

MORTGAGE, SECURITY AGREEMENT AND INDENTURE OF TRUST  
BETWEEN  
THE PUBLIC PARK AND RECREATION BOARD  
OF THE CITY OF PELHAM  
AND  
FIRST ALABAMA BANK

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STATE OF ALABAMA     )

SHELBY COUNTY         )

THIS MORTGAGE, SECURITY AGREEMENT AND INDENTURE OF TRUST made and entered into as of the first day of February, 1996, by and between THE PUBLIC PARK AND RECREATION BOARD OF THE CITY OF PELHAM, a public corporation duly organized and existing under the laws of the State of Alabama (hereinafter sometimes referred to as the "Borrower"), as party of the first part, and FIRST ALABAMA BANK, a bank organized and existing under the laws of the State of Alabama and authorized to accept and execute trusts of the character herein set out with its principal office in the City of Birmingham, Alabama (hereinafter called the "Trustee"), party of the second part;

W I T N E S S E T H:

WHEREAS, the Borrower has been heretofore organized under and is authorized by Act No. 218 adopted at the 1967 Extra Session of the Legislature of the State of Alabama, as amended (appearing as Code of Ala. 1975, § 11-60-1 thru § 11-60-20) (hereinafter sometimes referred to as the "Act"), to acquire, enlarge, improve, expand, equip and furnish medical clinic facilities; and

WHEREAS, the Borrower has made the necessary arrangements with the Purchaser, hereinafter defined, for acquiring real property and constructing thereon and equipping a building, facilities and improvements and for acquiring and installing equipment and furnishings thereon or therein (the "Project", as hereinafter more fully defined), which will be of the character and accomplish the purposes provided by the Act, and the Borrower has further entered into an Installment Sale Agreement with the Purchaser specifying the terms and conditions of the acquisition of the Project and the sale of the same to the Purchaser, which Installment Sale Agreement was authorized by a resolution duly adopted and approved by the Borrower, which Installment Sale 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, Security Agreement and Indenture of Trust on record with said Judge of Probate, and to which Installment Sale Agreement reference may be made by any interested person for the terms, conditions and obligations of the parties thereto (hereinafter sometimes referred to as the "Sale Agreement"); and

WHEREAS, it has been determined that the estimated amount necessary to finance the cost of the Project, including necessary expenses incidental thereto, will require the issuance, sale and delivery of Bonds in the principal amount of \$3,000,000 as hereinafter provided; and

WHEREAS, the execution and delivery of this Mortgage, Security Agreement and Indenture of Trust (hereinafter sometimes referred to as the "Indenture"), and the issuance of Bonds under the Act have been in all respects duly and validly authorized by resolution duly passed and approved by the Borrower; and

WHEREAS, the Bonds to be issued hereunder and the Trustee's authentication certificate are to be substantially in the following forms, respectively, with appropriate omissions, insertions and variations permitted or authorized as hereinafter provided:

(Form of Registered Bond)

UNITED STATES OF AMERICA  
STATE OF ALABAMA  
THE PUBLIC PARK AND RECREATION BOARD  
OF THE CITY OF PELHAM  
FIRST MORTGAGE REVENUE BOND  
SERIES 1996  
(YMCA-SMC PROJECT)

No. R-1

\$3,000,000

KNOW ALL MEN BY THESE PRESENTS that The Public Park and Recreation Board of the City of Pelham, a public corporation created and existing under the laws of the State of Alabama (hereinafter called the "Borrower") and located in the City of Pelham, Alabama (hereinafter called the "Municipality"), for value received, promises to pay (unless this Bond shall have been duly called for previous redemption and payment duly provided for) from the source and as hereinafter provided to FIRST ALABAMA BANK or registered assigns (the "Bond Owner"), the principal sum of THREE MILLION AND NO/100 DOLLARS (\$3,000,000) in 228 monthly installments of principal beginning on February 1, 1998, and continuing on the first of each month thereafter until the principal sum is paid in full, and in like manner to pay to the registered owner hereof interest (computed on a 360 day year of 12 consecutive 30 day months) from the date of issuance (as indicated by the date of authentication by the Trustee) on the outstanding principal balance thereof at the per annum rate of the "Applicable Percentage" (as hereinafter defined) of the Commercial Base Rate of interest as announced from time to time by Regions Financial Corporation, a Delaware corporation with its principal office in the City of Montgomery, Alabama (the "Base Rate"), subject to a maximum interest rate on this Bond of 6.25% and a minimum interest rate on this Bond of 5.25%. The initial Base Rate will be the rate in effect on the date of issuance and will be adjusted from time to time whenever the Base Rate changes. Interest only will be paid on the first of each month beginning April 1, 1996 to and including January 1, 1998. Beginning on February 1, 1998, and continuing on the first of each month thereafter to and including January 1, 2017, or such earlier date that the principal sum, accrued interest and all other payments due on this Bond are paid in full, principal and interest shall be paid in monthly installments which shall be level for each calendar year. Each calendar year's level payments shall be determined based on the Applicable Percentage of the Base Rate in effect on January 1, of such calendar year, as applied to an amortization schedule ending on January 1, 2017, and based on the outstanding principal balance (after reduction thereof for any prepayments of principal) and accrued but unpaid interest. All monthly payments shall be applied first to the actual accrued interest (adjusted whenever the Base Rate changes), then to the principal balance. Any accrued interest that remains unpaid after the application of a monthly payment due to negative amortization shall be carried over to the subsequent month. The final payment shall be made on January 1, 2017 (if not made prior



thereto), and shall include all accrued interest and outstanding principal. The "Applicable Percentage" shall initially be 66.00% and shall thereafter be indexed to the maximum marginal rate of tax imposed by Subtitle A, Chapter 1A, Part II, Section 11 of the Internal Revenue Code of 1986, as amended, on the taxable income of corporations (the "Maximum Corporate Tax Rate"), such that the Applicable Percentage shall be equal to the product (rounded to the second decimal point; e.g. 66.00) of (i) 66.00% times (ii) a fraction, the numerator of which is the number 1 minus the Maximum Corporate Tax Rate (expressed as a decimal) then in effect, and the denominator of which is 0.65. The Applicable Percentage shall not at any time exceed 100%. The Applicable Percentage shall be adjusted as of the effective date of each change in the Maximum Corporate Tax Rate. The maximum rate of 6.25% and the minimum rate of 5.25% will not change in the event of a change in the maximum tax rate.

The principal of and premium, if any, on this Bond shall be payable in lawful money of the United States of America at the corporate trust office of First Alabama Bank, Birmingham, Alabama (the "Trustee"), or its successor as Trustee under the Indenture hereinafter referred to, and the interest on this Bond shall be remitted by the Trustee, hereinafter referred to, in lawful money of the United States of America by check or draft mailed or otherwise delivered to the then registered owner hereof at the address shown on the bond registration books of the Trustee.

If interest on this Bond shall be determined to be subject to income taxation by the United States of America, without regard to the status, person acts or omissions of the owner of this Bond, then at any time after such determination of taxability, the Bond Owner shall have the option, upon written notice to the Purchaser, the Trustee and the Borrower, to direct that the interest rate on the Bond be increased to an amount not to exceed the Base Rate, subject to a maximum interest rate on this Bond of 9.08% and a minimum interest rate on this Bond of 7.54%.

If at any time this Bond is owned by Shelby County Health Care Authority (the "Guarantor"), or any successor organization, then such Bond Owner shall have the option, upon written notice to the Purchaser, the Trustee and the Borrower, to direct that the interest rate on this Bond be increased to an amount of not to exceed 80% of the Base Rate during the time that this Bond is owned by Shelby County Health Care Authority, or any such successor organization.

This Bond is one of an authorized issue of Bonds limited in aggregate principal amount to \$3,000,000 issued and authorized to be issued for the purpose of acquiring real property, constructing thereon and equipping a recreational, physical, athletic, sports, health, rehabilitation and sports medicine facility in the City of Pelham, Alabama, and selling the same by the Borrower under an Installment Sale Agreement dated as of February 1, 1996 (hereinafter called the "Sale Agreement") to The Young Men's Christian Association of Birmingham, an Alabama non-profit corporation (hereinafter referred to as "Purchaser") (such land, building, equipment, facilities and improvements as they may at any time exist being hereinafter called the "Project") and paying necessary expenses incidental thereto. Said Bond is issued under, is secured by and is entitled to the protection given by a Mortgage, Security Agreement and Indenture of Trust

(hereinafter called the "Indenture"), dated as of February 1, 1996, duly executed and delivered by said Borrower to First Alabama Bank, as Trustee (the term "Trustee" where used herein referring to said Trustee, or its successor in trust) and reference is hereby made to the Indenture and to all indentures supplemental thereto for a description of the property mortgaged, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of said Borrower, the Trustee and the owners of the Bonds and the terms upon which the Bonds are issued and secured. Said Bonds are also secured by a guaranty of payment from Shelby County Health Care Authority to the Trustee under a Guaranty Agreement dated as of February 1, 1996 (the "Guaranty"). Additional Bonds ranking equally with this Bond may be issued on the terms provided in the Indenture.

This Bond is transferable, as provided in the Indenture, only upon the registration books kept for that purpose at the principal office of the Trustee by the registered owner hereof in person or by his duly authorized attorney, upon surrender of this Bond to the Trustee together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney, and thereupon the Trustee shall issue in the name of the transferee one or more new registered Bonds of the same aggregate principal amount as the surrendered Bond, upon payment of the charges prescribed in the Indenture.

The owner of this Bond may surrender the same to the Trustee at its principal office (together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney), in exchange for an equal aggregate principal amount of registered Bonds, of any authorized denominations, in the manner, subject to the conditions and upon the payment of the charges provided in the Indenture.

