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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): December 15, 2004**

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**Trex Company, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-14649**  
(Commission  
File Number)

**54-1910453**  
(IRS Employer  
Identification No.)

**160 Exeter Drive**  
**Winchester, Virginia 22603-8605**  
(Address of principal executive offices)

**Registrant's telephone number, including area code: (540) 542-6300**

**Not Applicable**

(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2-(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

On December 15, 2004, Trex Company, Inc. (the “Company”) entered into various definitive agreements in connection with the financing transaction described below (the “Transaction”). A copy of the news release relating to the Transaction issued by the Company on December 16, 2004 is filed as Exhibit 99 to this report and is incorporated by reference in this Item 1.01 in its entirety and made a part of this Item 1.01.

**Transaction**

On December 16, 2004, the Mississippi Business Finance Corporation, a public corporation organized under the laws of the state of Mississippi (the “Issuer”), issued \$25,000,000 in principal amount of its bonds designated as “Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004” (the “Bonds”). The Bonds are special, limited obligations of the Issuer and, unless sooner paid, including pursuant to redemption or other specified principal payment event, will mature on December 1, 2029.

The Bonds were issued under a Trust Indenture, dated as of December 1, 2004 (the “Indenture”), between the Issuer and J.P. Morgan Trust Company, National Association, as trustee (the “Trustee”). The proceeds of the Bonds were loaned to the Company pursuant to a loan agreement between the Company and the Issuer (the “Loan Agreement”) for the purpose of financing all or a portion of the costs of the acquisition, construction and equipping of solid waste disposal facilities (the “Project”) to be used in connection with the Company’s new manufacturing plant, which is located in Olive Branch, Mississippi, and related operations (the “Facility”) and to pay the costs of the issuance of the Bonds. It is expected that approximately \$24,900,000 of the proceeds will be applied to the Project. The \$25,000,000 loan from the Issuer to the Company is evidenced by a promissory note (the “Promissory Note”) from the Company to the Issuer. Under the Loan Agreement and the Promissory Note, the Company has agreed to make payments (the “Loan Repayments”) sufficient to pay the principal of, premium, if any, and interest on the Bonds when due.

Concurrently with, and as a condition to, the issuance of the Bonds, the Company caused to be delivered to the Trustee an irrevocable letter of credit dated the date of original issuance of the Bonds (together with any subsequent letter of credit, the “Letter of Credit”) of JPMorgan Chase Bank, N.A. (together with any subsequent letter of credit issuer, the “Bank”) in an initial stated amount equal to \$25,308,220. Under the Letter of Credit, the Trustee will be entitled to draw up to an amount sufficient to pay (a) the principal of the Bonds or the portion of the purchase price corresponding to the principal of the Bonds and (b) interest up to a maximum amount equal to 45 days’ accrued interest on the Bonds or that portion of the purchase price of the Bonds corresponding to

accrued interest thereon at a maximum rate of 10% per annum. The Company's obligation to make the payments due under the Loan Agreement will be deemed to be satisfied and discharged to the extent of corresponding payments made by the Bank to the Trustee pursuant to draws made under the Letter of Credit. The initial Letter of Credit was issued pursuant to a reimbursement and credit agreement between JPMorgan Chase Bank, N.A. and the Company. The Company is obligated under this agreement to reimburse the Bank for drawings made under the Letter of Credit and to make certain other payments.

Interest on the Bonds will initially be payable at a variable rate established on a weekly basis as the minimum rate necessary for the remarketing agent of the Bonds (the "Remarketing Agent") to sell the Bonds on the effective date of such variable rate at their principal amount, without regard to accrued interest. Under circumstances specified in the Indenture, the Company has the option to convert the interest rate on the Bonds from a variable rate to a fixed rate. During the variable rate period, interest on the Bonds is payable on the first business day of each month, commencing on January 3, 2005.

Interest on the Company's \$25,000,000 loan accrues interest at the same rate, and is payable according to the same schedule, as interest on the Bonds.

#### **Definitive Agreements**

On December 15, 2004, the Company entered into various definitive agreements in connection with the Transaction.

