

MORTGAGE AND INDENTURE

THE INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF PELHAM

To

FIRST COMMERCIAL BANK

As Mortgagee

Dated as of May 1, 1995

(Pelham Industrial Enterprises, L.L.C., Phase FIVE Project)

This Mortgage and Indenture was prepared by R. H.  
Walston of Walston, Stabler, Wells, Anderson & Bains, 500  
Financial Center, Birmingham, Alabama 35203

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*Calhoun*

## MORTGAGE AND INDENTURE

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and is only for convenience of reference)

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STATE OF ALABAMA  
SHELBY COUNTY

THIS MORTGAGE AND INDENTURE made and entered into as of May 1, 1995, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation duly organized and existing under the laws of the State of Alabama (hereinafter called the "Borrower"), as party of the first part, and FIRST COMMERCIAL BANK, a state banking corporation with its principal office in the City of Birmingham, Alabama (hereinafter called the "Mortgagee"), 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 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 in said Article 4; and

WHEREAS, the Borrower has made the necessary arrangements with Pelham Industrial Enterprises, L.L.C., as Lessee, for the acquisition of the Project, hereinafter defined, and the Borrower has further entered into a Lease Agreement dated as of the date hereof with the Lessee specifying the terms and conditions of the acquisition of the Project and the leasing of the same to the Lessee (hereinafter called 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 Mortgagee as hereinafter provided and an executed copy thereof delivered to the Mortgagee; 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 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 estimated amount necessary to finance the Mortgagee's agreed loan portion of the cost of the Project, including expenses incidental thereto, will require the issuance, sale and delivery of the Bond as hereinafter provided; and

WHEREAS, the Bond to be issued hereunder is to be substantially in the following form, with appropriate omissions, insertions and variations permitted or authorized as hereinafter provided:



UNITED STATES OF AMERICA  
STATE OF ALABAMA  
THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

INDUSTRIAL DEVELOPMENT REVENUE BOND  
(PELHAM INDUSTRIAL ENTERPRISES, L.L.C., PHASE FIVE PROJECT)

[THE INTEREST ON THIS BOND IS SUBJECT  
TO FEDERAL INCOME TAX]

KNOW ALL MEN BY THESE PRESENTS that The Industrial Development Board of the City 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 and as hereinafter provided to First Commercial Bank, its successors or assigns, the principal sum of

ONE MILLION, SIX HUNDRED SEVENTY-FIVE THOUSAND DOLLARS  
(\$1,675,000)

and in like manner to pay interest on the unpaid principal balance hereof from the date hereof at a rate per annum equal to the Prime Rate, as hereinafter defined, plus 1% per annum, such principal and interest being payable in installments as follows:

(a) On June 5, 1995, and on the first day of each calendar month thereafter, the interest accrued on the unpaid principal balance hereof to the date of such installment; and

(b) On May 5, 1997, unless sooner paid, an amount equal to the entire unpaid principal balance hereof plus the interest accrued and unpaid hereon to the date of payment.

Both the principal of and interest on this bond shall be payable at the principal office of the Mortgagee (First Commercial Bank, in the City of Birmingham, Alabama) or of its successors or assigns, 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.

Interest on this bond shall be computed on the basis of a 360-day year for the actual number of days elapsed. The term "Prime Rate" shall mean the rate of interest established (whether or not charged) from time to time by First Commercial Bank, as its general reference rate of interest, after taking into account such factors as First Commercial Bank may from time to time deem appropriate in its sole discretion (it being understood, however, that First Commercial Bank may from time

to time make various loans at rates of interest having no relationship to such general reference rate of interest).

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 plus 3% 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 fourteenth day (whether or not a business day) 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.