This Bond is subject to optional redemption or prepayment of principal by the Borrower prior to maturity, upon request of the Purchaser, on any interest payment date, in whole or in part, at a price equal to 100% of the principal amount thereof plus accrued interest thereon to the redemption or prepayment date.

This Bond is also subject to mandatory redemption or prepayment of principal in the event (1) the Purchaser exercises its option to redeem the Bond or prepay principal pursuant to Section 207 of the Indenture or the Purchaser elects to have the proceeds of a condemnation award applied toward the redemption of the Bond or prepayment of principal as provided in Section 5.2 of the Sale Agreement, (2) there is any money left in the Construction Fund after the Project Supervisor certifies that the Project has been completed, (3) the Project is sold pursuant to Article IX of the Indenture after an event of default, (4) there is a failure of title to the project to the extent that substantial use of the Project by the Purchaser will be prevented for in excess of 3 consecutive months or (5) the Project is sold, assigned or transferred without the prior written consent of the owner of the Bond. In the case of redemption or prepayment of principal pursuant to any of the foregoing, this Bond shall be subject to redemption or prepayment of principal by the Borrower at any time in whole or in part, at a price equal to 100% of the principal amount thereof plus accrued interest thereon to the redemption or prepayment date.



In the event any of the principal is called for redemption or prepayment as aforesaid, notice thereof identifying the amount to be redeemed or prepaid will be given by mailing a copy of the redemption or prepayment notice by registered or certified mail to the address shown on the registration books at least thirty days prior to the date fixed for redemption or prepayment to the registered owner of this Bond; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for redemption or prepayment. All principal so called for redemption or prepayment will cease to bear interest on the specified redemption or prepayment date provided funds for their redemption or prepayment are on deposit at the place of payment at that time, and, upon such deposit, such principal shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Alabama, particularly Act No. 218 adopted at the 1967 Extra Session of the Legislature of the State of Alabama, as amended (appearing as Code of Ala. 1975, § 11-60-1 thru § 11-60-20) and pursuant to a resolution adopted and approved by the Borrower, which resolution authorizes the execution and delivery of the Indenture. This Bond and the issue of which it forms a part are limited obligations of the Borrower and are payable solely out of the revenues and receipts derived from the sale of the Project financed through the issuance of the Bond and which has been sold to the Purchaser. The Bond does not now and shall never constitute an obligation of or a charge against the general credit or taxing powers of the Municipality. Installment payments sufficient for the prompt payment when due of the interest on and principal of this Bond are to be paid to the Trustee for the account of the Borrower and deposited in a special account created by the Borrower under the Indenture and have been duly pledged for that purpose and in addition the Project has been mortgaged to secure payment of such principal, premium, if any, and interest under the Indenture.

The 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. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of the Bond issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of the Indenture or of any supplements thereto may be made only to the extent and in the circumstances permitted by 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 issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; that the issuance of this Bond, together with all other obligations of the Borrower, do not exceed or violate any constitutional or statutory limitation; and that the installment payments and revenues pledged to the payment of the

principal of, premium, if any, and interest on this Bond and the issue of which it forms a part, as the same become due, will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been signed by the Trustee.

This Bond and the income therefrom and also the Project and any revenues derived by the Borrower from the sale thereof are exempt from all taxation in the State of Alabama, but such exemption does not extend to estate taxes or other taxes not levied or assessed directly on the Bond.

IN WITNESS WHEREOF, The Public Park and Recreation Board of the City of Pelham has caused this Bond to be executed in its name with the manual signature of the Chairman of its Board of Directors and attested by its secretary, who has manually subscribed his signature hereon and impressed its corporate seal hereto, all as of the first day of February, 1996.

THE PUBLIC PARK AND RECREATION BOARD  
OF THE CITY OF PELHAM

By

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

S E A L

Attest:

\_\_\_\_\_  
Secretary

(Form of Trustee's Certificate of Authentication)

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This Bond is the only Bond of the issue described in the within-mentioned Mortgage, Security Agreement and Indenture of Trust.

This the \_\_\_\_\_ day of March, 1996.

**FIRST ALABAMA BANK, as Trustee**

By \_\_\_\_\_

Authorized Officer



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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS MORTGAGE, SECURITY AGREEMENT AND INDENTURE OF TRUST Witnesseth:

### GRANTING CLAUSES

That the Borrower in consideration of the premises and the acceptance of the Bonds by the owner thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable considerations, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of (and premium, if any) and interest on the Bonds according to their tenor and effect and the performance and observance by the Borrower of all the covenants expressed or implied herein, in the Installment Sale Agreement and in the Bonds, does hereby grant, bargain, sell, convey, mortgage, pledge and grant a security interest unto the Trustee and unto its successors in trust, and to it and its assigns forever for the securing of the performance of the obligations of the Borrower hereinafter set forth:

#### I.

The following described real estate and premises together with all buildings, additions and improvements now or hereafter located thereon or therein, with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining, and the Borrower hereby warrants the title to the same subject, however, to the "Permitted Encumbrances" as hereinafter defined, to-wit:

A tract of land lying in the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , all in Section 1, Township 20 South, Range 3 West, more particularly described as follows: Commence at the SW corner of the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 1, Township 20 South, Range 3 West, and run Northerly along the West line of said  $\frac{1}{4}$ - $\frac{1}{4}$  Section 442.22 feet to an old iron found in place and the point of beginning; thence continue along last described course 398.78 feet to an old iron found in place; thence right 27 degrees 23 minutes 19 seconds and run 770.94 feet to an old iron found in place; thence right 95 degrees 51 minutes 59 seconds and run 603.36 feet to an old iron found in place on the Westerly right-of-way of U.S. Highway No. 31; thence right 84 degrees 21 minutes 50 seconds and run along said right-of-way 225.00 feet; thence right 90 degrees and run 300.00 feet; thence

left 90 degrees and run 781.22 feet; thence right 62 degrees 24 minutes 02 seconds and run 126.92 feet to the point of beginning.

Subject to:

Easements, rights-of-ways and restrictions of record.

Transmission line permits to Alabama Power Company recorded in Deed Book 101, Page 511; Deed Book 127, Page 303; Deed Book 131, Page 455; and Deed Book 171, Page 400, in the Probate Office of Shelby County, Alabama.

Outstanding mineral and mining rights.

## II.

All machinery, equipment, furniture, furnishings, fixtures and tangible personal property acquired by the Borrower with the proceeds from the Bonds issued under and secured by this Indenture.

## III.

The rights of the Borrower under and pursuant to the Guaranty Agreement, the Ground Lease, the Sale Agreement, all installment payments, revenues and receipts receivable by the Borrower from the Project including, without limitation, all installment payments to be received by the Borrower from the sale of the Project and in particular the installment payments to be received under and pursuant to and subject to the provisions of the Sale Agreement, and pursuant to the terms of which installment payments are to be paid directly to the Trustee at the principal office of the Trustee for the account of the Borrower and deposited in the Bond Fund hereinafter identified.

## IV.

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

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

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all owners of the Bonds issued under and secured by this Indenture;

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

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



## ARTICLE I

## 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:

"Act" means Act No. 218 adopted by the 1967 Extra Session of the Legislature of the State of Alabama, as amended (appearing as Code of Ala. 1975, § 11-60-1 thru § 11-60-20).

"Additional Bonds" means any Bonds issued pursuant to Section 203 hereof.

"Applicable Percentage" shall initially be 66.00% and shall thereafter be indexed to the maximum marginal rate of tax imposed by Subtitle A, Chapter 1A, Part II, Section 11 of the Internal Revenue Code of 1986, as amended, on the taxable income of corporations (the "Maximum Corporate Tax Rate"), such that the Applicable Percentage shall be equal to the product (rounded to the second decimal point; e.g. 66.00) of (i) 66.00% times (ii) a fraction, the numerator of which is the number 1 minus the Maximum Corporate Tax Rate (expressed as a decimal) then in effect, and the denominator of which is 0.65. The Applicable Percentage shall not at any time exceed 100%. The Applicable Percentage shall be adjusted as of the effective date of each change in the Maximum Corporate Tax Rate.

"Base Rate" means that rate announced by Regions Financial Corporation (formerly known as First Alabama Bancshares, Inc.), as the Commercial Base Rate (such rate being an index for establishing variable interest rates on loans of affiliates of Regions Financial Corporation) (or, if no such rate is then announced, such other comparable rate which serves as the basis upon which effective rates of interest are calculated for those loans making reference to a variable rate index). Loans are made at rates above, below, or equal to the Commercial Base Rate. The Commercial Base Rate may change at any time.

"Bond" or "Bonds" means the bonds of the Board issued, authenticated and delivered from time to time under this Indenture.

"1996 Bond" or "1996 Bonds" means the Bond or Bonds of the Board in the aggregate principal amount of \$3,000,000 authorized to be issued pursuant to Section 201 hereof.

"Bond Fund" or "Park and Recreation Board Revenue Bond Fund" means the fund created in Section 402 hereof.

"Bond Owner" or "owner of the Bonds" means the registered owner of any Bond.

"Bond Registrar" means the Trustee, acting as registrar of the Bonds pursuant to Section 1304 hereof.

"Borrower" means the party of the first part hereto and 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.

"Building" means the Building as defined in the Installment Sale Agreement.

"City" means the City of Pelham, Alabama, a municipality organized and existing under the laws of the State of Alabama. The words "City" and "Town" are used interchangeably in this Indenture.

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

"Construction Fund" or "Park and Recreation Board Construction Fund" means the fund created by Section 303 hereof.

"Default" means those defaults specified in and defined by Section 901 hereof.

"Equipment" means all items of machinery, equipment, furniture, fixtures and tangible personal property to be acquired and installed in the Building or upon the Realty, including without limitation any machinery, equipment, furniture, fixtures and tangible personal property acquired with the proceeds from the sale of the Bonds, and any item of machinery, equipment, furniture, fixtures or tangible personal property acquired in substitution therefor or as a renewal or replacement thereof pursuant to the provisions hereof.