Loan Agreement. On December 15, 2004, the Company entered into the Loan Agreement, dated as of December 1, 2004, with the Issuer. The Loan Agreement obligates the Company to pay principal or purchase price of, premium, if any, and interest on the Bonds, whether at maturity, upon redemption or purchase or otherwise coming due on the Bonds. The Company's obligation to make the Loan Repayments will be deemed satisfied to the extent of corresponding draws under the Letter of Credit, and the Company's failure to make the Loan Repayments will not constitute a default under the Loan Agreement if such payments are timely made by the Bank to the Trustee pursuant to the Letter of Credit. The Company is obligated under the Loan Agreement to pay specified fees and charges of the Trustee, the Issuer and J.P. Morgan Securities, Inc., who serves as the Remarketing Agent. The Loan Agreement contains covenants obligating the Company to take specified actions with respect to the maintenance, repair, modification and insurance of the Project. The Loan Agreement contains customary events of default, including failure by the Company to make the Loan Repayments and other payments when due under the Loan Agreement or the Promissory Note (except to

the extent such payments are made by the Bank to the Trustee pursuant to the Letter of Credit), the failure by the Company to comply with covenants, conditions or agreements specified in the Loan Agreement or the Promissory Note, any event of the default under the Indenture, or specified events of bankruptcy, insolvency, reorganization or similar events affecting the Company.

On December 15, 2004, the Company executed the Promissory Note, dated as of December 16, 2004, payable to the order of the Issuer in the principal amount of \$25,000,000, which evidences the repayment obligation of the Company with respect to amounts payable under the Loan Agreement.

Reimbursement Agreement. On December 15, 2004, the Company entered a Reimbursement and Credit Agreement, dated as of December 1, 2004 (the “Reimbursement Agreement”), with JPMorgan Chase Bank, N.A. Pursuant to the Reimbursement Agreement, the Company has agreed to reimburse the Bank for all amounts that are drawn by the Trustee under the Letter of Credit, together with interest on all such amounts in accordance with the provisions of the Reimbursement Agreement. The Company also has agreed to pay to the Bank drawing fees with respect to the Letter of Credit, amendment and transfer fees, an annual fee based on the amount available to be drawn under the Letter of Credit, interest on amounts drawn under the Letter of Credit to the date of repayment by the Company, and all expenses incurred in maintaining the Letter of Credit and in enforcing the Bank’s rights under the Reimbursement Agreement. All costs and expenses, including those which result from a change in law, incurred by the Bank relative to the Letter of Credit or the Reimbursement Agreement will also be paid by the Company.

The Company affirmatively covenants in the Reimbursement Agreement, among other things, to maintain the Facility subject to the mortgage thereon in good repair and operating condition; to comply with all applicable laws and to pay taxes; to maintain adequate insurance; to keep proper books and records; to permit the Bank to examine such books and records; to submit to the Bank specified financial and other reports and information; to promptly execute and deliver additional security documents; and to provide the Bank with required further assurances with regard to its exercise and enforcement of rights under the Reimbursement Agreement.

Subject to specified exceptions provided in the Reimbursement Agreement, the Company also covenants not to do certain things or permit certain conditions to exist without the written consent of the Bank, including, among other things: not to incur certain additional indebtedness and liens; not to engage in any consolidation, merger, sale or conveyance of any assets other than in the ordinary course of business; not to make certain investments, loans or advances; and not to take any action, or omit to take any action, which action or omission will adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Reimbursement Agreement contains customary events of default, including failure by the Company to pay when due any payment under the Reimbursement Agreement or, except as provided therein, the Loan Agreement, the failure by the Company to comply with affirmative or negative covenants contained in the Reimbursement Agreement, default on other specified indebtedness, failure to discharge specified judgments, and specified events of bankruptcy, insolvency, reorganization or similar events affecting the Company.

On December 15, 2004, pursuant to the Reimbursement Agreement, the Company executed a reimbursement note, dated as of December 1, 2004 (the "Reimbursement Note"), payable to the Bank in the principal amount of \$25,308,220, which evidences the amount of the Company's initial reimbursement obligation under the Reimbursement Agreement.

Security Agreement. On December 15, 2004, pursuant to the Reimbursement Agreement, the Company entered into a Land Deed of Trust, dated as of December 1, 2004, made by the Company to the trustee named therein for the benefit of the Bank. Under this agreement, the Company has granted to the Trustee, for the benefit of the Bank, to secure performance of the Company's obligations under the Reimbursement Agreement and the Reimbursement Note, a senior mortgage on and a first priority security interest in specified assets that include the Project, the Facility buildings and related improvements, and equipment purchased with the proceeds of the Bonds.

Indenture. On December 15, 2004, the Issuer and the Trustee entered into the Indenture, which sets forth the terms of the Bonds and governs the respective rights and obligations of the various parties to the Transaction, including the Issuer, the Trustee, the Company and the holders of the Bonds, with respect to the Bonds.

**Item 2.03    Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth under Item 1.01 of this report is incorporated by reference in this Item 2.03 in its entirety and made a part of this Item 2.03.