This bond is issued for the purpose of financing a part of the cost of acquiring real property, constructing thereon and equipping two buildings, facilities and improvements, and paying necessary expenses incidental thereto (such land, buildings, improvements, equipment and facilities as they may at any time exist being herein called the "Project"). The Project is leased to Pelham Industrial Enterprises, L.L.C., an Alabama limited liability company (herein called the "Lessee") under a Lease Agreement dated as of May 1, 1995 (herein 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 May 1, 1995 (herein called the "Indenture") duly executed and delivered by the Board to First Commercial Bank (herein called the "Mortgagee", which term also includes any successor mortgagee 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 Mortgagee and the owner of this bond, and the terms upon which this bond is delivered.

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 date in the event of (a) damage to or condemnation of the Project, as 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.

(2) The entire unpaid principal balance of this



bond or any lesser portion thereof in multiples of \$5,000 is subject to prepayment (without premium or penalty) at the option of the Board with money provided by the Lessee on any date.

Written notice of any intended prepayment above shall be given to the owner hereof by the Lessor or the Lessee at least 15 days before the date fixed for redemption, but such notice may be waived.

Any partial prepayment of principal shall be accompanied by payment of the accrued interest on the Bond to the date of such payment, and shall not postpone the due date of any subsequent interest installments coming due hereunder prior to the payment in full of the principal and interest on this bond.

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 Indenture. This bond is a 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 principal of and interest on 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 under the Indenture to secure the payment of this bond. The City of Pelham, Alabama (herein called the "Municipality") shall not in any event be liable for the payment of 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 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 entire principal balance 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 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 will be sufficient in amount for that purpose.

IN WITNESS WHEREOF, The Industrial Development Board of the City of Pelham has caused this bond to be executed in its name by the Chairman of its Board of Directors and attested by its Secretary, and has caused its corporate seal to be hereunto affixed, all as of the \_\_\_\_\_ day of \_\_\_\_\_ 1995.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

By \_\_\_\_\_  
Chairman of its Board of  
Directors

S E A L

Attest: \_\_\_\_\_  
Secretary

WHEREAS, all things necessary to make the Bond, when issued as in this Indenture provided, the valid, binding and legal obligation 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 and interest on the Bond, have been done and performed, and the creation, execution and issuance of the

Bond, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS MORTGAGE AND INDENTURE WITNESSETH:

GRANTING CLAUSES

For and in consideration of the premises, the mutual covenants of the Borrower and the Mortgagee and the purchase of the Bond by the Mortgagee and in order to secure the payment of the principal of and interest on the Bond according to its tenor and effect and the performance and observance by the Borrower of all the covenants expressed or implied herein and in the Bond, the Borrower does hereby grant, bargain, sell, convey, assign, mortgage and pledge unto the Mortgagee and unto its successors and assigns forever:

I.

The real estate and interest therein and the premises located in the City of Pelham, Shelby County, Alabama, described on Exhibit A attached hereto and incorporated herein by this reference, 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 and installed in or about the Buildings or on the Mortgaged Realty pursuant to the Inducement Agreement and the Lease Agreement, including without limitation any machinery, equipment and personal property acquired or financed with the proceeds from the sale of the Bond and the machinery, equipment and personal property described in 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.

III.

The rights of the Borrower under and pursuant to the Lease Agreement, 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 under and pursuant to the Lease Agreement.

IV.

Until disbursed in accordance with the provisions hereof, all moneys and investments in the Construction Fund.

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 Mortgagee, 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.

SUBJECT, HOWEVER, to Permitted Encumbrances;

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 Mortgagee and its successors and assigns forever;

PROVIDED, HOWEVER, that if the Borrower, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of and interest on the Bond due or to become due thereon, at the times and in the manner mentioned in the Bond, 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 Mortgagee 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 Bond is to be issued, authenticated, delivered, secured and accepted by all persons who from time to time shall be or become the owner thereof, and the conditions upon which the Mortgaged Property is to be held and disposed of, 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 Mortgagee, 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 \$50,000,000, or (iii) money market funds which are invested solely in any of the investments referred to in clauses (i) and (ii) of this definition.

"Bond" means the Bond 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 Mortgagee.

