Issuer, an amount equal the purchase price of Bonds tendered (or deemed tendered) for purchase on such Tender Date; provided, however, that (i) any amount already on deposit in the Bond Purchase Fund on such Tender Date that is available for the payment of the purchase price of such Tendered Bonds shall be credited against the amount of such Basic Rental Payment, and (ii) any amount drawn by the Trustee pursuant to the Letter of Credit for the payment of the purchase price of such Tendered Bonds shall be credited against such Basic Rental Payment.

(b) Prior to 10:00 a.m. (Birmingham, Alabama time) on each Bond Payment Date the Trustee shall, without making any prior claim or demand on the User for the payment of Basic Rental Payments with respect to Bonds other than Pledged Bonds,

make a draw on the Letter of Credit in an amount equal to the amount of Debt Service due on such Bond Payment Date on Bonds other than Pledged Bonds. The User shall receive a credit against Basic Rental Payments for the amount so drawn. No draw shall be made under the Letter of Credit with respect to Debt Service on Pledged Bonds, and the User shall receive no credit against Basic Rental Payments with respect to Pledged Bonds for any amounts drawn under the Letter of Credit.

(c) Prior to 9:30 a.m. (Birmingham, Alabama time) on each Tender Date the Trustee shall, without making any prior claim or demand on the User for Basic Rental Payments with respect to the purchase price of Bonds, and without taking into account any proceeds anticipated from the remarketing of Bonds by the Remarketing Agent, make a draw under the Letter of Credit in an amount equal to the purchase price of all Bonds to be purchased on such Tender Date. The User shall receive a credit against Basic Rental Payments for the amount so drawn, as provided in Section 4.02(a)(2).

(d) All Basic Rental Payments shall be made in funds immediately available to the Trustee at its Principal Office on the related Bond Payment Date or Tender Date, as the case may be.

(e) If any Basic Rental Payment is due on a day which is not a Business Day, such payment may be made on the first succeeding day which is a Business Day with the same effect as if made on the day such payment was due.

#### SECTION 4.03 Additional Rental Payments

(a) The User shall make Additional Rental Payments to the Issuer or to the Trustee, as the case may be, as follows:

(1) the acceptance fee of the Trustee and the annual (or other regular) fees, charges and expenses of the Trustee and Remarketing Agent;

(2) any amount to which the Trustee may be entitled under Section 13.07 of the Indenture; and

(3) the reasonable expenses of the Issuer incurred at the request of the User, or in the performance of its duties under any of the Financing Documents, or in connection with any litigation which may at any time be instituted involving the Project, the Financing Documents, or in the pursuit of any remedies under the Financing Documents.

(b) All Additional Rental Payments shall be due and payable within 10 days after receipt by the User of an invoice therefor.



#### SECTION 4.04 Overdue Rental Payments

Any overdue Basic Rental Payment shall bear interest from the related Bond Payment Date until paid at the Post-Default Rate for overdue Debt Service payments. Any overdue Additional Rental Payment shall bear interest from the date due until paid at the Post-Default Rate for such Additional Rental Payments specified in the Indenture.

#### SECTION 4.05 Unconditional Obligation of User

The User's obligation to make Rental Payments and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Issuer or the Trustee. The User will not suspend or discontinue any such Rental Payment or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, (i) failure to complete the Project, (ii) any acts or circumstances that may constitute an eviction or constructive eviction, (iii) failure of consideration or commercial frustration of purpose, (iv) the invalidity of any provision of this Lease Agreement, (v) any damage to or destruction of the Project or any part thereof, (vi) the taking by eminent domain of title to, or the use of, all or any part of the Project, (vii) any change in the laws or regulations of the United States, the State of Alabama or any other governmental authority, or (viii) any failure of any party to any of the Financing Documents or the Remarketing Agent to perform and observe any agreement or covenant, whether express or implied, to be performed or observed by it under any of the Financing Documents or under any agreement to which it is a party.

### ARTICLE 5

#### CONCERNING THE BONDS, THE INDENTURE AND THE TRUSTEE

#### SECTION 5.01 Assignment of Lease Agreement and Rental Payments by Issuer

(a) As security for the Credit Obligor Indebtedness, simultaneously with the delivery of this Lease Agreement the Issuer shall, pursuant to the Mortgage, (i) assign and pledge to the Credit Obligor all right, title and interest of the Issuer in and to the Lease Revenues and the Lease Agreement (except for certain rights personal to the Issuer) and (ii) mortgage the Project to the Credit Obligor; provided, however, that the terms of such assignment and pledge shall provide that, unless and until the Bonds are accelerated pursuant to Section 12.02 of the Indenture and the Credit

Obligor pays the draw on the Letter of Credit made pursuant to Section 12.02 of the Indenture, the Lease Revenues shall be applied as provided in this Lease Agreement and the Indenture. The User hereby consents to such assignment, pledge and mortgage.

(b) Until all Credit Obligor Indebtedness has been Fully Paid, the Credit Obligor may exercise all rights and remedies herein accorded to the Issuer (subject to the provisions of subsection (a) of this Section) and any references herein to the Issuer shall be deemed, with the necessary changes in detail, to include the Credit Obligor; provided, however, that the Issuer shall retain the rights to indemnification and reimbursement of expenses granted to it by this Lease Agreement.