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

"Ground Lease Agreement" means the Ground Lease, Ownership, Operating and Tenancy in Common Agreement of even date herewith between the Purchaser and Shelby County Health Care Authority, d/b/a/ Shelby Medical Center.

"Guaranty Agreement" means the Guaranty Agreement of even date herewith executed by and between Shelby County Health Care Authority d/b/a Shelby Medical Center and the Trustee.

"Indenture" means these presents and all supplements and amendments thereto.

"Installment Sale Agreement" or "Sale Agreement" means the Installment Sale Agreement executed by and between the Borrower and the Purchaser of even date herewith, as such sale agreement may hereafter be supplemented or amended.

"Mortgaged Property" means the properties comprising the Project, including the properties sold to the Purchaser under the Installment Sale Agreement, as well as all properties which, under the terms hereof, subsequently become subject to the lien of this Indenture, but excluding all other property owned by the Purchaser and title to which remains in the Purchaser under the terms of the Sale Agreement.

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

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

- (a) Bonds canceled because of payment or redemption prior to maturity;
- (b) Bonds for the payment or redemption of which moneys or Government Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) as provided in Section 802 hereof; and
- (c) Bonds in lieu of which others have been authenticated under Section 209.

"Permitted Encumbrances" means, as of any particular time, (i) liens for ad valorem taxes permitted to exist as provided in the Sale Agreement and not then delinquent, (ii) this Indenture and the Sale Agreement, (iii) utility, access and other easements and rights of way, restrictions and exceptions that an Independent Engineer (as defined in the Sale Agreement) certifies will not interfere with or impair the operation of the Equipment (as defined in the Sale Agreement) or the operations being conducted in the Building (as defined in the Sale Agreement), was designed or last modified or elsewhere on the Realty (as defined in the Sale Agreement), (iv) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right of purchase money security interest in respect thereof if payment is not yet due and payable under the contract in question, (v) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the Project and as do not, in the opinion of an Independent Counsel (as defined in the Sale Agreement), materially impair the Project for the purpose for which it was acquired or is held by the Borrower, (vi) outstanding mineral and mining rights, and (vii) easements and rights of way of record.



"Person" means natural persons, firms, associations, corporations and public bodies.

"Project" means the Realty, the Building and the Equipment acquired with proceeds from the sale of the Bonds or the proceeds of any payment by the Purchaser pursuant to the provisions hereof as such Realty, Building and Equipment may at any time exist.

"Project Costs" means those costs of the Project (including expenses incurred in connection with the issuance of the Bonds) for which payment is to be made as provided in the Sale Agreement.

"Project Supervisor" means the agent of the Purchaser authorized to act in connection with matters pertaining to the Project pursuant to the provisions hereof.

"Purchaser" means The Young Men's Christian Association of Birmingham, an Alabama non-profit corporation, and its successors and assigns and any surviving resulting or transferee corporation as provided in the Sales Agreement.

"Realty" means the Realty as defined in the Installment Sale Agreement.

"State" means the State of Alabama.

"Town" means the City of Pelham, Alabama, a municipality organized and existing under the laws of the State of Alabama. The words "Town" and "City" are used interchangeably in this Indenture.

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

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

"Unimproved" when used with reference to the Realty means any part or parts of the Realty upon the surface of which no part of a building or other structure rests.

[The next provision of this Indenture is Article II]

## ARTICLE II

## THE BONDS

Section 201. Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds initially authorized to be issued hereunder is \$3,000,000 (the "1996 Bonds").

Section 202. Issuance of 1996 Bonds. The 1996 Bonds shall be designated "The Public Park and Recreation Board of the City of Pelham First Mortgage Revenue Bonds, Series 1996 (YMCA-SMC Project)", shall be dated as of February 1, 1996, and shall be payable in 228 monthly installments of principal beginning on February 1, 1998, and continuing on the first of each month thereafter until the principal sum is paid in full, and shall bear interest (computed on a 360 day year of 12 consecutive 30 day months) from the date of issuance (as indicated by the date of authentication by the Trustee) on the outstanding principal balance thereof at the per annum rate of the "Applicable Percentage" of the Base Rate, subject to a maximum interest rate on the 1996 Bond of 6.25% and a minimum interest rate on this Bond of 5.25%. The initial Base Rate will be the rate in effect on the date of issuance and will be adjusted from time to time whenever the Base Rate changes. Interest only will be paid on the first of each month beginning April 1, 1996 to and including January 1, 1998. Beginning on February 1, 1998, and continuing on the first of each month thereafter to and including January 1, 2017, or such earlier date that the principal sum, accrued interest and all other payments due on the 1996 Bond are paid in full, principal and interest shall be paid in monthly installments which shall be level for each calendar year. Each calendar year's level payments shall be determined based on the Applicable Percentage of the Base Rate in effect on January 1, of such calendar year, as applied to an amortization schedule ending on January 1, 2017, and based on the outstanding principal balance and accrued but unpaid interest. All monthly payments shall be applied first to the actual accrued interest (adjusted whenever the Base Rate changes), then to the principal balance. Any accrued interest that remains unpaid after the application of a monthly payment due to negative amortization shall be carried over to the subsequent month. The final payment shall be made on January 1, 2017 (if not made prior thereto), and shall include all accrued interest and outstanding principal.

If interest on the 1996 Bond shall be determined to be subject to income taxation by the United States of America, without regard to the status, person acts or omissions of the owner of the 1996 Bond, then at any time after such determination of taxability, the Bond Owner shall have the option, upon written notice to the Purchaser, the Trustee and the Borrower, to direct that the interest rate on the 1996 Bond be increased to an amount not to exceed the Base Rate, subject to a maximum interest rate on the Bonds of 9.08% and a minimum interest rate on the Bond of 7.54%.

If at any time the 1996 Bond is owned by Shelby County Health Care Authority (the "Guarantor"), or any successor organization, then such Bond Owner shall have the option, upon written notice to the Purchaser, the Trustee and the Borrower, to direct that the interest rate on



the 1996 Bond be increased to an amount of not to exceed 80% of the Base Rate during the time that the 1996 Bond is owned by Shelby County Health Care Authority, or any such successor organization.

Principal of, premium, if any, and interest on the 1996 Bonds shall be payable to the person appearing on the Bond registration books of the Borrower as the registered owner thereof and shall be paid by check or draft mailed to the registered owner at his address as it appears on such registration books or at such other address as is furnished to the Trustee, in writing, by such owner. Payment shall be made in lawful money of the United States of America.

Section 203. Additional Bonds. At any time while the Borrower is not in default under this Indenture and subject to receipt by the Trustee of the documents listed below, the Borrower at the request of the Purchaser, after receipt of the written consent of the Guarantor under the Guaranty Agreement and after receipt of written consent of the owner of the Bonds, may issue one or more series of Additional Bonds for the purposes set forth in Section 2.4 of the Sale Agreement. Each such series of Additional Bonds shall be issued pursuant to a supplement to this Indenture and shall be equally and ratably secured under this Indenture with the 1996 Bonds and any other series of Additional Bonds issued pursuant to this section, without preference, priority or distinction of any Bonds over any other Bonds. Unless provided otherwise in a supplement to this Indenture, all such Additional Bonds shall be in substantially the same form as the 1996 Bonds, but shall be of such denomination or denominations, bear such date or dates, bear interest at such rate or rates, have such maturity dates, redemption dates and redemption premiums, contain an appropriate series designation, and be issued at such prices as shall be approved by the Purchaser. The Trustee shall authenticate and deliver such Additional Bonds, but only upon receipt by it of the opinion of counsel mentioned in Section 2.4 of the Sale Agreement and of such other opinions, certificates and other documents as it may deem necessary or appropriate.

Section 204. Execution of Bonds. The Bonds shall be executed on behalf of the Borrower with the manual signature of the Chairman of its Board of Directors, and attested with the manual signature of the Secretary of the Borrower, and shall have impressed thereon the corporate seal of the Borrower. In case any officer whose signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 205. Authentication of Bonds. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinabove set forth duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.



Section 206. Form of 1996 Bonds. The 1996 Bonds issued under this Indenture shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture.

Section 207. Redemption Provisions. The 1996 Bonds shall be subject to redemption or prepayment of principal at the times and subject to the provisions in the form of the Bond hereinabove set forth. The notice of any intended redemption or prepayment of principal shall be given in accordance with such forms and Section 802 hereof. The installments so called for redemption or prepayment of principal shall become due and payable at the price and on the date specified in such notice. Notice of redemption or prepayment of principal having been given or provided for as required in this Indenture and funds for the payment of the redemption price having been set aside and made available therefor, the principal so called for prepayment shall cease to bear interest from and after the date fixed for prepayment, and shall no longer be entitled to the benefit of the lien hereof unless default shall be made in the payment therefor.

Section 208. Redemption Requests. Redemptions of the Bonds or prepayment of principal permitted by this Indenture and the Sale Agreement shall be made as follows, and the Trustee shall give the notice referred to in Section 207 hereof in respect of each such redemption or prepayment:

(i) Redemption or prepayment of principal shall be made pursuant to Section 5.2(c) of the Sale Agreement after receipt by the Trustee of the Purchaser's written direction and, in the case the Purchaser shall have directed redemption or prepayment of principal of less than all the Bonds, the Independent Engineer's certificate specified in said Section 5.2(c).

(ii) Redemption or prepayment of principal shall be made pursuant to Section 304 hereof if there is any money left in the Construction Fund after the Project Supervisor certifies that the Project has been completed.

(iii) Optional redemption or prepayment of principal shall be made at the request of the Purchaser pursuant to the provisions of the Bond and Section 6.5 of the Sale Agreement on the earliest applicable date occurring not earlier than 30 days subsequent to the receipt by the Trustee of the Purchaser's notice specified in said Section 6.5.