"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 (i) the buildings, structures and fixtures constructed or installed on the Mortgaged Realty, and (ii) all other buildings, structures and fixtures hereafter located on the Mortgaged Realty, as they may at any time exist.

"Construction Fund" means the fund established under Section 3.2 hereof.

"Enabling Law" means 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 described in granting clause II hereof.

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

"Extraordinary Expenses" means all expenses incurred under the Indenture other than Ordinary Expenses.

"Government Obligations" means (a) 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 (b) 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.

"Guaranty Agreement" shall have the meaning assigned to it in the Lease Agreement.



"Indenture" means these presents as supplemented and amended by any supplemental indentures executed by the Borrower and the Mortgagee.

"Independent Counsel" means an attorney duly admitted to practice law in any state of the United States of America and not regularly employed by either the Borrower or the Lessee, 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.

"Lessee" means Pelham Industrial Enterprises, L.L.C., a limited liability company under the laws of Alabama.

"Mortgaged Property" means (i) the Project, (ii) the rights of the Borrower under and pursuant to the Lease Agreement, (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, are or subsequently become subject to the lien of this Indenture.

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

"Mortgagee" means the party of the second part hereto, and any corporation or association resulting from or surviving any consolidation, merger or conversion to which it or its successors may be a party.

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

"Ordinary Expenses" means those expenses normally incurred by a mortgagee under instruments similar to this Indenture.

"Permitted Encumbrances" means, as of any particular time, (i) the Lease Agreement, (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 inchoate mechanic's, laborer's, materialman's, supplier's or vendor's lien, (v) without limitation of any of the foregoing, those exceptions and encumbrances referred to in

Exhibit C attached hereto and hereby made a part hereof, and (vi) 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.

"Prime Rate" means the rate of interest established (whether or not charged) from time to time by First Commercial Bank, as its general reference rate of interest, after taking into account such factors as First Commercial Bank may from time to time deem appropriate in its sole discretion (it being understood, however, that First Commercial Bank may from time to time make various loans at rates of interest having no relationship to such general reference rate of interest).

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

"State" means the State of Alabama.

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

Section 1.4 Applicable Provisions of 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 shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Mortgagee.

Section 1.7 Limitation of Rights. Nothing expressed or mentioned in or to be implied from this Indenture or the Bond is intended or shall be construed to give any person other than the parties hereto and their successors hereunder and the Lessee 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 and the Lessee as herein provided.

No recourse shall be had for the payment of the principal of, premium (if any), or interest on the Bond or for any claims based thereon or upon any obligation, covenant or agreement contained in the Indenture, 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 Bond.

## ARTICLE II

### THE BOND

Section 2.1 Source of Payment of Bond; Municipality not Liable. The Bond 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 Bond 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 general 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 Bond, the rentals, revenues and receipts derived from or in connection with the Project and the moneys received under the Lease Agreement, and nothing in the Bond or in this Indenture shall be considered as pledging any other funds or assets of the Borrower. The Municipality is not liable for



payment of the Bond or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Borrower. Neither the Bond nor any agreement of the Borrower shall be construed to constitute an indebtedness of the Municipality within the meaning of any constitutional or statutory provision whatever.

Section 2.2 Authorization of Bond. A single bond shall be issued hereunder in the principal amount of \$1,675,000. The Bond shall be in such form, shall bear interest at such rate, shall be payable as to principal and interest at such time or times and in such amounts, shall be subject to prepayment at such times and under such circumstances, and shall contain such other terms as set forth in the form of the Bond in the recitals to this Indenture. The Bond shall be executed by the Chairman of the Board and shall be attested by the Secretary, and the official corporate seal of the Board shall be affixed thereto. The Bond shall be dated as of the date of delivery and payment therefor. No bonds other than the Bond shall be issued under or secured by this Indenture.