#### SECTION 5.02 Redemption of Bonds

(a) The Issuer will redeem any or all of the Bonds in accordance with the scheduled mandatory redemption provisions of the Bonds and the Indenture and upon the occurrence of any event or contingency requiring the mandatory redemption of Bonds, all in accordance with the applicable provisions of the Bonds and the Indenture.

(b) If no Lease Default exists, the Issuer will exercise any right of optional redemption with respect to the Bonds only upon the written request of the User.

#### SECTION 5.03 Amendment of Indenture

The Issuer will not cause or permit the amendment of the Indenture or the execution of any amendment or supplement to the Indenture without the prior written consent of the User.

#### SECTION 5.04 The Special Funds

If no Lease Default exists, the Issuer shall cause any money held as part of a Special Fund shall be invested or reinvested by the Trustee in accordance with the terms of the Indenture and the instructions of the User.

#### SECTION 5.05 Effect of Full Payment of Indebtedness

(a) After the Indenture Indebtedness is Fully Paid, all references in this Lease Agreement to the Bonds, the Indenture and the Trustee shall be ineffective and neither the Trustee nor the Holders of the Bonds shall thereafter have any rights hereunder, except those rights that shall have theretofore vested.

(b) After the Credit Obligor Indebtedness is Fully Paid,  
(i) all references in this Lease Agreement to the Credit Obligor shall be ineffective and thereafter the Credit Obligor



shall have no rights hereunder, except those rights that shall have theretofore vested, and (ii) all references in this Lease Agreement to the Mortgage shall be ineffective.

(c) After all Indebtedness is Fully Paid, any money or investments remaining in the Special Funds shall be delivered to the User.

(d) If all Indebtedness is Fully Paid prior to the expiration of the term of this Lease Agreement, the User shall be entitled to the use and occupancy of the components of the Project until the expiration of the respective terms of this Lease Agreement without the payment of any further Basic Rental Payments, but otherwise subject to all the terms and conditions hereof, except that the User shall no longer be required to perform and observe the agreements and covenants of this Lease Agreement that are for the sole benefit of the Credit Obligor, the Trustee or the Holders of the Bonds.

## ARTICLE 6

### PROVISIONS RESPECTING THE PROJECT

#### SECTION 6.01 Possession and Use of Project

(a) So long as no Lease Default exists, the User shall be permitted to possess, use, manage, operate and enjoy the Project without hindrance on the part of the Issuer, subject, however, to all the terms and conditions of this Lease Agreement.

(b) The Issuer shall be permitted such possession of the Project as shall be necessary and convenient for it to construct and install any additions, improvements, modifications, repairs or renovations to the Project that are required to be made by it pursuant to the terms of this Lease Agreement.

#### SECTION 6.02 Maintenance and Other Operating Expenses

The User will, at its own expense, (i) cause the Project to be maintained and kept in good condition, repair and working order, (ii) cause to be made all necessary repairs, renewals, replacements, betterments and improvements to the Project as may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times, and (iii) pay all gas, electric, water, sewer and other charges for the operation, use and upkeep of the Project.

#### SECTION 6.03 Taxes, Assessments, Etc.

The User will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Project



or any part thereof or upon any income therefrom, and also all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Trustee or of the Credit Obligor in the Trust Estate, so that the lien of the Indenture shall at all times be wholly preserved at the cost of the User and without expense to the Issuer, the Trustee or the Credit Obligor; provided, however, that the User shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the User shall have established and shall maintain adequate reserves on its books for the payment of the same.

#### SECTION 6.04 Improvements, Alterations, Etc.

The User may, at its own expense, subject to the requirements of the Mortgage, make changes, additions, improvements or alterations to the buildings, structures and other improvements constituting a part of the Project, provided that the User determines, in its judgment, that such changes, additions, improvements or alterations are necessary or desirable in connection with the business of the User with respect to the Project. At the written request of the User, the Issuer will enter into a contract for such changes, additions, improvements, or alterations, subject, however, to the requirements of Section 10.01.

#### SECTION 6.05 Utility Easements

The Issuer will, upon request of the User, subject to the requirements of the Mortgage, grant such utility and other similar easements over, across or under the Project Site as shall be necessary or convenient for the furnishing of utility and other similar services to the Project or to real property adjacent to the Project Site that is owned or leased by the User; provided, that such easements shall not, in the opinion of the User, materially impair the use of the Project for the purposes for which it is leased by the User.

#### SECTION 6.06 Transfer or Encumbrance Created by Issuer

Without the prior written consent of the User, and except as otherwise provided in the Mortgage, the Issuer (i) will not sell, transfer or convey the Project or any part thereof, except as provided in this Lease Agreement, and (ii) will not create or incur or suffer or permit to be created or incurred or to exist any mortgage, lien, charge or encumbrance on the Project or any part thereof.

#### SECTION 6.07 Assignment, etc. of Leasehold Interest

The User may, subject to the requirements of the Mortgage, assign its rights under this Lease Agreement or mortgage its leasehold interest in the Project, or sublease the Project or any part thereof, subject to the following limitations:

(1) the User shall continue to be primarily liable for the performance and observance of the agreements and covenants to be performed and observed by it under this Lease Agreement, and no such assignment, mortgage or sublease shall in any way diminish or abate the obligations of the User hereunder;

(2) no such assignment, mortgage or sublease shall permit or result in the use of the Project or any part thereof for any purpose that would not be permitted for facilities financed under the Enabling Law; and

(3) within 30 days after the delivery of any such assignment, mortgage or sublease, the User shall deliver a copy thereof to the Issuer and to the Trustee.