Upon the consummation of the Transaction on December 16, 2004, the Company became obligated to make the Loan Repayments under the Loan Agreement and the Promissory Note in an original principal amount of \$25,000,000. This new direct financial obligation constitutes long-term debt of the Company.

Principal is payable on the Company's loan at the same dates and in the same amounts as principal on the Bonds. Unless sooner paid, including pursuant to a redemption or other principal payment event specified in the Indenture, the Bonds will mature and be

payable in full on December 1, 2029. Consistent with the terms of the Bonds, there is no scheduled amortization of principal of the Company's loan before the loan maturity date of December 1, 2029. Upon a redemption or other Bond principal payment event occurring before the Bond maturity date, the Company will be required to prepay the outstanding principal under its loan in an equal amount. Subject to the terms of the Indenture and the Bonds, the Company will have the option to redeem the Bonds, in whole or in part, at any time at a specified premium. The Bonds are also subject to mandatory purchase or redemption, in some circumstances at a specified premium, upon the occurrence of specified events, including upon a specified expiration or termination of the Letter of Credit, a specified insurance or condemnation event relating to the Project, and specified determination events with respect to the treatment of interest on the Bonds for federal income tax purposes. The principal repayment of the Company's loan also may be accelerated, and all outstanding principal of the loan become due and fully payable, upon the occurrence of an event of default under the Loan Agreement or the Reimbursement Agreement.

**Item 9.01 Financial Statements and Exhibits.**

(c) Exhibits. The Company herewith files the exhibits listed below.

| <u>Exhibit Number</u> | <u>Description of Exhibit</u>   |
|-----------------------|---|
| 10.1                  | Loan Agreement, dated as of December 1, 2004, between Trex Company, Inc. (the "Company") and Mississippi Business Finance Corporation (the "Issuer").         |
| 10.2                  | Promissory Note, dated as of December 16, 2004, in the principal amount of \$25,000,000 from the Company payable to the order of the Issuer.                  |
| 10.3                  | Reimbursement and Credit Agreement, dated as of December 1, 2004, between the Company and JPMorgan Chase Bank, N.A., as Bank and Administrative Agent.        |
| 10.4                  | Reimbursement Note, dated as of December 1, 2004, in the principal amount of \$25,308,220 from the Company payable to JPMorgan Chase Bank, N.A. (the "Bank"). |
| 10.5                  | Land Deed of Trust, dated as of December 1, 2004, made by the Company to the trustee named therein for the benefit of the Bank.                               |

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- 10.6 Trust Indenture, dated as of December 1, 2004, between the Issuer and J.P. Morgan Trust Company, National Association, as Trustee, including Form of Variable Rate Series 2004 Bond and Form of Fixed Rate Series 2004 Bond.
- 99 News Release issued by Trex Company, dated December 16, 2004.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 20, 2004

TREX COMPANY, INC.

/s/ Paul D. Fletcher

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Paul D. Fletcher  
Senior Vice President and  
Chief Financial Officer

**LOAN AGREEMENT**

**BY AND BETWEEN**

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**MISSISSIPPI BUSINESS FINANCE CORPORATION,**  
a public corporation duly  
organized and existing under the laws of  
the State of Mississippi,

**AND**

**TREX COMPANY, INC.,**  
a Delaware corporation

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**RELATING TO**

**\$25,000,000 Mississippi Business Finance Corporation**  
**Variable Rate Demand Environmental Improvement Revenue Bonds**  
**(Trex Company, Inc. Project), Series 2004**  
**Dated as of December 1, 2004**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of December 1, 2004, by and between the **MISSISSIPPI BUSINESS FINANCE CORPORATION**, a public corporation duly organized and existing under the laws of the State of Mississippi, (the “Issuer”), and **TREX COMPANY, INC.**, a Delaware corporation (the “Borrower”).

WHEREAS, the Issuer has been created pursuant to the provisions of Section 57-10-167, Mississippi Code of 1972, as amended and is authorized pursuant to the provisions of Section 57-10-401 et seq., Mississippi Code of 1972, as amended (the “Act”) to make loans to pay the Approved Costs (as defined in the Act); and

WHEREAS, the Borrower has applied to the Issuer for a Loan (as hereinafter defined) in the aggregate amount of \$25,000,000 to finance the costs of the Project (as hereinafter defined) and pay costs of issuance; and

WHEREAS, the Issuer has determined that granting the Loan requested by the Borrower will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Act; and

WHEREAS, the Issuer and the Borrower desire to set forth the terms and conditions of the Loan;

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings herein expressed, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