### ARTICLE III

#### DELIVERY OF THE BOND CUSTODY AND APPLICATION OF PROCEEDS OF BOND

Section 3.1 Delivery of Bond. The Borrower shall execute and deliver the Bond to the Mortgagee upon the payment by the Mortgagee to the Borrower of the purchase price thereof. The Bond may be executed by the Borrower and delivered prior to any recordation of the Indenture. The receipt of the Treasurer of the Borrower shall be full acquittal to the Mortgagee for the purchase price of the Bond, and the proceeds of the sale of the Bond shall be held and disposed of only as hereinafter provided.

Section 3.2 Construction Fund; Disbursements. There is hereby established with the Mortgagee an account in the name of the Borrower to be designated the "Pelham Industrial Enterprises, L.L.C., Phase FIVE Construction Fund". The proceeds of the Bond shall be deposited in the Construction Fund. The money in the Construction Fund shall be paid out by the Mortgagee from time to time on a monthly basis for the purpose of paying Project Costs, 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 such payment, the amount requested to be paid and the name of the person to whom such payment is to be made.

(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 the Project Cost, (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 to be expended, (iv) certify that any property for which payment is to be made has been installed or is located on the Mortgaged Realty, (v) state that the Lessee is not in default under the Lease Agreement and that no such default is imminent, and (vi) 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 Bond.

(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, an undertaking by the Lessee to retain for four years all invoices and copies of purchase orders for Project Costs and to make them available at all reasonable times to the Borrower and the Mortgagee, or any taxing agency having an interest therein) 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.

(d) An updated detailed budget for the Project on a category by category basis, showing sources, uses and application of funds and a completed and executed AIA Form G702.

(e) An endorsement of approval on such requisition, signed by the Mortgagee.

(f) A "down-to-date endorsement" on the policy of title insurance respecting the Project showing that no mechanic's or materialman's liens have been filed.

(g) Such foundation and "as-built" surveys as the Mortgagee may require.

All disbursements from the Construction Fund shall be made in accordance with a project budget approved by the Mortgagee and any deviations from this budget must be approved in advance by the Mortgagee. The budget will be monitored monthly on a category by category basis. Should an individual category exceed the budgeted amount needed to complete the Project, then an equity injection must be made by the Lessee unless a budgetary savings in the same or a greater amount is realized in a different category. The Lessee shall fund all budget overruns. All disbursements will be subject to satisfactory inspection of the Project by the Mortgagee.

The Mortgagee reserves the right to employ an independent inspection firm to monitor the progress of the construction on a monthly basis. The fee charged by the inspection firm will be

paid for by the Lessee; however, the selection of the firm shall be mutually acceptable to the Mortgagee and the Lessee.

In addition to the documents required by this Section, the Mortgagee may require as a condition precedent to any payment or withdrawal further evidence with respect thereto or as to the correctness of any statement made in any requisition, payment request or endorsement.

All moneys remaining in the Construction Fund upon delivery of the documents referred to in Section 2.5 of the Lease Agreement shall be applied on the next ensuing interest payment date to the prepayment of the principal of the Bond.

#### ARTICLE IV

##### INVESTMENT OF AND SECURITY FOR CONSTRUCTION FUND

Section 4.1 Security for Fund. The moneys at any time on deposit in the Construction Fund shall be and at all times remain public funds impressed with a trust for the purpose for which the said fund was created. The Mortgagee shall at all times keep the moneys on deposit in such fund continuously secured for the benefit of the Borrower 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, 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 Mortgagee to secure any portion of the money on deposit in the said fund 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 4.2 Investment of Construction Fund Moneys. Any money held as part of the Construction Fund shall be invested and reinvested by the Mortgagee in Authorized Investments in accordance with the instructions of the Lessee, as provided in the Lease Agreement. Any such investments shall be held by or under the control of the Mortgagee and shall be deemed at all times a part of the Construction Fund 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 Mortgagee shall sell and reduce to cash funds a sufficient amount of such investments whenever the cash balance in the Construction Fund is insufficient to pay a requisition when presented. The Mortgagee shall have no liability or responsibility for any loss resulting from investments made pursuant to this Article. Money held by the Mortgagee hereunder need not be segregated from other funds except to the extent required by law. The Mortgagee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing 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 Mortgagee as follows:

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

Section 5.2 Cooperation with Lessee. The Borrower will cooperate with the Lessee to the end that the Project may be completed, placed in service, and rented or leased by the Lessee in the most successful and productive manner possible.