#### SECTION 6.08 Insurance

(a) Until the Credit Obligor Indebtedness is Fully Paid, the User will at all times keep the Project insured as provided in the Mortgage.

(b) The User will at all times (whether or not all Credit Obligor Indebtedness is Fully Paid) maintain insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project Site or in any way related to the condition or operation of the Project, in the minimum amounts of \$1,000,000 for death of or bodily injury to any one person, \$3,000,000 for all death and bodily injury claims resulting from any one accident, and \$100,000 for property damage. Such insurance shall insure the Issuer, as well as the User, against such liability.

(c) All insurance required by subsection (b) of this Section shall be effected with responsible insurance carriers. All policies or other contracts evidencing such insurance or a certificate of the respective insurers attesting the fact that such insurance is in force and effect, shall be deposited with the Issuer. Prior to the expiration of such insurance, the User shall furnish to the Issuer evidence that such insurance has been renewed or replaced. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the Issuer for at least 10 days after written notice to the Issuer of cancellation.



#### SECTION 6.09 Damage and Destruction

(a) If the Project or any part thereof is damaged or destroyed by fire or other casualty, the User shall, as promptly as practicable, repair, rebuild, restore or replace the property damaged or destroyed (herein referred to as the "Restoration Work"). If the amount of loss proceeds of insurance on the Project available to pay the costs of such Restoration Work is not sufficient for such purpose, the User shall complete the Restoration Work at its own expense. At the request of the User, the Issuer shall enter into contracts and purchase orders necessary for the Restoration Work, subject to the requirements of Section 10.01.

(b) If the Credit Obligor Indebtedness has been Fully Paid, loss proceeds from any insurance payable with respect to such casualty shall be paid to the User and shall be applied by the User to pay the costs of the Restoration Work.

(c) If the Credit Obligor Indebtedness has not been Fully Paid, loss proceeds from any insurance payable with respect to such casualty shall be paid to the Credit Obligor and shall be applied as provided in the Mortgage.

#### SECTION 6.10 Condemnation

(a) If title to, or the use of, the Project or any part thereof shall be taken by the exercise of the power of eminent domain and the Credit Obligor Indebtedness has not been Fully Paid, the entire proceeds of any award referable thereto shall be paid to the Credit Obligor and shall be applied as provided in the Mortgage.

(b) If the Credit Obligor Indebtedness has been Fully Paid, the entire proceeds of any award referred to in subsection (a) of this Section shall be paid to the User and applied to the cost of acquiring, constructing and equipping additional facilities in accordance with the instructions of the User, which additional facilities shall forthwith become, without further action, property of the Issuer and a part of the Project subject to this Lease Agreement.

(c) The Issuer shall cooperate in good faith with the User in the conduct of any condemnation proceeding with respect to the Project and will, to the extent it may lawfully do so, permit the User to appear in such proceeding in the name and on behalf of the Issuer. The Issuer will not settle, or consent to the settlement of, any condemnation proceeding without the prior written consent of the User.



## ARTICLE 7

### REPRESENTATIONS AND COVENANTS

#### SECTION 7.01 General Representations

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

(1) It is duly organized as a limited liability company under the laws of the State of Alabama and is not in default under any of the provisions contained in its articles of organization or in the laws of the state of its organization.

(2) It has the power to consummate the transactions contemplated by the Financing Documents to which it is a party.

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

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

(5) The execution and delivery by it of the Financing Documents to which it is a party and the consummation by it of the transactions contemplated therein will not (i) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under its articles of organization, or any agreement, instrument, order or judgment to which it is a party or is subject, or (ii) result in or require the creation or imposition of any lien of any nature upon or with respect to any of its properties now owned or hereafter acquired, except as contemplated by the Financing Documents.

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

(7) The Guarantors constitute all of the members of the User.

(8) The financing of the Project through the issuance of the Prior Bonds, the leasing of the Project to the lessees thereof, and the subleasing of the Project to the sublessees thereof, induced such sublessees to locate in the Municipality or to expand existing facilities in the Municipality.

(9) The User will sublease the Project only to one or more tenants and only for uses of the type described in the definition of "project" in the Enabling Law.

(10) The Project will constitute a "project" within the meaning of the Enabling Law.

(11) The Project is located wholly within the corporate limits of the Municipality.

(12) As of the date of delivery of this Lease Agreement, the User does not have any plans and is not a party to any arrangement which, if consummated, would result in the Project being used by any person other than the User and sublessees described above.

#### SECTION 7.02 Eligibility of Project for Financing

The Issuer makes the following representations and warranties:

(a) The Issuer is duly incorporated under the provisions of the Enabling Law and has the power to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder. The Issuer is not in default under any of the provisions contained in its certificate of incorporation, its by-laws, or in the laws of the State. By proper corporate action the Issuer has duly authorized the execution and delivery of those of the Financing Documents to which it is a party.