All terms used herein which are defined in the Indenture identified below, but not otherwise defined herein, shall have the meanings therein set forth, which definitions are by this reference incorporated herein and made a part of this Agreement. In addition to the terms elsewhere defined in this Agreement, the words “this Agreement” as used herein shall mean this Loan Agreement and the following terms used in this Agreement (including the preamble) shall have the following meanings unless the context indicates a different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined:

“**Authorized Borrower Representative**” means such Person at the time and from time to time designated to act on behalf of the Borrower by written certificate furnished to the Issuer, JPMorgan Chase Bank, N.A., a national banking association (the “Bank”) and the Trustee, containing the specimen signature of such Person, signed on behalf of the Borrower by an authorized officer of the Borrower.

“**Bond**” or “**Bonds**” means the Bonds authorized to be issued pursuant to the Indenture.

“**Borrower**” means the Trex Company, Inc., a Delaware corporation.

**“Completion Date”** means the earlier of (a) the date of completion of the Project, as set forth in a completion certificate in the form attached hereto as Exhibit A delivered pursuant to Section 5.4 hereof, or (b) the third anniversary of the Issue Date of the Bonds, unless such date has been extended beyond the third anniversary of the Issue Date in accordance with the requirements of Section 5.4 hereof.

**“Costs of the Project”** shall have the same meaning as the term “Approved Costs” as defined in the Act, and shall include, to the extent permitted by that Act (a) obligations of the Borrower incurred, or reimbursement to the Borrower, for labor and to contractors, builders and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of acquiring land or rights in land and any cost incidental thereto, including recording fees, (c) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Project which is not paid by the contractor or contractors or otherwise provided for; (d) all costs of engineering services, including test borings, surveys, estimates, plans and specifications and preliminary investigations, and supervising construction and construction, as well as for the performance of all other duties required by or consequent upon the proper construction and construction of the Project; (e) Issuance Costs; (f) all other costs which the Borrower shall be required to pay, under the terms of any contract or contracts, for the acquisition, construction and installation of the Project; (g) interest on the Bonds during the construction component of the Project that will be capitalized by the Borrower under generally accepted accounting principles; (h) all other costs relating to the Project to the extent that (i) such costs are eligible for payment under the Act, including all such costs described in attached Exhibit B, and (ii) payment of such costs will not cause the interest on the Bonds to be included in gross income for federal income tax purposes; and (i) other costs of a nature comparable to those described in clauses (a) through (h) above which the Borrower shall be required to pay as a result of the damage, destruction, condemnation or taking of the Project or any portion thereof.

**“Indenture”** means the Trust Indenture dated as of December 1, 2004 between the Issuer and J.P. Morgan Trust Company, National Association, as trustee (the “Trustee”), as the same may be amended or supplemented from time to time as permitted thereby.

**“Inducement Date”** means October 15, 2003, as the date on which the Issuer adopted its inducement resolutions with respect to the Project.

**“Issuance Costs”** means items of expense payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, sale and issuance of the Bonds and authorization and execution of this Agreement, which items of expense shall include, but not be limited to, application fees and expenses, publication costs, printing costs, costs of reproducing documents, filing and recording fees, Bond Counsel and Counsel fees, costs of credit ratings, initial, first year annual and initial legal fees of the Trustee, Underwriter fees, charges for execution, transportation and safekeeping of the Bonds and related documents, and other costs, charges and fees in connection with the foregoing.

**“Loan”** means the Loan made pursuant to Section 3.1 of this Agreement.

**“Loan Repayments”** means all amounts required to be paid by the Borrower to the Issuer (and the Trustee as the assignee of the Issuer) pursuant to the Promissory Note and Section 3.2 of this Agreement.

**“Person”** means any natural person, firm, partnership, association, limited liability company, corporation, or public body.

**“Project”** means the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi to be used by the Borrower in connection with the manufacture of non-wood decking, railing and fencing products, all as more fully described in attached Exhibit D.

**“Promissory Note”** means the promissory note given by the Borrower pursuant to this Agreement, in the form of attached Exhibit C, as the same may be amended, modified or supplemented in accordance with the terms hereof.

**“Requisition Certificate”** means a certificate in the form of attached Exhibit E delivered pursuant to Section 5.1 hereof.

**“Tax Certificate”** means the Tax Certificate and Covenants of the Borrower dated the date of issuance of the Bonds.

**“Unassigned Rights”** means the right of the Issuer to make all determinations and approvals and receive all notices accorded to it under this Agreement and to enforce in its name and for its own benefit the provisions of Sections 3.5, 8.6, 8.11 and 10.4 of this Loan Agreement with respect to Issuer fees and expenses, and indemnity payments as the interests of the Issuer and related Persons shall appear.