Section 5.3 Collection and Disposition of Revenues and Receipts. The Borrower will 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 Mortgagee for disposition in accordance with and as provided in this Indenture. The Borrower will deposit, or cause to be deposited, with the Mortgagee 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 and interest on the Bond as the same become due and payable.

Section 5.4 Borrower to Keep Project Leased. The Borrower will keep the Project leased at all times for a rent sufficient to pay the principal of and interest on the Bond 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 also 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 leased premises under the Lease Agreement is returned to the Borrower, the Borrower shall fully

cooperate with the Mortgagee 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 installments of principal and interest on the Bond 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 of the entire Project except the Lease Agreement shall be subject to the prior written approval by the Mortgagee and all such leases shall be assigned to the Mortgagee as security for the Bond.

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 Mortgagee 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 Mortgagee 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 will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bond and in all proceedings of its Board of Directors pertaining thereto.

The Borrower will require the Lessee faithfully to perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Lease Agreement. The Borrower will promptly notify the Mortgagee 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 will promptly comply with the instructions or directions of the Mortgagee 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 Mortgagee may from time to time designate.

Section 5.8 Title to Project. The Borrower has title in fee simple to and the beneficial interest in and is lawfully possessed of the Mortgaged Realty and the Equipment, 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 Mortgagee, its successors and assigns, 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.

Section 5.9 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. The Borrower will warrant and defend such pledge and assignment to the Mortgagee, its successors and assigns, against the claims and demands of all persons whomsoever. 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 except as herein otherwise provided. The Borrower will at all times maintain and preserve the lien and rank of this Indenture as a first and prior lien upon revenues, receipts and the Lease Agreement so pledged and assigned.

Section 5.10 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 Mortgagee shall reasonably require for the better assuring, assigning, transferring, pledging and confirming unto the Mortgagee, 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 Bond and the rights and remedies of the Mortgagee 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 5.11 Taxation. As provided in the Enabling Law, the Bond and the income therefrom and any revenues derived from any lease of the Project, are exempt from all taxation in the State. The Project is subject to ad valorem taxation, except as agreed to by the Mortgagee pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. The income on the Bond is subject to Federal income taxation.

## 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. Any such proceeds held by the Mortgagee for the purpose of repairing, rebuilding or restoring the Project shall be deposited in the Construction Fund and withdrawals shall be made therefrom upon compliance with the provisions of this Indenture with reference to disbursements from said Fund.

Section 6.3 Prohibition of Mortgages and Pledges. The Borrower will not mortgage, pledge or otherwise encumber the Mortgaged Property or any part thereof. The Borrower shall not incur any obligations nor issue any bonds or other securities payable from the revenues and receipts herein pledged.

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, except as may be permitted by this Section.

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, and the Mortgagee shall consent in writing thereto, 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 Municipality or to another public corporation whose property and income are not subject to Federal or Alabama taxation if the Municipality 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 Bond according to its 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 Municipality 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 on or other lien being affixed to or imposed on or becoming a lien on the Project or the revenues and receipts therefrom, or in the interest income on the Bond becoming subject to State income taxation.

Section 6.5 Improvements, Alterations, Fixtures and Personal Property. While the Borrower is not in default hereunder, the Borrower, with the prior written consent of the Mortgagee, 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 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, with the prior written consent of the Mortgagee, 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.

## ARTICLE VII

### DEFAULT PROVISIONS AND REMEDIES OF MORTGAGEE

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

(a) Failure by the Borrower to pay any installment of interest on or the principal of the Bond as and when the same 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 and interest on the Bond) after thirty days' written notice of such failure (which notice must state that it is a "Notice of Default" hereunder) made by the Mortgage to the Borrower 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; or

(e) An event of default under the Lease Agreement or the Guaranty Agreement, as defined in the Lease Agreement.