(b) The execution and delivery of those of the Financing Documents to which it is a party by the Issuer, the consummation of the transactions therein contemplated and the fulfillment of the terms thereof will not conflict with, be in violation of, or constitute a default under any indenture, mortgage, deed of trust or other contract, agreement or instrument or any statute or rule of law to which the Issuer is now a party or is subject, or the certificate of incorporation or by-laws of the Issuer, or any resolution, order, rule or regulation, writ, injunction, decree or judgment of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Issuer.



(c) All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, which are required to be obtained by the Issuer as conditions precedent to the issuance of the Bonds and the execution and delivery by the Issuer of those of the Financing Documents to which it is a party have been obtained.

(d) The Issuer has determined that the issuance of the Prior Bonds and the Bonds, the acquisition, improvement and construction of the Project and the leasing of the Project to the User promote industry, develop trade and further the use of agricultural products and natural and human resources of the State of Alabama and the development and preservation of the said resources by inducing manufacturing, industrial, commercial and research enterprises to locate in the State or to enlarge, expand and improve existing operations in the State, including the User and those which will sublease the Project or portions thereof from the User.

(e) The Project does and will constitute a "project" within the meaning of the Enabling Law.

(f) The Indenture will be delivered by the parties thereto and the Bonds will be issued and delivered by the Issuer contemporaneously with the delivery of this Lease Agreement.

(g) The Project is located wholly within the corporate limits of the Municipality.

(h) All of the proceeds of the Bonds will be applied on the date of delivery thereof to the payment of the principal of the Prior Bonds and expenses of issuance of the Bonds.

#### SECTION 7.03 Company Existence

The User will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises.

#### SECTION 7.04 Further Assurances

(a) The User will do, execute, acknowledge and deliver such further acts, conveyances, mortgages, financing statements and assurances as the Issuer or the Trustee shall require for accomplishing the purposes of the Financing Documents.

(b) The User will cause this instrument, any amendments to this Lease Agreement and other instruments of further assurance, including financing statements and continuation statements, to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed in such places as may be required by law fully to preserve and protect



the rights of the Issuer and the Trustee to all property comprising the Project.

#### SECTION 7.05 Inspection of Records

The User will at any and all times, upon the written request of the Issuer or the Trustee, permit the Issuer or the Trustee by their representatives to inspect the Project and any books, records, reports and other papers of the User relating to the Project, and to make copies therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the User will furnish to the Issuer and the Trustee any and all information as the Issuer or the Trustee may reasonably request with respect to the performance by the User of its covenants in this Lease Agreement.

#### SECTION 7.06 Advances by Issuer or Trustee

If the User shall fail to perform any of its covenants in this Lease Agreement, the Issuer or the Trustee may, at any time and from time to time, after written notice to the User if no Lease Default exists, make advances to effect performance of any such covenant on behalf of the User. Any money so advanced by the Issuer or the Trustee, together with interest at the Post-Default Rate, shall be repaid upon demand.

#### SECTION 7.07 Indemnity of Issuer and Trustee

(a) To the extent permitted by law, the User agrees to indemnify the Issuer and the Trustee for, and hold each of them harmless against, any loss, liability or expense (including reasonable attorneys' fees) incurred without bad faith or willful misconduct on their part, arising out of or in connection with the issuance of the Bonds, the acceptance of their duties and responsibilities under the Financing Documents, or their performance or observance of any agreement or covenant on their part to be observed or performed under the Financing Documents, including without limitation (i) the acquisition or construction of, or other work on, the Project, (ii) any injury to, or the death of, any person or any damage to property at the Project, or in any manner growing out of, or connected with, the use, nonuse, condition or occupation of the Project or any part thereof, (iii) any damage, loss or destruction of the Project, (iv) violation or breach by the User of any contract, agreement or restriction affecting the Project or the use thereof or of any law, ordinance or regulation affecting the Project or any part thereof or the ownership, occupancy or use thereof, (v) the offer and sale of the Bonds or a subsequent sale or distribution of any of the Bonds, (vi) the exercise, or failure to exercise, any right, privilege or power of the Issuer or the Trustee under the Financing Documents and (vii) the administration of the trust established by the Indenture.

(b) The covenant of indemnity by the User contained in this Section shall survive the termination of this Lease Agreement.

## ARTICLE 8

### REMEDIES

#### SECTION 8.01 Events of Default

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

(1) default in the payment of any Basic Rental Payment when such Basic Rental Payment becomes due and payable; or

(2) default in the performance, or breach, of any covenant or warranty of the User in this Lease Agreement (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Section specifically dealt with), and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the User and the Credit Obligor by the Issuer or by the Trustee a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder; or

(3) the occurrence of an event of default, as therein defined, under any other Financing Document, other than the Credit Agreement or the Mortgage, and the expiration of the applicable grace period, if any, specified therein.