(iv) Redemption shall be made pursuant to Section 902 of the Indenture after an event of default upon declaration by the Trustee that the principal and accrued interest is immediately due and payable.

(v) Redemption shall be made pursuant to Section 912 hereof without the necessity of any request by, or notification from the Borrower or the Purchaser upon the sale of the Project under any provision of Article IX hereof.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Borrower may execute and the Trustee may authenticate

a new Bond of like date, number, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Borrower and, in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Borrower and the Trustee evidence of such loss, theft or destruction satisfactory to the Borrower and the Trustee, together with indemnity satisfactory to them and to the Purchaser. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Borrower may pay the same without surrender.

Section 210. Transfer of Bonds. Each registered Bond shall be transferable only upon the books of the Bond Registrar by the registered owner thereof in person or by his duly authorized attorney, upon surrender thereof to the Bond Registrar with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney. Upon the registration of transfer of any such registered Bond, the Borrower shall issue in the name of the transferee one or more new registered Bonds of the same aggregate principal amount as the surrendered Bond.

In all cases in which the privilege of registering the transfer of registered Bonds is exercised, the Borrower shall execute and the Trustee shall authenticate and deliver new Bonds in accordance with the provisions hereof. The new Bonds shall be issued upon the surrender of the old Bonds in such manner that no gain or loss of interest results from said transfer.

No charge shall be made to any Bond Owner for the privilege of transfer hereinabove granted, but any Bond Owner requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any registered Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of any such Bond shall be made only to or upon the order of the registered owner thereof, or his legal representative, and neither the Borrower, the Trustee, nor the Bond Registrar nor any paying agent shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. All Bonds presented for transfer shall be accompanied by a written instrument or instruments of transfer in a form satisfactory to the Borrower and the Trustee duly executed by the registered owner or his attorney duly authorized in writing.

Transfers of Bonds made under this Section 210 shall in every case be for an equal aggregate principal amount of Bonds of the same series and maturity, bearing interest at the same rate, and in the same form as the Bonds surrendered for transfer.

[The next provision of this Indenture is Article III]



## ARTICLE III

DELIVERY OF THE BONDS:  
CUSTODY AND APPLICATION OF PROCEEDS OF BONDS

Section 301. Delivery of Bonds. The Trustee shall deliver the Bonds duly executed and authenticated, upon the order of the Borrower, to the purchaser or purchasers thereof upon the payment by such purchaser or purchasers to the Borrower of the purchase price thereof. The Bonds may be executed by the Borrower and authenticated by the Trustee and delivered prior to any recordation of the Indenture. The receipt of the Chairman of the Borrower shall be full acquittal to the purchaser or purchasers for the purchase price of the Bonds, and such purchaser or purchasers shall be under no obligation to see to the application thereof. The proceeds of the sale of any of the Bonds shall, however, be held in trust and disposed of only as hereinafter provided.

Section 302. Application of Proceeds. All of the proceeds of the sale of the Bonds shall be deposited in the Construction Fund.

Section 303. Construction Fund; Disbursements. There is hereby created and established with the Trustee a trust fund in the name of the Borrower to be designated the "Construction Fund". The moneys in the Construction Fund shall be paid out by the Trustee from time to time for the purpose of (1) paying the expenses of issuing the Bonds (including attorney's fees and Trustee's acceptance fee), (2) reimbursing to Purchaser all funds advanced to the Borrower or otherwise expended for the acquisition and construction of the Project which were expended subsequent to the execution of the Memorandum of Agreement between the Borrower and the Purchaser and (3) paying the Project Costs, but only after receipt of:

(a) A requisition or payment request signed by any duly authorized officer, employee or agent of the Borrower and stating with respect to each such payment, the amount requested to be paid, the name and address of the person, firm or corporation to whom such payment is due and the particular Project Cost stated in reasonable detail for which the obligation to be paid was incurred, and

(b) An endorsement on such requisition or payment request signed by the Purchaser and (i) approving the payment thereby requested to be made, (ii) describing in reasonable detail the particular initial Project Cost, (iii) stating the purpose for which such payment is to be made is one for which Construction Fund moneys are authorized under the Sale Agreement to be expended, (iv) certifying that such payment is for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation or for paying expenses incurred in connection with the issuance, sale and delivery of the Bonds, (v) certifying that any property for which payment is to be made has been installed or located on the mortgaged property, and (vi) certifying that such payment is not for the cost of acquiring any real or personal property, the commitment to obtain which was made prior to the execution of the Memorandum of Agreement.



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

Section 304. Completion of the Project. The completion of the Project shall be evidenced by the filing with the Trustee of the certificate of the Project Supervisor as required by the provisions of the Sale Agreement. As soon as practicable and in any event within sixty days after the receipt by the Trustee of said Certificate of the Project Supervisor, any balance remaining in the Construction Fund shall without further authorization be used by the Trustee to prepay principal on the 1996 Bonds.

[The next provision of this Indenture is Article IV]

## ARTICLE IV

BONDS ARE LIMITED OBLIGATIONS OF BORROWER:  
REVENUES AND BOND FUNDS

Section 401. Source of Payment of Bonds; City or Town Not Liable. The Bonds herein authorized and all payments by the Borrower hereunder are limited obligations payable solely from revenues and receipts derived from the Project and as authorized by the Act and provided herein. No covenant or agreement contained in this Indenture or the Bonds nor any obligation herein or therein imposed upon the Borrower, or the breach thereof shall constitute or give rise to or impose upon the Borrower a pecuniary liability or a charge upon its general credit or property other than the Mortgaged Property and the revenues pledged. All obligations respecting money are limited to the proper application of the proceeds of the sale of the Bond, the revenues pledged, and the proceeds of any sale of the Project or part thereof. The City or Town is not liable for payment of the principal of or interest on the Bonds, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which is undertaken by the Borrower. Neither the Bonds nor any agreement of the Borrower shall be construed to constitute an indebtedness of the City or Town within the meaning of any constitutional or statutory provision whatever.

Section 402. Creation of the Bond Fund. There is hereby created by the Borrower and ordered established with the Trustee a trust fund to be designated "Park and Recreation Board Revenue Bond Fund" (sometimes referred to herein as the "Bond Fund"), which shall be used to pay the principal of, premium, if any, and interest on the Bonds. The Bond Fund shall be maintained until the principal of, premium, if any, and interest on the Bonds shall have been paid in full.

Section 403. Payments into the Bond Fund. There shall be deposited into the Bond Fund all accrued interest, if any, received at the time of the issuance and delivery of the Bonds. In addition, there shall be deposited into the Bond Fund, as and when received, (a) all Basic Installment Payments payable under the Sale Agreement; and (b) all other moneys received by the Trustee under and pursuant to any of the provisions of the Sale Agreement directing that such moneys are to be paid into the Bond Fund. The Borrower hereby covenants and agrees that until the principal of (and premium, if any) and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance herewith, the Borrower will deposit, or cause to be deposited, in the Bond Fund for its account sufficient sums from revenues and receipts derived from the Project (whether or not under and pursuant to the Sale Agreement) promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and to this end the Borrower covenants and agrees that, should there be a default under the Sale Agreement with the result that the right of possession of the Project is returned to the Borrower, the Borrower shall fully cooperate with the Trustee and with the Bond Owners and shall diligently proceed in good faith and use its best efforts to secure another tenant for the premises to the end that at all times sufficient revenues and receipts will be derived from the Project promptly to meet and pay the principal of (and



premium, if any) and interest on the Bonds as the same become due and payable, as well as covering the cost of maintaining and insuring the Project. Nothing herein shall be construed as requiring the Borrower to operate the Project.

Section 404. Use of Moneys in the Bond Fund. Moneys in the Bond Fund shall be used solely for the payment of the principal, premium, if any, and interest on the Bonds and for the redemption of the Bonds at or prior to maturity. Any money transferred to the Bond Fund from the Construction Fund upon or after completion of the Project shall be used only for payment of the principal on the Bonds. Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds outstanding hereunder and to pay interest to accrue thereon prior to such redemption, the Borrower covenants and agrees to take and cause to be taken the necessary steps to redeem all of said Bonds on the next succeeding redemption date for which the required redemption notice may be given in accordance with the prepayment provisions on the face of the Bond.

Section 405. Custody of the Bond Fund. The Bond Fund shall be in the custody of the Trustee but in the name of the Borrower and the Borrower hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, which authorization and direction the Trustee hereby accepts.

Section 406. Non-presentment of Bonds. In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the owners thereof, all liability of the Borrower to the owners thereof for the payment of such Bonds shall cease, determine and be completely discharged as of the time such funds are made available to the Trustee and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond.

Section 407. Trustee's, Bond Registrar's and Paying Agent's Fees, Charges and Expenses. Pursuant to the provisions of the Sale Agreement the Purchaser has agreed to pay the Trustee until the principal of (and premium, if any) and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of this Indenture: (i) an amount equal to the annual fee of the Trustee for the Ordinary Services of the Trustee rendered and its Ordinary Expenses incurred under this Indenture, (ii) the reasonable fees and charges of the Trustee for acting as paying agent and Bond Registrar as herein provided, as and when the same become due, and (iii) the Extraordinary Services and Extraordinary Expenses of the Trustee under this Indenture, as and when the same become due. The initial or acceptance fees of the Trustee and the fees, charges and expenses of the Trustee referred to in the preceding sentence which become due prior to the time the Purchaser begins to pay the same, will be paid to the Trustee from the Construction



Fund as and when the same shall become due. The Purchaser may, without creating a default hereunder, contest in good faith the necessity for any such Extraordinary Services and Extraordinary Expenses and the reasonableness of any of the fees or charges referred to herein.