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

(a) The Mortgagee may, by notice in writing delivered to the Borrower, declare the entire principal balance of the Bond 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 Bond to the contrary notwithstanding; subject, however, to the discretionary right of the Mortgagee 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, and all arrears of interest upon the Bond and the reasonable expenses and charges of the Mortgagee, its agents and attorneys, and all other payments required by this Indenture shall be paid.

(b) The Mortgagee may proceed to protect and enforce its rights hereunder and under the Bond, 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 Mortgagee, being advised by counsel, shall deem most effectual to protect and enforce its rights hereunder.

(c) The Mortgagee 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 Mortgagee may, in its discretion, with or without declaring the entire principal balance of the Bond 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 Mortgagee 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 Mortgagee and its agents, attorneys, receivers, or counsel, the Mortgagee shall apply the moneys arising as aforesaid as provided in Section 7.7 hereof.

(e) The Mortgagee, 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 made at

public outcry at the main door of the County Courthouse of the County in which the Project is situated, at such time or times and upon such terms as may be required by law or as the Mortgagee may determine after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) consecutive weeks prior to said sale in any newspaper then published in said County, 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 Mortgagee pursuant to any of the foregoing powers or pursuant to judicial authority,

(a) The entire principal balance of the Bond shall forthwith become due, anything therein or herein to the contrary notwithstanding.

(b) The whole of the Project may be sold in one parcel and as an entirety, or in more than one parcel.

(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 Mortgagee 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 Mortgagee, the Mortgagee may sell such property for an amount less than sufficient to pay all amounts then owing to the Mortgagee or for a consideration consisting of part cash and part purchase money mortgage, or both.



(f) The Mortgagee may bid for and purchase the Project, or the portion thereof to be sold, at such sale.

(g) The Mortgagee 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 Mortgagee 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 Mortgagee of any part of the purchase money.

Section 7.4 Rights and Remedies of Mortgagee on Default under Lease. The Mortgagee 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 entire 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 or of the Bond, or of any part thereof. In the event of a default by the Lessee, as defined in Section 8.1 of the Lease Agreement, or in the event of a default of any other lessee of the entire Project in the punctual payment of rent sufficient to pay the principal of and interest on the Bond as they become due, the Mortgagee may declare such lease in default and pursue such proper remedies as it shall deem desirable for the enforcement of the provisions of such lease and guaranty, if any, and the exercise of any remedies available to the Borrower or the Mortgagee in the event of such default under such lease and such guaranty; subject, however, to the discretionary right of the Mortgagee 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 Mortgagee 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 Bond or any part thereof, the Mortgagee (irrespective of whether there has been a default under this Indenture) shall be entitled and empowered to intervene in such proceedings, 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 Mortgagee (including any claim for reasonable compensation to the Mortgagee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Mortgagee) 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 Mortgagee may deem necessary or appropriate to protect the interest of the Mortgagee, and any receiver, assignee or trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized to make payments to the Mortgagee.

Section 7.6 Rights of Lessee in Event of Default by Borrower under this Indenture. If the Lessee is not in default under the Lease Agreement and an Event of Default should occur under this Indenture, the Mortgagee 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 Application of Money Collected. Any money collected by the Mortgagee 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 Mortgagee hereunder, shall, after payment of all amounts owed to the Mortgagee, its agents, attorneys and counsel for the collection of such moneys or for moneys advanced hereunder, and subject to the provisions of Section 2 of the Guaranty Agreement to the contrary with respect to moneys collected or received thereunder, be applied in the following order:

(a) Unless the entire principal balance of the Bond shall have been declared due and payable, all such moneys shall be applied:

First. To the payment of interest then due on the Bond, with interest on overdue installments of such interest.