#### SECTION 8.02 Remedies on Default

If a Lease Default occurs and is continuing, the Credit Obligor (or, if the Indebtedness has been Fully Paid, the Issuer) may exercise any of the following remedies:

(1) declare all installments of Basic Rental Payments for the remainder of the term of this Lease Agreement to be immediately due and payable in an amount not to exceed the principal amount of all Outstanding Bonds, plus the redemption premium (if any) payable with respect thereto, plus the interest accrued thereon to the date of such declaration;



(2) reenter the Project, without terminating this Lease Agreement, and, upon 10 days' prior written notice to the User, relet the Project or any part thereof for the account of the User, for such term (including a term extending beyond the term of this Lease Agreement) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Project or any part thereof, as the Credit Obligor may deem advisable, and such reentry and reletting of the Project shall not be construed as an election to terminate this Lease Agreement nor relieve the User of its obligations to pay Basic Rental Payments and to perform and observe any of its other agreements and covenants under this Lease Agreement, all of which shall survive such reentry and reletting, and the User shall continue to pay all Rental Payments until the end of the term of this Lease Agreement, less the net proceeds, if any, of any reletting of the Project after deducting all of the Credit Obligor's expenses in connection with such reletting, including, without limitation, all repossession costs, brokers' commissions, attorneys' fees, alteration costs and expenses of preparation for reletting;

(3) terminate this Lease Agreement, exclude the User from possession of the Project and, if the Credit Obligor elects so to do, lease the same for the account of the Issuer, holding the User liable for all Rental Payments due up to the date such lease is made for the account of the Issuer; and

(4) take whatever legal proceedings may appear necessary or desirable to collect the Rental Payments then due, whether by declaration or otherwise, or to enforce any obligation or covenant or agreement of the User under this Lease Agreement or by law.

#### SECTION 8.03 No Remedy Exclusive

No remedy herein conferred upon or reserved to the Issuer, the Credit Obligor or the Trustee 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 under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.



SECTION 8.04 Agreement to Pay Attorneys' Fees and Expenses

If the User should default under any of the provisions of this Lease Agreement and the Issuer, the Credit Obligor or the Trustee should employ attorneys or incur other expenses for the collection of Rental Payments or the enforcement of performance or observance of any agreement or covenant on the part of the User herein contained, the User will on demand therefor pay to the Issuer, the Credit Obligor or the Trustee (as the case may be) the reasonable fee of such attorneys and such other expenses so incurred.

SECTION 8.05 No Additional Waiver Implied by One Waiver

In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 8.06 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 Lease Agreement invalid or unenforceable.

ARTICLE 9

OPTIONS

SECTION 9.01 Option to Terminate

If no Lease Default exists, the User shall have the option to cancel or terminate this Lease Agreement at any time after the Indebtedness has been fully paid, by giving the Issuer notice in writing of such termination. Such termination shall become effective 10 days after such notice is given.

SECTION 9.02 Option to Purchase Project

If no Lease Default exists, the User shall have the option to purchase the Project or any part thereof for a purchase price of \$100 after the Indebtedness has been fully paid or, with respect to any parcel described in Exhibit A hereto, upon the termination of the Lease Term respecting that parcel, as set out in Section 4.01. Any such option may be exercised by the User prior to the termination of this Lease Agreement or within 300 days thereafter upon written notice to the Issuer.

The closing for such purchase shall take place on (i) a Business Day designated by the User that is not less than 7 days nor more than 21 days from the date of such notice, or the date of termination of this Lease Agreement, as the case may be, or (ii) such other date as shall be mutually acceptable to the Issuer and the User.

#### SECTION 9.03 Option to Purchase Part of Project.

The User shall have the option at any time during the term of this Lease to purchase from the Issuer either Parcel 1 described in Exhibit A attached hereto, or Parcels 2 and 3 together, but not separately, described in Exhibit A attached hereto. If it is Parcel 1 which is purchased, the purchase price shall be equal to 60% of the then Outstanding Bonds plus the interest which has accrued and will accrue thereon until the earliest practicable date when Bonds may be redeemed pursuant to the special mandatory redemption provisions thereof which are applicable to the use of proceeds of any such purchase; and if the purchase is with respect to the said Parcels 2 and 3, the purchase price shall be equal to 40% of the then Outstanding Bonds plus the interest which has accrued and will accrue thereon to the earliest practicable date on which Bonds may be redeemed pursuant to the special mandatory redemption provisions thereof which are applicable to the use of the proceeds of any such purchase.

If any such purchase occurs, all of the proceeds thereof paid to the Issuer shall be paid into the Bond Fund and applied as follows: the interest component of the purchase price shall be used to reimburse the Credit Obligor for the interest on the Bonds and the principal component of such price shall be used to reimburse the Credit Obligor for the Bonds redeemed, and the Trustee shall on the appropriate date draw on the Letter of Credit for such redemption and shall redeem Bonds on the earliest practicable and applicable special mandatory redemption date for which such moneys may be used for such purpose. Upon any such redemption, the amount of Bonds required to be mandatorily redeemed shall be reduced, to the nearest \$5,000, by that percentage which equals the percentage applicable in determining the purchase price, that is to say, if Parcel 1 is purchased, then each mandatory redemption amount shall be reduced 60%, or if Parcels 2 and 3 are purchased, each mandatory redemption amount shall be reduced by 40%, in each case to the nearest \$5,000.

#### SECTION 9.04 Conveyance on Exercise of Option to Purchase

Upon the exercise of any option to purchase granted herein, the Issuer will upon receipt of the purchase price deliver to the User documents conveying to the User the property with respect to which such option was exercised, as such property then exists, subject to the following: (i) those liens and encumbrances, if any, to which title to said property



was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the User or to the creation or suffering of which the User consented; and (iii) those liens and encumbrances resulting from the failure of the User to perform or observe any of the agreements or covenants on its part contained in this Lease Agreement.