Section 408. Release of Funds Upon Payment of Bonds. Any amounts remaining in the Bond Fund after payment in full of the Bonds, the fees, charges and expenses of the Trustee and the paying agents and all other amounts required to be paid hereunder shall be paid or applied as provided in the Sale Agreement if there is no default thereunder.

[The next provision of this Indenture is Article V]

## ARTICLE V

## SECURITY FOR AND INVESTMENT OF FUNDS

Section 501. Security for Funds. The moneys at any time on deposit in the Construction Fund and in the Bond Fund shall be and at all times remain impressed with a trust for the purpose for which each of said funds was created. The Trustee shall at all times keep the moneys on deposit in each of such funds continuously secured for the benefit of the Borrower and the owners of the Bonds, either (i) by holding on deposit, as collateral security, direct general obligations of the United States of America, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, or other marketable securities eligible as security for the deposit of trust funds under regulations of the Comptroller of the Currency, United States Treasury, having a market value (exclusive of accrued interest) not less than the amount of moneys on deposit in the fund being secured, or (ii) if the furnishing of security in the manner provided by the foregoing subsection (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 trust funds; provided, however, that it shall not be necessary for the Trustee to secure any portion of the moneys on deposit in either of said funds that may be secured by the Federal Deposit Insurance Corporation or by any agency of the United States of America that may succeed to its functions, or to secure any portion of the moneys that are invested as hereinafter provided.

Section 502. Investment of Construction Fund Moneys. Any moneys held as part of the Construction Fund shall be invested and reinvested by the Trustee in accordance with the provisions of the Sale Agreement. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Construction Fund and the interest accruing thereon and any profit realized from such investments shall be credited to the Construction Fund, and any loss resulting from such investments shall be charged to the Construction Fund. The Trustee is directed to 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 Trustee shall have no liability or responsibility for any loss resulting from investments made pursuant to this Section, except liability for its own gross negligence.

Section 503. Investment of Bond Fund Moneys. Any moneys held as part of the Bond Fund shall be invested or reinvested by the Trustee in accordance with the provisions of the Sale Agreement, to the extent that such investment is feasible and consistent with the required payment of the principal of (and premium, if any) and interest on the Bonds. Any such investments shall be held by or under control of the Trustee and shall be deemed at all times a part of the Bond Fund and the interest accruing thereon and any profit realized therefrom shall be credited to the Bond Fund and any loss resulting from such investments shall be charged to the Bond Fund. The Trustee shall sell and reduce to cash funds a sufficient portion of investments under the provisions of this Section whenever the cash balance in the Bond Fund

is insufficient to pay the current interest and principal requirements. The Trustee shall have no liability or responsibility for any loss resulting from investments made pursuant to this Section, except liability for its own gross negligence.

Section 504. Trustee's Responsibility: Arbitrage Bonds. The Trustee shall have no liability or responsibility for any loss resulting from investments made pursuant to this Article, except liability for its gross negligence. Notwithstanding any provision to the contrary in this Indenture or the Sale Agreement, the Board will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the Board or the Purchaser, or take or omit to take any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

[The next provision of this Indenture is Article VI]



## ARTICLE VI

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

Section 601. Condemnation or Destruction of or Damage to Mortgaged Property. In the event of condemnation or destruction of or damage to the Mortgaged Property, provision is made in the Sale 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 Sale Agreement. Any such proceeds held by the Trustee for the purpose of repairing, rebuilding or restoring Mortgaged Property 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 602. Sale of Project Prohibited Except Under Certain Conditions. The Borrower will not hereafter sell or otherwise dispose of the whole or any integral part of the Project until all of the principal of, premium, if any, and accrued interest on the Bonds shall have been paid in full, or unless and until provision for such payment shall have been made. If the laws of Alabama at the time shall permit such action to be taken, nothing contained in this Section shall prevent the consolidation of the Borrower with, or merger of the Borrower into, any public corporation having corporate authority to carry on the business of owning, selling and leasing the Project, or the transfer by the Borrower of the Project as an entirety to the City or the Town or to another public corporation whose property and income are not subject to Federal or Alabama taxation and which has the corporate authority to carry on the business of owning, selling and leasing the Project; provided that upon any such consolidation, merger or transfer, the due and punctual payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and the due and punctual performance and observance of all the agreements and conditions of the Indenture to be kept and performed by the Borrower shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety; and provided further, that such consolidation, merger or transfer shall not cause or result in any mortgage or the lien being affixed to or imposed on or becoming a lien on the Project or the revenues therefrom that will be prior to the lien of the Indenture and of the pledge herein made for the benefit of the Bonds or in the interest income on the Bonds becoming subject to Federal or Alabama income taxation. Nothing contained in this Section shall be construed to prevent the Borrower from selling the Project to the Purchaser in accordance with the provisions of the Sale Agreement.

Section 603. Movable or Replaced Personal Property Connected with Project. If the Borrower shall not be in default hereunder, the Borrower, without procuring the consent of the Trustee, may alter, repair, replace, change or add to the Equipment or the fixtures or structures connected with the Project or on the Mortgaged Property or permit the Purchaser of the Project so to do; provided that such action does not impair either the value of the Project or its utility for the purpose intended, and provided further that such alterations or improvements shall be deemed a part of the Project and covered by this Indenture. If the Borrower shall not be in

default hereunder, either the Borrower or the Purchaser may dispose of, free from the lien hereof, any Equipment or fixtures no longer required for the leasing and operation of the Project and the Mortgaged Property if either the Borrower or the Purchaser shall first have substituted property of equal value and utility to be subject to the lien hereof, free and clear of liens prior to the lien of this Indenture, or shall have deposited with the Trustee the proceeds thereof under terms of Section 10.2(b) of the Sale Agreement. Anything in this paragraph to the contrary notwithstanding, the Project may provide that additions of personal property made by the Purchaser after completion of the Project, and which additions were not purchased with the proceeds of the sale of the bonds and which do not constitute repairs, renewals or replacements, shall not become a part of the Project nor be covered by this Indenture, but that such additions shall inure to and remain the property of the Purchaser.

Section 604. Release Clause with Respect to Mortgaged Property. While the Borrower is not in default to the knowledge of the Trustee in the payment of any Bond outstanding hereunder or in the payments to the Bond Fund or in respect of any of the covenants on the part of the Borrower herein contained, the Borrower may obtain the release of any of the Unimproved portion of the Mortgaged Property not needed by it as a part of the Project and not useful in the maintenance and care of the Project, and the Trustee shall release the same from the lien hereof upon receipt of a certificate of an Independent Engineer (as defined in the Installment Sales Agreement), who is acceptable to the Trustee, dated not more than 90 days prior to the date thereof and stating that, in the opinion of the person signing such certificate, (i) the portion of the Realty with respect to which the option is exercised is not needed for the operation of the Project for the purposes hereinabove stated and (ii) the release will not impair the usefulness of the Project and will not destroy the means of ingress thereto and egress therefrom.

Upon compliance by the Borrower with the foregoing conditions, the Trustee shall, at the expense of the Borrower, execute and deliver to the Borrower any and all instruments that may be necessary to release from the lien of this Indenture that portion of the Mortgaged Property so sold by the Borrower. The money deposited with the Trustee as aforesaid shall be paid into the Bond Fund.

[The next provision of this Indenture is Article VII]



## ARTICLE VII

## COVENANTS BY THE BORROWER

The Borrower, for itself, its successors and assigns, covenants and agrees with the Trustee and the owners from time to time of the Bonds as follows:

Section 701. Construction and Acquisition of Project. The Borrower will cause the construction and acquisition of the Project to be begun and to be continued to final completion with all reasonable dispatch, and all moneys derived from the sale of the Bonds shall be used solely for the purposes for which the same are authorized under this Indenture and not otherwise. The obligations of the Borrower as concerns the acquisition and construction of the Project are limited to the proper application of (1) the proceeds of the sale of the Bonds as provided herein and in the Sale Agreement and (2) moneys made available to the Borrower by the Purchaser. Plans, drawings and specifications for the Project will be submitted to and approved by the owner of the Bond prior to construction. All material changes must also be approved in writing by the owner of the Bond.

Section 702. Cooperation with Purchaser. The Borrower will cooperate with the Purchaser to the end that the Project may be placed in operation at the earliest possible time and thereafter operated by the Purchaser in the most successful and productive manner possible.

Section 703. Borrower to Cooperate with Trustee. If there should be a default under the Sale Agreement with the result that the right of possession of the premises under the Sale Agreement is returned to the Borrower, the Borrower will fully cooperate with the Trustee and with the Bond Owners and will diligently proceed in good faith and use its best efforts to lease or sell the premises to the end that at all times sufficient revenues and receipts will be derived from the Project promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, as well as covering the cost of maintaining and insuring the Project. Nothing herein shall be construed as requiring the Borrower to operate the Project.

Section 704. Insurance, Repairs and Taxes. The Borrower shall cause the Purchaser 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 Sale Agreement. The Borrower shall also cause the Purchaser to deposit with the Trustee all policies of insurance required to be maintained by the Purchaser under the Sale 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 Purchaser to furnish to the Trustee satisfactory evidence that such policy has been renewed or replaced by another policy.



Section 705. Collection and Disposition of Revenues and Receipts. The Borrower will promptly collect or cause to be collected all revenues and receipts derived from the sale of the Project and the Mortgaged Property as the same become due and will cause all such revenues and receipts as collected to be paid over to and deposited with the Trustee for disposition in accordance with and as provided in this Indenture.

Section 706. Performance of Covenants by Borrower and Purchaser. The Borrower will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its Board of Directors pertaining thereto. The Borrower will require the Purchaser faithfully to perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Sale Agreement.