## ARTICLE II REPRESENTATIONS

SECTION 2.1 Representations and Tax Covenants by the Borrower. As an inducement to the Issuer to issue the Bonds and to make the Loan to the Borrower, the Borrower, makes the following representations, warranties and covenants:

(a) The Borrower is a duly organized and existing Delaware corporation in good standing under the laws of the State of Mississippi and is authorized to conduct business in the State of Mississippi and every other state in which the nature of its business or the ownership or lease of its properties requires such authorization except where the failure to qualify could not reasonably be expected to have a material adverse effect on its operations or financial condition.

(b) Except as disclosed in the Borrower’s Form 10-Q most recently filed with the United States Securities and Exchange Commission, there are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before any governmental authority or arbitration board or tribunal which, if determined adversely to the Borrower, would materially and adversely affect the transactions contemplated by this Agreement, the Pledge Agreement, the Promissory Note, the Reimbursement Agreement, the Bond Purchase Agreement, the Remarketing Agreement or

the Indenture or which, in any way, would adversely affect the enforceability or validity of the Bonds, the Indenture, the Reimbursement Agreement, the Pledge Agreement, the Promissory Note, the Bond Purchase Agreement, the Remarketing Agreement or this Agreement or the ability of the Borrower to perform its obligations under this Agreement or such related agreements.

(c) The execution, delivery and performance of this Agreement, the Pledge Agreement, the Promissory Note, the Bond Purchase Agreement, the Remarketing Agreement and the Reimbursement Agreement and the compliance by the Borrower with all of the provisions hereof and thereof are within its powers, have been duly authorized, and are not in contravention of law or of the terms of the Borrower's Articles of Incorporation or By-Laws or any unwaived provision of any mortgage, deed, instrument or undertaking to which the Borrower is a party or by which it or its property is bound.

(d) This Agreement, the Pledge Agreement, the Promissory Note, the Bond Purchase Agreement, the Remarketing Agreement and the Reimbursement Agreement are valid, binding and enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity.

(e) The Borrower is not in default in any material respect under any order, writ, judgment, injunction, decree, determination or award or any material indenture, agreement, lease or instrument. The Borrower is not in default under any law, rule or regulation wherein such default could reasonably be expected to materially adversely affect the operations or financial condition of the Borrower or the ability of the Borrower to perform its obligations under this Agreement.

(f) The Project conforms and will conform in all material respects with all applicable zoning, planning, building, environmental (other than as disclosed in writing by Borrower to the Issuer and the Bank) and other laws and regulations of the governmental authorities having jurisdiction of the Project and all licenses and approvals required to operate Borrower's facilities have been obtained from appropriate state and federal agencies and departments or, if not obtained on the date of this Agreement, will be obtained in the normal course of business at or prior to the time such authorizations, consents or approvals are required to be obtained.

(g) The Borrower intends to cause the Project to operate at all times during the term of this Agreement so as to qualify as a "project" as defined in the Act.

(h) There are no authorizations, consents or approvals of governmental bodies or agencies required in connection with the execution and delivery by the Borrower of this Loan Agreement, the Bond Purchase Agreement, the Remarketing Agreement, the Pledge Agreement, the Promissory Note or the Reimbursement Agreement or in connection with the carrying out by the Borrower of its obligations thereunder which have not been obtained or, if not obtained on the date of this Loan Agreement, are expected to be obtained in the normal course of business at or prior to the time such authorizations, consents or approvals are required to be obtained.

(i) There is hereby incorporated herein by reference the Tax Certificate. The Borrower represents that its statements in the Tax Certificate are true, complete and correct in all material respects and agrees to comply in all material respects with all of its covenants and undertakings therein.

(j) All reimbursements to the Borrower for Project Costs from proceeds of the Bonds shall be made in compliance with Treasury Regulation § 1.150-2 (the “Reimbursement Regulations”).

(k) All property which is to be financed by the net proceeds of the Bonds is expected to be owned by the Borrower during the term of the Bonds.

(l) The amount of Issuance Costs financed from the proceeds of the sale of the Bonds shall not exceed two percent (2%) of the proceeds of the Bonds.

(m) The Borrower shall complete the Project as required by the Act on or before the Completion Date, and shall cause to be paid all costs of the Project in excess of the moneys available therefor in the Project Fund.

(n) The Borrower expects to complete the acquisition, construction and installation of the Project within three (3) years after the date of issuance of the Bonds.