Second. To the payment of the unpaid principal of the Bond which shall have matured, with interest on overdue principal from the date upon which it became due.

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

(b) If the entire principal balance of the Bond 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 Bond, with interest on overdue principal and interest.

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

Section 7.8 Remedies Cumulative. No remedy herein conferred upon or reserved to the Mortgagee 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 7.9 Delay or Omission Not a Waiver. No delay or omission of the Mortgagee 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 Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

Section 7.10 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.

## ARTICLE VIII

### THE MORTGAGEE

Section 8.1 Relation of Mortgagee to Other Parties. The Mortgagee is acting hereunder for its own economic interest and has and shall have no fiduciary obligation to the Borrower, the Lessee, or any Guarantor.

Section 8.2 Right of Mortgagee 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, assessments, 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 Mortgagee may pay such tax, assessment, governmental charge, premiums or expenses without prejudice, however, to any rights of the Mortgagee 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 rate equal to the Prime Rate, as defined in the Bond, plus 3% 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 the Bond and shall be paid out of the proceeds of any sale of the Mortgaged Realty if not otherwise paid by the Borrower, but the Mortgagee shall be under no obligation to make any such payment.

Section 8.3 Compensation of Mortgagee. The Mortgagee shall have a first lien on the Mortgaged Property and the revenues and receipts pledged hereunder and all funds held or collected by the Mortgagee as such with right of payment prior to payment on account of interest or principal of the Bond, for all reasonable expenses, advances, disbursements and counsel fees incurred or made in and about the exercise and performance of the powers and duties of the Mortgagee 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 Mortgagee).

Section 8.4 Merger or Consolidation. Any corporation or association into which the Mortgagee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger or consolidation to which the Mortgagee shall be a party, or any corporation or association succeeding to all or substantially all of the business of the Mortgagee, shall be the successor of the Mortgagee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1 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, addressed to the Borrower, the Mortgagee or the Lessee as provided in the Lease Agreement. A duplicate copy of each notice required to be given hereunder by either the Borrower or the Mortgagee shall also be given to the Lessee, and a duplicate copy of each notice required to be given hereunder by the Mortgagee to either the Borrower or the Lessee shall also be given to the other. The Borrower, the Lessee, and the Mortgagee may, by



notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2 Release of Funds Upon Payment of Bond. Any amounts remaining in the Construction Fund after payment in full of the Bond, the charges and expenses of the Mortgagee and all other amounts required to be paid hereunder shall be paid or applied as provided in the Lease Agreement if there is no default hereunder.

Section 9.3 Consent of Guarantors to Amendment to Lease Agreement or Indenture. The consent of any guarantors of the Bond or any part thereof or the Lessee's obligations under the Lease Agreement shall be obtained prior to the execution of any amendments or supplements to the Lease Agreement or this Indenture.

Section 9.4 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 9.5 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.

IN WITNESS WHEREOF, the Borrower has caused this Indenture to be signed in its name and behalf by the Chairman of its Board of Directors and its corporate seal to be hereunto affixed and attested by its Secretary and to evidence its acceptance of the rights hereby created, the Mortgagee 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 Mortgagee have caused this Indenture to be dated as of May 1, 1995.

THE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF PELHAM

By *Donnell*  
Chairman of its Board of  
Directors

S E A L

Attest: *Tillman T. Evers*  
Secretary

FIRST COMMERCIAL BANK

By *Ch. A. [unclear]*  
Its Commercial loan officer

S E A L

Attest: *Harold Green*  
Its Private Banking Officer

ACKNOWLEDGMENT OF BORROWER

STATE OF ALABAMA  
COUNTY OF SHELBY

I, ROBERT H. WALSTON, 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 City of Pelham, a public corporation, is signed to the foregoing Mortgage and Indenture and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage and Indenture, 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 4<sup>th</sup> day of May 1995.