## ARTICLE 10

### MISCELLANEOUS

#### SECTION 10.01 Issuer's Liabilities Limited

(a) The covenants and agreements contained in this Lease Agreement shall never constitute or give rise to a personal or pecuniary liability or charge against the general credit of the Issuer, and in the event of a breach of any such covenant or agreement, no personal or pecuniary liability or charge payable directly or indirectly from the general assets or revenues of the Issuer shall arise therefrom. Nothing contained in this Section, however, shall relieve the Issuer from the observance and performance of the covenants and agreements on its part contained herein.

(b) No recourse under or upon any covenant or agreement of this Lease Agreement shall be had against any past, present or future incorporator, officer or member of the Board of Directors of the Issuer, or of any successor corporation, either directly or through the Issuer, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Lease Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, officer or member of the Board of Directors of the Issuer or any successor corporation, or any of them, under or by reason of the covenants or agreements contained in this Lease Agreement.

#### SECTION 10.02 Corporate Existence of Issuer

The Issuer shall not consolidate with or merge into any other corporation or transfer its property substantially as an entirety, except as provided in Section 10.07 of the Indenture.

#### SECTION 10.03 Notices

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Lease Agreement to be made upon, given or furnished to, or filed with, the Issuer, the User, the Trustee or the Credit Obligor shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Lease Agreement) either (i) delivered personally to the party or, if



such party is not an individual, to an officer, partner or other legal representative of the party to whom the same is directed (provided that any document delivered personally to the Trustee must be delivered to a corporate trust officer at its Principal Office during normal business hours) at the hand delivery address specified in Section 17.01 of the Indenture or (ii) mailed by first-class, registered or certified mail, postage prepaid, addressed as specified in Section 17.01 of the Indenture. Any of such parties may change the address for receiving any such notice or other document by giving notice of the change to the other parties as provided in this Section.

(b) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, partner or other legal representative of the party) at the address specified pursuant to this Section, or, if sent by mail, 3 days after such notice or document is deposited in the United States mail, proper postage prepaid, addressed as provided above.

#### SECTION 10.04 Successors and Assigns

All covenants and agreements in this Lease Agreement by the Issuer or the User shall bind their respective successors and assigns, whether so expressed or not.

#### SECTION 10.05 Benefits of Lease Agreement

Nothing in this Lease Agreement, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, the Trustee and the Holders of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Lease Agreement.

#### SECTION 10.06 Municipal Public Service Payment

The User and the Issuer acknowledge that under present law parts of the Project are exempt from part or all taxation in the State of Alabama, including, without limitation ad valorem taxes levied by the Municipality. The User further acknowledges that public services provided by the Municipality (including, without limitation, fire and police protection) benefit the User in the utilization and leasing of the Project and enhance the value of the interest of the User in the Project.

In order to compensate the Municipality for providing the aforesaid services, the User shall pay directly to the Municipality as a third party beneficiary to this Lease Agreement (and not to the Issuer or the Trustee or the Credit Obligor) the following amounts (the "Service Payments") during the term of this Lease Agreement so long as the Project is otherwise exempt from ad valorem taxation by the Municipality:

(a) On October 1, 1994, and on the first day of each October thereafter until October 1, 2003, the sum of \$38,693.50; and

(b) On October 1, 2004, and on the first day of each October thereafter until October 1, 2006, the sum of \$9,990.

#### SECTION 10.07 Prior Agreements Canceled

Except for the Prior Leases and any deed or other instrument by which the Project, the Project Sites, or any part thereof, or any interest therein has been transferred and conveyed by the User to the Issuer, this Lease Agreement shall completely and fully supersede all prior agreements, both written and oral, between the Issuer and the User relating to the leasing of the Project and any options to renew or to purchase. Neither the Issuer nor the User shall hereafter have any rights under such prior agreements not excepted hereby but shall look solely to this Lease Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the Project.


#### SECTION 10.08 Prior Leases to Remain in Effect; Construction of Lease Agreement

This Lease Agreement is executed and delivered (a) in continuation of the relationship of the Issuer and the User and the User's assignors as landlord and tenants with respect to the Project established pursuant to the Prior Leases, as amendatory and supplementary to the provisions thereof, and (b) only to the extent necessary to refinance the principal of the Prior Bonds as provided in the Indenture in order that the Issuer and the User realize the savings effected thereby. The Issuer and the User intend for the Issuer to continue to own the Project Sites and lease the same to the User on the terms of this Lease Agreement and the Prior Leases, as the same may be applicable thereto. The Prior Leases shall remain in effect, as amended and supplemented by this Lease Agreement, as to the property covered thereby. In order to provide, however, for the orderly administration of the Project, the payment of all costs associated therewith, and the due and punctual payment of the principal of, premium (if any) and interest on the Bonds, the provisions of this Lease Agreement shall control and govern any conflicting or inconsistent provisions in the Prior Leases, and performance by the Lessee of any provision of this Lease Agreement shall be deemed to constitute performance of any similar or comparable provision in the Prior Leases, without more.

IN WITNESS WHEREOF, the Issuer and the User have caused this Lease Agreement to be executed in their respective names, the Issuer has caused its corporate seal to be hereunto affixed and attested, all by their duly authorized officers or

members, and the parties have caused this Lease Agreement to be dated as of May 1, 1994.


THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF PELHAM

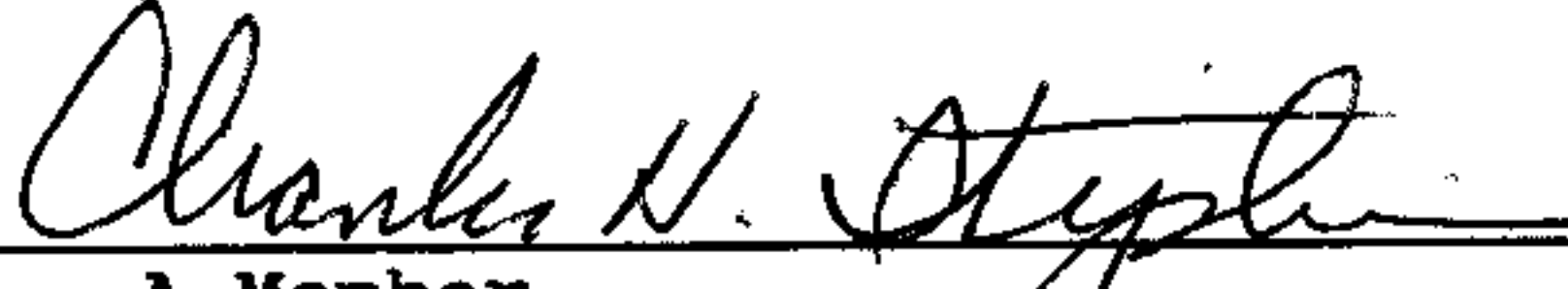
By   
Chairman of its Board of  
Directors

S E A L

Attest:   
Its Secretary

PELHAM INDUSTRIAL ENTERPRISES, L.L.C.

By   
A Member

By   
A Member

By   
A Member

By   
A Member



STATE OF ALABAMA  
SHELBY COUNTY

I, Carolee S. Crenshaw, a Notary Public in and for said County in said State, hereby certify that Daniel M. Spitler, Jr., whose name as Chairman of the Board of Directors of The Industrial Development Board of the City of Pelham, a public corporation, is signed to the foregoing Amended Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, 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 25<sup>th</sup> day of May, 1994.

Carolee S. Crenshaw  
Notary Public

NOTARIAL SEAL

My commission expires: 2-10-96

STATE OF ALABAMA  
JEFFERSON COUNTY

I, Carolee S. Crenshaw, a Notary Public in and for said County in said State, hereby certify that Charles H. Stephens, Marc A. Eason and David Bunkin, whose names as members of Pelham Industrial Enterprises, L.L.C., an Alabama limited liability company, are signed to the foregoing Amended Lease Agreement, and who are known to me, each acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 25<sup>th</sup> day of May, 1994.

Carolee S. Crenshaw  
Notary Public

NOTARIAL SEAL

My commission expires: 2-10-96

STATE OF ALABAMA  
JEFFERSON COUNTY

I, Carolee S. Greenbow, a Notary Public in and for said County in said State, hereby certify that Marvin R. Engel, whose name as a member in Pelham Industrial Enterprises, L.L.C., an Alabama limited liability company, is signed to the foregoing Amended Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 25<sup>th</sup> day of May, 1994.

Carolee S. Greenbow  
Notary Public

NOTARIAL SEAL

My commission expires: 2-10-96

This instrument was prepared by:

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

EXHIBIT "A"

PARCEL 1

Part of the East 1/2 of Southwest 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:  
Begin at the Northwest corner of the East 1/2 of Southwest 1/4 of Section 30, Township 19 South, Range 2 West; thence run South along the West line of said East 1/2 of the Southwest 1/4 for 719.63 feet to a point; thence turn an angle to the left of 87 degrees 44 seconds and run 280.97 feet to point on the West right of way line of Business Center Drive, dedicated on map of Valleydale Business Center as recorded in Map Book 8, Page 170, in the Office of Probate Court, Shelby County, Alabama; thence turn an angle to the left of 92 degrees 16 minutes and run North along the West right of way line of Business Center Drive for 57.45 feet to a point on a curve to the left, said curve having a central angle of 42 degrees 50 minutes and a radius of 25 feet; thence run along the arc of said curve and right of way for 18.69 feet to the end of said curve and the beginning of a curve to the right having a radius of 50 feet and a central angle of 265 degrees 40 minutes 06 seconds; thence run along the arc of said curve and right of way for 231.83 feet to a point; thence at tangent to said curve 132 degrees 53 minutes left and run 316.61 feet to a point; thence turn an angle to the left of 90 degrees 00 minutes and run 629.76 feet to a point on the North line of said East 1/2 of Southwest 1/4; thence turn an angle to the left of 87 degrees 41 minutes and run West along the North line of said East 1/2 of said Southwest 1/4 for 663.97 feet to the point of beginning.  
Situated in Shelby County, Alabama.

According to survey of Miller, Triplett & Miller Engineers, Inc.