(o) The Borrower will comply with the provisions of Section 148 of the Code. The Borrower covenants, for the benefit of itself, the Issuer and the owners from time to time of the Bonds, that it will not cause or permit any proceeds of the Bonds to be invested in a manner contrary to the provisions of Section 148 of the Code, and that it will assume compliance with such provisions on behalf of the Issuer (including, without limitation, performing required calculations, the keeping of proper records and the timely payment to the Department of the Treasury of the United States, in the name of the Issuer, of all amounts required to be so paid by Section 148 of the Code), and the Borrower shall follow the procedures set forth in the Tax Certificate.

(p) No event has occurred and no condition exists with respect to the Borrower that would constitute an “Event of Default” under this Agreement or that, with the lapse of time or the giving of notice or both, would become an “Event of Default” under this Agreement.

(q) No proceeds of the Bonds will be allocated to the reimbursement of an expenditure for costs of the Project unless such reimbursement allocation is made not later than eighteen (18) months after the later of:

(i) The date the original expenditure is paid; or

(ii) The date the Project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid.

(r) The Borrower will use straight line depreciation for federal tax purposes for any assets financed with the proceeds of the Bonds, in accordance with Section 168(g) of the Code.

SECTION 2.2 Representations of the Issuer. The Issuer makes the following representations, warranties and covenants:

(a) It is a public corporation duly organized and existing under the laws of the State of Mississippi, with the power under and pursuant to the Act, to execute and deliver this Agreement and to perform its obligations hereunder, and to issue and sell the Bonds pursuant to this Agreement.

(b) It has taken all necessary action and has complied with all provisions of the Constitution of the State of Mississippi and the Act required to make this Agreement and the Bonds the valid, special obligations of the Issuer which they purport to be; and, when executed and delivered by the parties hereto, this Agreement will constitute a valid and binding agreement of the Issuer enforceable in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

(c) When delivered to and paid for by the initial purchasers in accordance with the terms of this Agreement and the Bond Purchase Agreement with respect to the Bonds, the Bonds will constitute valid and binding special limited obligations of the Issuer enforceable in accordance with their terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied, and will be entitled to the benefits of this Agreement.

(d) The Issuer has determined that the Project constitutes an “Economic Development Project” and that the Borrower is an “Eligible Company” and an “Approved Company” as such terms are defined under the Act.

(e) Except as provided in this Section 2.2, the Issuer makes no other representations or warranties, either express or implied, of any nature or kind, including, without limitation, a representation or warranty that interest on the Bonds is or will continue to be exempt from federal or state income taxation.

(f) The Issuer covenants that it will promptly pay or cause to be paid the principal or Purchase Price of, interest, premium, if any, and other charges, if any, on the Bonds at the place, on the dates, from the sources and in the manner provided herein and in the Bonds; *provided*, however, that under no circumstances shall the Bonds be or become an indebtedness of the State within the purview of any constitutional limitation or provision, and all covenants and undertakings by the Issuer hereunder and under the Bonds to make payments are special, limited, obligations of the Issuer, payable solely from the revenues and funds pledged hereunder. The Issuer has no power to levy taxes for any purpose whatsoever.

(g) Nothing contained in this Agreement is intended to impose any pecuniary liability on the Issuer nor shall it in any way obligate the Issuer to pay any debt or meet any financial

obligations to any Person at any time in relation to the Project except from moneys received under the provisions of this Agreement; *provided*, however, that nothing contained in this Agreement shall in any way obligate the Issuer to pay such debts or meet such financial obligations from moneys received for the Issuer's own account.

(h) The Issuer is not in default under any of the provisions of the laws of the State which would affect its existence or its powers referred to in Section 2.2 hereof.

(i) The Issuer hereby finds and determines that the Project will further the public purposes of the Act and that all requirements of the Act have been satisfied.

(j) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(k) There is no action, suit, proceeding or investigation pending (or to which the Issuer has received services of process) or, to the knowledge of Issuer, threatened against the Issuer which seeks to restrain or enjoin the issuance or delivery of the Bonds, or which in any way contests or affects any authority for the issuance of the Bonds, the validity of the Bonds or this Indenture, in any way contests the corporate existence or powers of the Issuer or in any way affects the tax-exempt status of the Bonds.

(l) The Bonds are to be issued under and secured by the Indenture, pursuant to which certain of the Issuer's interests in this Agreement, and the revenues and income to be derived by the Issuer pursuant to this Agreement and the Promissory Note, will be pledged and assigned to the Trustee as security for payment of the principal, premium, if any, Purchase Price and interest on the Bonds. The Issuer covenants that it has not and will not pledge or assign its interest in this Agreement, or the revenues and income derived pursuant to this Agreement or the Note, except for the Issuer's Unassigned Rights, other than to the Trustee under the Indenture, to secure the Bonds.