Section 707. Inspection of Project Books. The Borrower covenants and agrees that all books and documents in its possession relating to the Project and the revenues and receipts derived from the Project including any financial statement or other report by the Purchaser shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 708. Title to Mortgaged Property. The Borrower has title in fee simple to and the beneficial interest in and is lawfully possessed of the Project and the Mortgaged Property and has the rightful power and lawful authority to mortgage the same, subject only to the Permitted Encumbrances. The Borrower will warrant and defend the title thereto and every part thereof to the Trustee, its successors and assigns, for the benefit of the owners for the time being of the Bonds, against the claims and demands of all persons whomsoever. All of the Mortgaged Property now owned or hereafter acquired by the Borrower is free and clear of and from all and any liens and encumbrances of every nature and kind, subject only to the Permitted Encumbrances, and will be so kept except as herein otherwise permitted, and the Borrower will at all times maintain and preserve the liens and rank of this Indenture as herein provided.

Section 709. Title to Pledged Revenues. The Borrower has legal title to and the beneficial interest in the revenues and receipts from the Project hereby pledged and the Sale Agreement assigned and pledged 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 Trustee, its successor and assigns, for the benefit of the owners for the time being of the Bonds, against the claims and demands of all persons whomsoever. The revenues, receipts and the Sale 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 Sale Agreement so pledged and assigned.

Section 710. Further Assurances - Recording. The Borrower will at any time or times do, execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, assignments, pledges, transfers and

assurances in law as the Trustee shall reasonably require for the better assuring, assigning, transferring, pledging and confirming unto the Trustee, all and singular, the property and rights herein assigned, transferred and pledged or intended so to be. The Trustee will cause both this Indenture and the Sale Agreement, plus all supplements and amendments to both documents, and any and all additional instruments (including financing statements) executed pursuant to the provisions hereof at all times to be recorded and filed and kept recorded and filed in such public offices as may be necessary or required by law in order fully to preserve, continue and protect the security of the Bonds and the rights and remedies of the Trustee. 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.

Section 711. Taxation. As provided in the Act, the Bonds and the income therefrom and also the Project and any revenues derived from any sale thereof, shall be exempt from all taxation in the State.

Section 712. Covenants Regarding Sections 103(c) and 141 through 150 of Internal Revenue Code. The Borrower recognizes that the Bonds are being sold on the basis that the interest payable on the Bonds is excludable from gross income of the owner thereof under Sections 103 and 141 through 150 of the Code. The Borrower accordingly hereby covenants and agrees with the Trustee and the owners of the Bonds that the proceeds of the Bonds shall not be used or applied by it in such manner as to constitute any of the Bonds an "arbitrage bond" as that term is defined in Section 148 of the Code.

[The next provision of this Indenture is Article VIII]

## ARTICLE VIII

## DISCHARGE

Section 801. Discharge. When all of the principal of, premium, if any, and interest on the Bonds shall have been fully paid and provision shall also be made for paying all other sums payable hereunder, and if, at the time of such payment, the Borrower shall have kept, performed and observed all and singular the covenants and promises in the Bonds and in this Indenture required or contemplated to be kept, performed and observed by it or on its part on or prior to that time, then this Indenture shall be discharged and satisfied and the Borrower shall be released from the covenants, agreements and obligations of the Borrower contained in this Indenture. Upon such discharge and satisfaction, the Trustee, at the request and the expense of the Borrower, shall execute such documents as may be reasonably requested by the Borrower to evidence the discharge and satisfaction of this Indenture and the release of the Borrower from its obligations hereunder.

Notwithstanding the satisfaction and discharge of this Indenture, the Trustee shall continue to be obligated to hold in trust any moneys or investments held by the Trustee at the time of such satisfaction or discharge for the payment of the principal of, premium, if any, and interest on the Bonds, to pay to the owners of Bonds the funds so held by the Trustee as and when such payment becomes due, and to pay over any amounts required to be paid in accordance with Sections 404, 406 and 802 hereof.

Section 802. Payment of Bonds. All of the Bonds shall be deemed to have been fully paid within the meaning of Section 801 hereof,

(1) If all principal plus all accrued interest on the principal balance have been paid to the registered owners of the Bonds,

(2) If there have been delivered to the Trustee for cancellation all of the Bonds issued hereunder (other than any Bonds which shall have been previously cancelled or delivered to the Trustee for cancellation of Bonds in exchange for or in lieu of which other Bonds have been issued hereunder),

(3) If there is on deposit in the Bond Fund a total amount sufficient to pay the principal of all the then outstanding Bonds, plus premium, if any, and interest due thereon until and at their respective maturities, and provision for payment of all Trustee's and paying agents' fees, accrued and to accrue, has been made in a manner satisfactory to the Trustee and such paying agents, or

(4) If (a) there shall have been deposited with the Trustee either (i) moneys in an amount, or (ii) Government Obligations, the principal of and interest on which Government Obligations when due will, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, provided moneys in an amount which, together



with the moneys (if any) deposited with or held by the Trustee at the same time and available for such purpose pursuant to this Indenture, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to become due on and prior to the respective dates fixed for redemption or maturity dates on all of the Bonds issued hereunder (other than Bonds which have been cancelled or delivered to the Trustee for cancellation or Bonds in exchange for or in lieu of which other Bonds have been issued hereunder), plus an amount sufficient to pay the fees of the Trustee to the final date fixed for redemption or maturity, and (b) in case any of such Bonds are to be redeemed on any date prior to their maturity, the Purchaser shall have given to the Trustee an irrevocable notice requiring redemption of such Bonds on said date and the Borrower shall have given to the Trustee in form satisfactory to the Trustee irrevocable instructions to give notice of redemption of such Bonds prior to said date as provided in Section 207 hereof and in the forms of the Bonds hereinabove set forth, and (c) in the event said Bonds are not by their terms subject to redemption within 60 days next succeeding the date of such deposit with the Trustee, the Borrower shall have given the Trustee in form satisfactory to it irrevocable instructions to send by registered or certified mail to the registered owners of the Bonds no less than thirty days prior to the date fixed for the redemption, a notice that the deposit required by clause (a) of this sentence has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article VIII and stating such maturity or redemption date or dates upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on such Bonds. Failure to give such notice, or any defect therein, shall not affect the validity of any proceeding for the redemption of Bonds.

Any Government Obligations deposited with the Trustee pursuant to this Section 802 shall mature on such dates as shall coincide as nearly as practicable, but not later than, the time or times at which the moneys provided upon such maturity will be required for the aforesaid purpose. Such Government Obligations shall not contain provisions permitting the redemption thereof at the option of the issuer.

Government Obligations and moneys deposited with the Trustee pursuant to this Article VIII and the principal or interest payments on any such Government Obligations shall be held by the Trustee in trust in a special segregated fund and shall not be withdrawn or used for any purpose other than the payment of the principal of, premium, if any, and interest on the Bonds. However, after the whole amount of the principal of, premium, if any, and interest on all the Bonds has been completely paid in full, together with all other sums payable hereunder, any income earned by the Government Obligations in excess of the amount required for the purpose of such payment of principal, premium and interest and other sums shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in that fund.

[The next provision of this Indenture is Article IX]

## ARTICLE IX

DEFAULT PROVISIONS AND REMEDIES OF  
TRUSTEE AND BOND OWNERS

Section 901. Events of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "event of default" under this Indenture:

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

(b) Failure by the Borrower to perform any of the agreements on its part herein contained (other than its agreement to pay the principal of, premium, if any, and the interest on the Bonds) after thirty (30) days' written notice, specifying such failure and requesting that it be remedied, given to the Borrower by the Trustee or by the owners of 25% in principal amount of the Bonds then outstanding and secured hereby, unless the Borrower and the Trustee (or the Borrower, the Trustee and said Bond Owners if the notice was given by said Bond Owners) shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be corrected but not within the applicable period, it shall not constitute an event of default if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the default is corrected;

(c) Bankruptcy by the Borrower or an appointment by a court having jurisdiction of a receiver for the Project or for a substantial part thereof, or approval by a court of competent jurisdiction of any petition for reorganization of the Project or rearrangement or readjustment of the obligations of the Borrower under any provisions of the bankruptcy laws of the United States;

(d) Failure of title to the Project to the extent that substantial use of the Project by the Purchaser will be prevented for in excess of 3 consecutive months;

(e) Any event of default by Purchaser under the Sale Agreement.

Section 902. Remedies on Default. Subject to the rights of the Purchaser as provided for in the next succeeding Section of this Indenture, whenever any event of default shall have happened and be subsisting:

(a) The Trustee may, and upon written request of the owners of not less than twenty-five percent (25%) in principal amount of the Bonds then outstanding shall, by notice in writing delivered to the Borrower, declare the principal of all of the Bonds then outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable, anything in this Indenture or the Bonds to the contrary notwithstanding; subject, however, to the discretionary right of the Trustee and upon written notice to the Trustee by the owners of a majority in principal amount of the outstanding Bonds the duty of the Trustee to annul such declaration and destroy its effect at any time before the Mortgaged Property or the Project shall have been sold pursuant to any provision of this Indenture, if all covenants with respect to which default shall have been made, shall be fully performed, and all arrears of interest upon all Bonds outstanding hereunder and the reasonable expenses and charges of the Trustee, its agents and attorneys, and all other payments required by this Indenture (except the principal of any Bonds not then due by their terms) shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto;

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

(c) The Trustee shall be entitled upon or at any time after the commencement of any proceedings instituted in the case 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, the Mortgaged Property and any and all property at the



time forming a part of or used in connection with the Project, and of the revenues and income from the Project, with power to sell the Project and the Mortgaged Property. 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 sell the Project and the Mortgaged Property, or any part thereof, for any terms approved by the court;

(d) The Trustee may, in its discretion, with or without declaring the Bonds due and payable, enter upon and take possession of the Project and the Mortgaged Property and hold, operate and manage the same, and from time to time make all needful repairs and improvements as by the Trustee shall be deemed wise; and the Trustee may sell the Project or any part thereof in the name and for account of the Borrower and collect, receive and sequester the revenues, issues, earnings, income, products and profits therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and/or set up proper reserves for the payment of, all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Trustee, its agents and counsel, and any charges of the Trustee hereunder, and any taxes and assessments and other charges prior to the lien of this Indenture which the Trustee may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions of this Indenture. Whenever all that is due upon the Bonds shall have been paid and all defaults made good, the Trustee shall surrender possession to the Borrower, its successors or assigns; the same right of entry, however, to exist upon any subsequent event of default.