EXHIBIT "A"

PARCEL 2

Part of Block 4 of Cahaba Valley Park North as recorded in Map Book 13, Page 140, in the Probate Office of Shelby County, Alabama,

Commence at the centerline station 35+00 Cahaba Valley Parkway which is the intersection of Cahaba Valley Parkway and Cahaba Valley Parkway West; thence run North along the centerline of Cahaba Valley Parkway for 53.56 feet; thence turn an angle to the right of 90° 00' and run East 30.00 feet to the East R.O.W. Line of Cahaba Valley Parkway and to the point of beginning; thence 90° left and run North along the said East R.O.W. of Cahaba Valley Parkway for 306.07 feet; thence 81° 50' 22" right and run Northeasterly for 272.69 feet; thence 7° 18' 59" right and run Easterly for 378.84 feet to a point on the West R.O.W. Line of Cahaba Valley Circle; thence 90° right and run Southerly along said West R.O.W. Line for 22.54 feet to the beginning of a curve to the right; said curve subtending a central angle of 64° 31' 39" and having a radius of 168.01 feet; thence run Southwesterly along the arc of said curve and along said R.O.W. Line for 189.21 feet to the end of said curve; thence at tangent to said curve run Southwesterly along said R.O.W. Line of Cahaba Valley Circle for 22.49 feet to the beginning of a curve to the right; said curve subtending a central angle of 42° 50' 00" and having a radius of 25.00 feet, thence run Westerly along the arc of said curve and along said R.O.W. Line for 18.69 feet to the end of said curve and to the beginning of a curve to the left; said curve subtending a central angle of 132° 50' 00" and having a radius of 50.00 feet; thence run Southwesterly along the arc of said curve and along said R.O.W. Line of 115.92 feet; thence from tangent of said curve turn 90° 00' 00" right and run Southwesterly for 210.00 feet; thence 26° 19' 00" right and run Westerly for 269.94 feet to the point of beginning,

also known as Lot O-14B according to the Resurvey of Cahaba Valley Business Park as recorded in Map Book 17, Page 73 in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT "A"

PARCEL 3

LOT OW-4A, BLOCK 4 OF A RESURVEY OF CAHABA VALLEY BUSINESS PARK, AS RECORDED IN MAP BOOK 17, PAGE 73, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, SITUATED IN THE NORTH 1/2 OF SECTION 31, TOWNSHIP 19 SOUTH, RANGE 2 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 COMMENCE AT THE NORTHEAST CORNER OF LOT O-14B, BLOCK 4, OF SAID RESURVEY OF CAHABA VALLEY BUSINESS PARK, SAID POINT ALSO BEING ON THE WEST RIGHT OF WAY LINE OF CAHABA VALLEY CIRCLE, A CITY STREET; THENCE RUN SOUTH ALONG THE EAST LINE OF SAID LOT O-14B AND ALONG SAID RIGHT OF WAY LINE FOR 22.54 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE SUBTENDING A CENTRAL ANGLE OF 30°-49'-35" AND HAVING A RADIUS OF 168.01 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY LINE FOR 90.39 FEET TO THE END OF SAID CURVE AND TO THE END OF THE DEDICATED RIGHT OF WAY OF CAHABA VALLEY CIRCLE, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED, SAID POINT BEING AT THE BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE SUBTENDING A CENTRAL ANGLE OF 33°-42'-04", AND HAVING A RADIUS OF 168.01 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG THE VACATED NORTHERLY RIGHT OF WAY LINE OF SAID CAHABA VALLEY CIRCLE FOR 98.82 FEET TO THE END OF SAID CURVE; THENCE AT TANGENT TO SAID CURVE RUN SOUTHWESTERLY ALONG SAID VACATED NORTHERLY RIGHT OF WAY LINE FOR 22.49 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE SUBTENDING A CENTRAL ANGLE OF 42°-50'-00" AND HAVING A RADIUS OF 25.00 FEET; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID VACATED NORTHERLY RIGHT OF WAY LINE FOR 18.69 FEET TO THE END OF SAID CURVE AND TO THE BEGINNING OF A CURVE TO THE LEFT, SAID CURVE SUBTENDING A CENTRAL ANGLE OF 132°-50'-00" AND HAVING A RADIUS OF 50.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID VACATED RIGHT OF WAY LINE FOR 115.92 FEET TO THE END OF SAID CURVE; THENCE AT TANGENT TO SAID CURVE TURN 90°-00'-00" RIGHT AND RUN SOUTHWESTERLY FOR 210.00 FEET; THENCE 90°-00'-00" LEFT AND RUN SOUTHEASTERLY FOR 275.00 FEET; THENCE 90°-00'-00" LEFT AND RUN NORTHEASTERLY FOR 460.00 FEET; THENCE 90°-00'-00" LEFT AND RUN NORTHWESTERLY FOR 283.31 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF SAID CAHABA VALLEY CIRCLE, SAID POINT ALSO BEING AT THE END OF THE DEDICATED RIGHT OF WAY OF SAID CAHABA VALLEY CIRCLE; THENCE 33°-42'-04" LEFT AND RUN NORTHWESTERLY ACROSS THE END OF SAID CAHABA VALLEY CIRCLE FOR 60.00 FEET TO THE POINT OF BEGINNING.  
 SAID PARCEL CONTAINS 135,990.73 SQUARE FEET OR 3.12 ACRES, MORE OR LESS.

Inst # 1994-16976

05/26/1994-16976  
 09:47 AM CERTIFIED  
 SHELBY COUNTY JUDGE OF PROBATE  
 034 MCD 91.00