### ARTICLE III LOAN AND REPAYMENT

SECTION 3.1 Amount and Evidence of Loan. Concurrently with the issuance and delivery of the Bonds, the Issuer shall make and the Borrower shall receive the Loan in the aggregate principal sum of \$25,000,000, the proceeds of which shall be used to make the required deposit to the Project Fund for payment of the Costs of the Project to be disbursed in accordance with Section 5.1 hereof. The Loan shall be evidenced by the Promissory Note.

SECTION 3.2 Loan Repayments. On or before each date on which a payment of principal, premium, if any, or interest is due on the Bonds, whether by acceleration, mandatory redemption or otherwise, and until the principal of, premium, if any, and interest on the Bonds has been fully paid or provided for as set forth in Article V of the Indenture, the Borrower shall pay, or cause to be paid, to the Trustee, in immediately available funds for deposit in the Bond Fund, the Loan Repayments, including the amounts payable as principal, premium, if any, and

interest due on the Bonds on such date, less any Eligible Funds held by the Trustee in the Bond Fund that are required to be applied to the payment of such principal, premium, if any, and interest on such date.

Notwithstanding any provision in this Section 3.2 to the contrary, if the Bonds are secured by a Letter of Credit and drawings are made thereunder for the purpose of making payments with respect to the principal, premium, if any, and interest due on the Bonds which are required to be made pursuant to this Section 3.2, the Borrower shall be deemed to have made principal and interest Loan Repayments in a like amount, and no additional payments shall be due or paid by the Borrower hereunder with respect to the payment of principal of, premium, if any, or interest on such Bonds to the extent that funds are so drawn on the Letter of Credit and applied by the Trustee for such payment on such dates.

SECTION 3.3 Mandatory and Optional Prepayments of the Promissory Note. The Borrower may prepay the Promissory Note in whole or in part in authorized denominations without penalty or premium, in accordance with the terms of the Indenture, while the Bonds are in the Variable Rate. The Borrower may direct the redemption of the corresponding amount of Bonds then outstanding on such dates and pursuant to the provisions and limitations, and upon payment of any required interest and premium, set forth in Section 217(a) of the Indenture.

The Borrower shall prepay the Promissory Note at such times in order to enable the Trustee to redeem all or a portion of the Bonds as required in Section 217 of the Indenture. Subject to the provisions of Section 501 of the Indenture, any redemption of all or a portion of the Bonds made by the Trustee with the proceeds of a drawing under the Letter of Credit shall be deemed to represent a prepayment of the Promissory Note in a like amount.

If the Borrower repays or prepays Loan Repayments and other amounts owing to the Trustee under this Agreement and the Indenture and to the Bank under the Reimbursement Agreement in such a manner so as to permit the Security to be released from the lien of the Indenture in accordance with Article V of the Indenture and the Bonds to be deemed paid in full, then the Loan shall be deemed fully repaid, and this Agreement and the Promissory Note shall be canceled on the date on which the Security is so released. To confirm such cancellation, the Borrower may require the Trustee to cancel the Promissory Note and execute any further reasonable evidence of cancellation on the date the Security is so released.

In the event of any optional prepayment of the Promissory Note on or before the date set for redemption of the Bonds to be redeemed in connection therewith, the Borrower shall deposit, or cause to be deposited in the Bond Fund with the Trustee immediately available Eligible Funds which, when added to Eligible Funds on hand in the Bond Fund, are sufficient to pay the principal of, premium, if any, and interest on the Bonds and shall deposit with the Trustee sufficient moneys (which do not have to be Eligible Funds) to pay all fees, costs, and expenses of the Issuer and the Trustee specified in Sections 3.5, 3.6, 8.6 and 10.4 hereof accruing through the date set for redemption of the Bonds (provided that no moneys derived from a draw on the Letter of Credit shall be used to pay such fees, costs and expenses of the Issuer or the Trustee).