(e) The Trustee, with or without entry, personally or by attorney, may in its discretion either

(1) sell, or cause to be sold, all and singular the Project and the Mortgaged Property, 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 Mortgaged Property is situated, at such time or times and upon such terms as may be required by law or as the Trustee may determine after having first given notice of the time, place and terms of sale, together with the 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 903. Rights of Purchaser in Event of Default. Whenever an event of default shall occur, the Purchaser shall have the right to remedy such default within sixty (60) days after written notification of the occurrence thereof, provided that the Purchaser has paid all past installment payments and is paying all current installment payments as they become due under the Sale Agreement and provided the Purchaser shall pay all expenses incurred in the exercise of rights or remedies hereunder and all expenses of remedying such default. The Borrower covenants and agrees promptly to notify in writing the Purchaser of the Mortgaged Property of any failure to pay any installment when the same becomes due and payable and promptly to notify in writing the Purchaser of any other default in the Sale Agreement or in this Indenture brought to its attention by the Trustee or otherwise. The exercise of the remedies set forth in the foregoing Section is subject to the right of the Purchaser under this Section to remedy a default as in this Section provided and limited. This Indenture is subject to the Sale Agreement. So long as the Purchaser is not in default under the provisions of the Sale Agreement, the Purchaser shall be entitled to possession of the Mortgaged Property and the Project and all other rights under the Sale Agreement.

Section 904. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment to the persons entitled thereto of (i) all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege and (ii) the unpaid principal of any of the Bonds which shall have become due (other than

Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds (at the rate borne by the Bonds) from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over any other installment of interest or of any Bond, over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

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

Whenever all Bonds and interest thereon shall have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining in the Bond Fund shall be paid to or upon the order of the Purchaser.

Section 905. Trustee May and Under Certain Conditions Shall Take All Steps to Protect Bond Owners. In case any one or more of the events of default shall happen, the Trustee may



and if requested so to do by the owners of a majority in aggregate principal amount of Bonds then outstanding and indemnified as provided in Article X hereof, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bond Owners.

Section 906. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any owners of the Bonds, and any recovery of judgment shall be for the equal benefit of the owners of the outstanding Bonds.

Section 907. Rights and Remedies of Bond Owners. No owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy hereunder, unless the owners of not less than twenty-five percent (25%) in principal amount of Bonds then outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless they also have offered to the Trustee indemnity as provided in Article X nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his or their own name or names; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the owners of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bond Owner to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the Borrower to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the Trustee for the benefit of the respective owners thereof at the time, place, from the source and in the manner in said Bonds expressed.

Section 908. Sale of Property in Whole or in Parcels. In the event of any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, the whole of the Mortgaged Property shall be sold in one parcel and as an entirety, unless the Trustee shall deem such sale as an entirety to be illegal or impracticable or inadvisable by reason of some statute or other cause, or unless the owners of a majority in principal amount of the Bonds then outstanding shall request the Trustee in writing to cause the Mortgaged Property to

be sold in parcels, in which case the sale shall be made in such parcels and in such order as may be required by law or specified in such request, or, in the absence of any division into parcels or order of sale so required or requested, as the Trustee may determine, the Trustee being the sole and final judge of the practicability of such sale as an entirety. The Borrower, for itself, its successors and assigns, and for all persons and corporations hereafter claiming through or under it, hereby expressly waives and releases to the extent permitted by law all right to have the Mortgaged Property or any part thereof marshalled upon any foreclosure sale or enforcement of any other right hereunder, and the Trustee or any court in which the foreclosure of this Indenture or the administration of the trusts hereby created is sought, shall have the right as aforesaid to sell the entire Mortgaged Property as a whole in a single parcel.

Section 909. Adjournment of Sale by Trustee. The Trustee may adjourn, or cause to be adjourned, from time to time, any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by law, such sale may be made, without further notice or publication, at the time and place to which the same shall be so adjourned.

Section 910. Provisions Relating to Conveyance to Purchaser. Upon the completion of any such sale or sales, the Trustee, upon the request of the purchaser or purchasers, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, and other instruments conveying, assigning and transferring all its estate, right, title and interest in and to the properties and rights sold. The Trustee and its successor or successors are hereby irrevocably appointed the true and lawful attorneys of the Borrower, in its name and stead or in the name of the Trustee, to make all necessary conveyances, assignments, transfers and deliveries of the properties and rights thus sold, and for that purpose they may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more persons with like power, the Borrower, for itself, its successors and assigns, hereby ratifying and confirming all that its said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Borrower, if so requested in writing by the Trustee, will ratify and confirm any such sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be advisable in the judgment of the Trustee for the purpose and as may be designated in such request.

Any such sale or sales made under or by virtue of the provisions of this Indenture, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Borrower, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Borrower, its successors or assigns, provided, however, nothing contained in this Section or any other provisions of this Indenture shall affect the statutory rights of redemption given or conferred by



Code of Ala. 1975, § 6-5-230 thru § 6-5-246, as amended, which statutory rights of redemption shall be exercised only in the manner and subject to the provisions of said Code of Ala. 1975 § 6-5-230 thru § 6-5-246, as amended.

Section 911. Receipt of Trustee for Purchase Money. The receipt of the Trustee for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property, or any part thereof, sold as aforesaid, and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or be answerable in any manner whatsoever for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 912. All Bonds Due in Event of Sale of Project. In the event of any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, the principal of the Bonds, if not previously due, shall immediately thereupon become due and payable, anything in the Bonds or in this Indenture to the contrary notwithstanding.

Section 913. Trustee and Bond Owners May Bid and Purchase. At any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, any purchaser shall be entitled to use and apply any Bonds, in settlement or payment of the purchase price, or any part thereof, of the property purchased, by presenting such Bonds in order that there may be noted thereon the sums paid out of the net proceeds of such sale to the owner thereof as his ratable share of such net proceeds; and thereupon such purchaser shall be credited, on account of such price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the Bonds so presented. Notwithstanding any provisions of this Section, in all cases the purchaser or purchasers at any such sale shall pay in cash a sum sufficient to provide for the payment of all costs and expense including attorneys' fees of the foreclosure proceedings.

At any such sale the Trustee or any owner or owners of the Bonds may bid for and purchase the property sold if his bid is the highest therefor, and may make payment therefor as aforesaid, and upon compliance with the terms of sale may hold, retain and dispose of such property without further accountability.

Section 914. Remedies Cumulative. No remedy herein contained upon or reserved to the Trustee or to the owners of the Bonds 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 915. Delay or Omission Not a Waiver. No delay or omission of the Trustee or of any owner of any of the Bonds to exercise any right or power accruing upon any default



occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the owners of the Bonds.

[The next provision of this Indenture is Article X]

## ARTICLE X

## THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an event of default and after curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an event of default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Borrower or the Purchaser), approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for the recording or re-recording, filing or re-filing of this Indenture, or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the Borrower of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby or for the value of title of the Project or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the Project pursuant to any provision of this Indenture it shall use due diligence in preserving all or any part of the Project so entered and the Trustee shall not be bound to ascertain or inquire as to agreements on the part of the Borrower except as hereinafter set forth; but the Trustee may require of the Borrower or of the Purchaser full information and advice as to the performance of the covenants, conditions and agreements aforesaid and as to the condition of the property herein conveyed.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Borrower by its Chairman and attested by its Secretary as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Secretary of the Borrower under its seal to the effect that a resolution in the form therein set forth has been adopted by the Borrower as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable or liable for other than its gross negligence, willful misconduct or willful default.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Borrower to cause to be made any of the payments to the Trustee required to be made by Article IV unless the Trustee shall be specifically notified in writing of such default by the Borrower or by the owners of at least twenty-five percent (25%) in aggregate principal amount of Bonds then outstanding. All notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the principal office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no default except as aforesaid.

(i) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts during any period in which it may be in the possession of or managing the Project as in this Indenture provided.

(j) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books, papers and records of the Borrower pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired.



(k) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(l) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Borrower to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.

(m) Before taking such action hereunder the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the gross negligence or willful default by reason of any action so taken.

(n) All moneys received by the Trustee or any paying agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

Section 1002. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and/or reimbursement for reasonable fees for its Ordinary Services rendered hereunder and all advances, counsel fees and other Ordinary Expenses reasonably and necessarily made or incurred by the Trustee in connection with such Ordinary Services and, in the event that it should become necessary that the Trustee perform Extraordinary Services, it shall be entitled to reasonable extra compensation therefor, and to reimbursement for reasonable and necessary Extraordinary Expenses in connection therewith; provided, that if such Extraordinary Services or Extraordinary Expenses are occasioned by the neglect or misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to compensation or reimbursement for the reasonable fees and charges of the Trustee as paying agent and Bond Registrar for the Bonds as hereinabove provided. Upon an event of default hereunder but only upon an event of default, the Trustee shall have a first lien with right of payment prior to payment on account of interest or principal of any Bond upon the Mortgaged Property for the foregoing advances, fees, costs and expenses incurred.

Section 1003. Notice to Bond Owners if Default Occurs. If a default occurs of which the Trustee is by subsection (h) of Section 1001 hereof required to take notice or if notice of default be given as in said subsection (h) provided, then the Trustee shall give written notice thereof by mail to the registered owners of the Bonds.