Robert H. Walston

Notary Public

NOTARIAL SEAL

My commission expires: 12-30-98

ACKNOWLEDGMENT OF MORTGAGEE

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, ROBERT H. WALSTON, a Notary Public in and for said County, in said State, hereby certify that Chris Haley, whose name as Commercial Loan Officer of First Commercial Bank is signed to the foregoing Mortgage and Indenture and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Mortgage and Indenture, 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 15<sup>th</sup> day of May 1995.

Robert H. Walston

Notary Public

NOTARIAL SEAL

My commission expires: 12-30-98



## EXHIBIT A

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, situated in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at Station 47+73.31 on the centerline of Cahaba Valley Parkway, said point also being on the centerline of Cahaba Valley Circle; thence run Easterly along said centerline of Cahaba Valley Parkway for 80.0 feet to a point; thence turn an angle to the right of 90 deg. 00 min. 00 sec. and run Southerly for 30.0 feet to a point on the Southerly right of way line of Cahaba Valley Parkway, said point also being the point of beginning; thence turn an angle to the left of 90 deg. 00 min. 00 sec. and run Easterly along the South right of way of Cahaba Valley Parkway for 265.00 feet to a point; thence turn an angle to the right of 90 deg. 00 min. 00 sec. and run Southerly for 537.78 feet to a point; thence turn an angle to the right of 64 deg. 31 min. 39 sec. and run Southwesterly for 249.65 feet to a point; thence turn an angle to the right of 90 deg. 00 min. 00 sec. and run Northwesterly for 283.31 feet to a point on the Easterly right of way line of Cahaba Valley Circle, said point being on a curve to the left, said curve having a radius of 228.01 feet and subtending a central angle of 30 deg. 49 min. 35 sec.; thence turn an angle to the right of 56 deg. 17 min. 56 sec. to become tangent to said curve; thence run along the arc of said curve and the Easterly right of way line of Cahaba Valley Circle for 122.67 feet to the end of said curve; thence at tangent to said curve run Northerly along the Easterly right of way line of Cahaba Valley Circle for 222.54 feet to a point on a curve to the right, said curve having a radius of 50.00 feet and subtending a central angle of 90 deg. 00 min. 00 sec.; thence run along the arc of said curve and the Easterly right of way line of Cahaba Valley Circle for 78.54 feet to the end of said curve, said point also being the point of beginning; being situated in Shelby County, Alabama.

## EXHIBIT B

All building materials, equipment, fixtures, supplies and fittings of every kind or character now or hereafter acquired by the Lessor or the Lessee for the purpose of or used or useful in connection with the improvements, additions and fixtures to be constructed and installed on the Leased Realty as defined in the Lease Agreement, whether such materials, equipment, fixtures, supplies and fittings are actually located on or adjacent to the Leased Realty or not, and whether in storage or otherwise, wheresoever the same may be located. The property included as a part of the Project shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing materials, paint, doors, windows, hardware, pails, wires and wiring, plumbing and plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, in general all building material and equipment of every kind and character used or useful in connection with the construction and installation of said improvements, additions and fixtures.

EXHIBIT C

General and special taxes or assessments for 1995 and subsequent years not yet due and payable.

Public easements as shown by recorded plat, including 12 foot slope easement on the Southeasterly side as shown on the survey by Joseph A. Miller, dated 02/22/95.

Restrictions, covenants and conditions as set out in instrument(s) recorded in Real 268 page 140 as amended Real 290 page 386; Instrument #1992-15856; Real 325 page 929 and Instrument #1993-25691 in Probate Office of Shelby County, Alabama.

Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed 101 pages 520 and 521; Deed 113 page 281 and Deed 145 page 378 in Probate Office of Shelby County, Alabama.

Easement(s) to Alabama Power Company as shown by instrument recorded in Real 292 page 618 in Probate Office of Shelby County, Alabama.

Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed 5 page 706 in Probate Office of Shelby County, Alabama.

Inst # 1995-12893

Inst # 1995-12893

05/17/1995-12893  
08:39 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
036 MCD 97.00