Section 1004. Intervention by Trustee. In any judicial proceeding to which the Borrower is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of Bond Owners and shall do so if requested in writing by the owners of at least 25% of the aggregate principal amount of Bonds then outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 1005. Successor Trustees. Any corporation or association into which the trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from such conversion, sale, merger, consolidation or transfer to which it is a party shall be and become, ipso facto, successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 1006. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice to the Borrower and by registered or certified mail to each registered owner of Bonds then outstanding and such resignation shall take effect at the end of such thirty days, or upon the earlier appointment of a successor trustee by the Bond Owners or by the Borrower. Such notice to the Borrower may be served personally or sent by registered mail.

Section 1007. Removal of the Trustee. The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee and to the Borrower, and signed by the owners of a majority in aggregate principal amount of Bonds then outstanding.

Section 1008. Appointment of Successor Trustee by the Bond Owners; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Trustee shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of the Bonds then outstanding, by an instrument or concurrent instruments in writing delivered to the Borrower, the Trustee and the successor Trustee, signed by such owners, or by their attorneys in fact, duly authorized; provided, nevertheless, that in case of such vacancy the Borrower by an instrument executed and signed by the chairman and attested by the secretary of the Borrower under its seal, may appoint a temporary Trustee to fill such vacancy until a successor trustee shall be appointed by the Bond Owners in the manner above provided; and any such temporary trustee so appointed by the Borrower shall immediately and without further act be superseded by the trustee so appointed by the Bond Owners. Every such Trustee appointed pursuant to the provisions of this Section to succeed the Trustee shall be a trust company or bank in good standing in the State, having a reported capital and surplus of



not less than fifty million dollars, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 1009. Concerning Any Successor Trustee. Every successor trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Borrower, or of its successor, execute and deliver an instrument transferring to such successor trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor trustee shall deliver all securities and moneys held by it as trustee hereunder to its successor. Should any instrument in writing from the Borrower be required by any successor trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Borrower. The resignation of any trustee and the instrument or instruments removing any trustee and appointing a successor hereunder together with all other instruments provided for in this Article shall be filed and/or recorded by the successor trustee in each recording office where the Indenture shall have been filed and/or recorded.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment or governmental or other charge upon any part of the property herein conveyed is not paid as required herein, the Trustee may pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the Bond Owners 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 per annum rate then in effect on the 1996 Bonds, shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds, and shall be paid out of the proceeds of revenues collected from the property herein conveyed, if not otherwise to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the owners of at least 25% of the aggregate principal amount of Bonds then outstanding and shall have been provided with adequate funds for the purpose of such payment.

Section 1011. Trustee Protected in Relying Upon Resolutions, etc. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

Section 1012. Successor Trustee As Bond Registrar, Custodian of Construction Fund and Bond Fund and Paying Agent. In the event of a change in the office of Trustee, the Trustee which has resigned or been removed shall cease to be Bond Registrar, custodian of the



Construction Fund and the Bond Fund and paying agent for principal and interest of the Bonds, and the successor Trustee shall become such Bond Registrar, custodian and paying agent.

Section 1013. Duties of Trustee. Notwithstanding anything to the contrary contained herein, the Trustee shall, prior to the occurrence of an event of default, as defined in Article IX, and after the curing of all such events of default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall, during the existence of any such event of default (which has not been cured), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in such exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own gross negligence, its own gross negligent failure to act, or its own willful misconduct, except that:

(a) prior to an event of default hereunder and after the curing of all events of default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee, conforming to the requirements of this Indenture, but notwithstanding any provision of this Indenture to the contrary in the case of any such certificate or opinion or any evidence which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this Indenture;

(b) at all times, regardless of whether or not any event of default shall exist:

(1) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the owners of not less than a majority in aggregate principal amount of all the Bonds at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture. For the purposes of determining whether the owners of the required principal amount of Bonds have concurred in any such direction, Bonds owned by any obligor upon the Bonds, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with such obligor, shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction only Bonds which the Trustee knows are so owned shall be so disregarded.

The term "Responsible Officers" of the Trustee, as used in this Indenture, shall mean and include the Chairman of the Board of Directors, the President, any Vice President and the Cashier, any Assistant Cashier, any Trust Officer and their assistants, and every other officer and assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be officers, respectively, or to whom any corporate trust matter is referred, because of his knowledge of and familiarity with a particular subject; and the term "Responsible Officer" of the Trustee, as used in this Indenture, shall mean and include any of said officers or persons.

[The next provision of this Indenture is Article XI]

## ARTICLE XI

## SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Bond Owners. The Borrower and the Trustee may, without the consent of, or notice to, any of the Bond Owners, enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bond Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bond Owners or the Trustee;
- (c) To subject to this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute; and
- (e) To provide for the issuance, sale and delivery of Additional Bonds and to set forth any or all matters in connection therewith as provided in Section 203 hereof.

Section 1102. Supplemental Indentures Requiring Consent of Bond Owners. Exclusive of supplemental indentures covered by the preceding Section and subject to the terms and provisions contained in this Section, and not otherwise, the owners of not less than 100% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Borrower and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable.



Anything herein to the contrary notwithstanding, any supplemental indenture under this Article shall not become effective unless and until the Purchaser shall have consented in writing to the execution and delivery of such supplemental indenture.

[The next provision of this Indenture is Article XII]

## ARTICLE XII

## AMENDMENT OF SALE AGREEMENT

Section 1201. Amendments, etc. Not Requiring Consent of Bond Owners. The Borrower and the Trustee shall, without the consent of or notice to the Bond Owners, consent to any amendment, change or modification of the Sale Agreement as may be required (i) by the provisions thereof or of this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, (iii) for the purposes of identifying more precisely the Project, or (iv) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the owners of the Bonds.

Section 1202. Amendments, etc. Requiring Consent of Bond Owners. Except for the amendments, changes or modifications as provided in the preceding Section, neither the Borrower nor the Trustee shall consent to any other amendment, change or modification of the Sale Agreement without written consent from the owners of 100% in aggregate principal amount of the Bonds at the time outstanding.

[The next provision of this Indenture is Article XIII]

## ARTICLE XIII

## MISCELLANEOUS

Section 1301. Consents, etc., of Bond Owners. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bond Owners may be in any number of writings of similar tenor and may be signed or executed by such Bond Owners in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

Section 1302. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any person or company other than the parties hereto, and the owners of the Bonds and the Purchaser 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, the Purchaser and the owners of the Bonds as herein provided.

Section 1303. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 1304. Trustee as Paying Agent and Registrar. The Trustee is hereby designated and agrees to act as a paying agent and as Bond Registrar for and in respect to the Bonds.

Section 1305. Payments Due on Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Sunday or legal holiday or a day on which banking institutions are authorized by law



to close, then payment of interest or principal (and premium, if any) need not be made on such date in such city but may be made on the next succeeding business day not a Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such prior date.

Section 1306. 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 1307. Applicable Provisions of Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 1308. Article and Section Captions. The article and section headings, the captions and the Index contained in this Indenture are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Indenture.

Section 1309. Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed as follows: if to the Borrower, at The Public Park and Recreation Board of the City of Pelham, City Hall, Pelham, Alabama; if to the Trustee, at First Alabama Bank, P.O. Box 10247, Birmingham, Alabama 35202, Attention: Corporate Trust Officer; and if to the Purchaser, as provided in the Sale Agreement. A duplicate copy of each notice required to be given hereunder by either the Borrower or the Trustee shall also be given to the Purchaser and to the Guarantor under the Guaranty Agreement, and a duplicate copy of each notice required to be given hereunder by the Trustee to either the Borrower or the Purchaser shall also be given to the others. The Borrower and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

IN WITNESS WHEREOF, The Public Park and Recreation Board of the City of Pelham has caused these presents 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 trusts hereby created, First Alabama Bank, as Trustee, has caused these presents to be signed in its name and behalf by one of its duly authorized officers, its official seal to be hereunto affixed and the same to be attested by a duly authorized officer of said Bank, all as of the first day of February, 1996.

THE PUBLIC PARK AND RECREATION BOARD  
OF THE CITY OF PELHAM

By *Michael S. Seal*  
Chairman of its Board of Directors

SEAL

Attest:

*Cezayir A. Bates*  
Secretary

ACKNOWLEDGMENT OF BORROWER

STATE OF ALABAMA     )  
SHELBY COUNTY         )

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Michael Dickens, whose name as Chairman of the Board of Directors of The Public Park and Recreation Board of the City of Pelham, is signed to the foregoing Mortgage, Security Agreement and Indenture of Trust, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said Mortgage, Security Agreement and Indenture of Trust, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Board.

Given under my hand and seal of office this 28<sup>th</sup> day of February, 1996.

*Michael A. Dickens*  
Notary Public

SEAL

FIRST ALABAMA BANK, as Trustee

By Roy D. Birdwell  
Its Vice-President  
L.S.A.SEALAttest: Cynthia Gernick  
Its Assistant Secretary

## ACKNOWLEDGMENT OF TRUSTEE

STATE OF ALABAMA        )  
JEFFERSON COUNTY        )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Roy D. Birdwell, whose name as <sup>3<sup>rd</sup></sup> Vice-President and Corporate Trust Manager of First Alabama Bank, is signed to the foregoing Mortgage, Security Agreement and Indenture of Trust, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of the said Mortgage, Security Agreement and Indenture of Trust he, as such officer and with full authority, executed the same voluntarily for and as the act of said Bank.

Given under my hand and seal of office this 5<sup>th</sup> day of March, 1996.

M. A. [Signature]  
Notary Public

SEAL

This instrument was prepared by:

A. Key Foster, Jr.  
Balch & Bingham  
P.O. Box 306  
Birmingham, Alabama 35201

Inst # 1996-07512

03/06/1996-07512  
04:16 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
059 NCD 155.50