SECTION 3.4 Additional Payment Obligations of the Borrower. (a) The Borrower agrees to pay, or cause to be paid, to the Trustee, for deposit in the Bond Purchase Fund, on or

before each purchase date, an amount sufficient, together with any remarketing proceeds then held by the Trustee in the Bond Purchase Fund and available for such purpose under Section 404 of the Indenture, to enable the Trustee to pay the Purchase Price of all Bonds to be purchased on such date pursuant to Section 205 or Section 206 of the Indenture at the price specified therein; provided, however, that if the Letter of Credit is outstanding and drawings may be made thereunder for such purpose, payments with respect to the Purchase Price of the Bonds on such date which are required to be made by the Borrower under this Section 3.4 shall be made on behalf of the Borrower by the Trustee with funds drawn by the Trustee under the Letter of Credit. No additional payments shall be due or paid by the Borrower hereunder with respect to the Purchase Price of such Bonds to the extent that funds are so drawn under the Letter of Credit and applied by the Trustee to payment of the Purchase Price of Bonds purchased on such date. Anything herein to the contrary notwithstanding, if on any purchase date the remarketing proceeds together with the amount theretofore drawn under the Letter of Credit are, for any reason, insufficient to pay the Purchase Price of the Bonds being tendered on such date as provided in the Indenture, the Borrower hereby agrees to immediately pay an amount equal to such deficiency to the Trustee at its corporate trust office in immediately available funds. Such payment shall be made at such times as are necessary so that sufficient funds will be available at such times as are necessary to pay the Purchase Price of the Bonds tendered under the Indenture at the times and in the manner contemplated by the Indenture.

(b) The Borrower agrees to pay, as and when the same is due, any Rebate Amount calculated as provided in Section 409 of the Indenture.

SECTION 3.5 Payment of Fees. The Borrower shall pay annually, in arrears, and (on a prorated basis) on the date the Bonds are redeemed in full, the Issuer's administrative fee which shall be equal to one-eighth of one percent (.00125) of the principal amount of the Bonds outstanding on such anniversary date or redemption date, as appropriate. The Issuer's administrative fee shall be paid by the Borrower to the Trustee for deposit into the Bond Fund (in the Non-Eligible Funds Account). The Borrower shall notify the Trustee of such payment, whereupon the Trustee will promptly forward such payment to the Issuer in accordance with the provisions of Section 401 of the Indenture. The Borrower will also pay, on the Issue Date, the fees of the Issuer's counsel and financial advisor prior to or contemporaneously with the making of the Loan. In addition, the Borrower shall pay, within ten (10) days of demand therefor, the reasonable fees and expenses of the Issuer related to the Project, or incurred by the Issuer in performing or enforcing the provisions of this Agreement or the Indenture.

SECTION 3.6 Administrative Expenses. The Borrower shall pay, or cause to be paid, an amount equal to (i) the reasonable fees and charges of the Trustee for services rendered as Trustee under the Indenture and its reasonable expenses incurred as Trustee under the Indenture, as and when the same become due, including the reasonable fees of its Counsel and (ii) the reasonable fees and charges of the Remarketing Agent for acting as Remarketing Agent under the Indenture, as and when the same become due, including the reasonable fees of its Counsel.

SECTION 3.7 Agreement to Supply Letter of Credit. The Borrower shall provide for the delivery of a Letter of Credit meeting the requirements of Section 308 of the Indenture to the Trustee simultaneously with the original issuance of the Bonds.

SECTION 3.8 Purchase of Bonds Prohibited. So long as a Letter of Credit is in effect, the Borrower will not, and will not permit any Insider of the Borrower, to purchase, directly or indirectly, any Bonds with any funds that do not constitute Eligible Funds, except as required by Section 3.4.

ARTICLE IV  
NO SECURITY INTEREST IN PROJECT

The Issuer shall have no rights to or any interest in the Project, which shall be the sole and exclusive property of the Borrower (subject to such liens thereon and security interests therein as the Borrower may grant to the Bank to secure the Borrower's obligations under the Reimbursement Agreement). However, the Borrower agrees that, subject to reasonable security and safety regulations, the Issuer and the Trustee shall have the right, but not the obligation, at all reasonable times to enter upon the site of the Project in order to determine that it conforms with the requirements of this Agreement.

ARTICLE V  
ACQUISITION OF THE PROJECT

SECTION 5.1 Disbursements from the Project Fund.

Each of the payments to be made for Costs of the Project shall be made only upon delivery to the Trustee of a Requisition Certificate signed by an Authorized Borrower Representative and approved in writing by the Bank in accordance with the Loan Documents. Each Requisition Certificate shall be accompanied by copies of invoices or other appropriate documentation satisfactory to the Bank, supporting the payments or reimbursements requested and by a brief description of the portion of the Project acquired, constructed or equipped; provided that the Trustee and the Bank shall have no duty or obligation to review such invoices or other documentation and may conclusively rely on such requisitions and such Bank approval. The Bank shall not be obligated to approve any disbursement from the Project Fund unless the Borrower shall have satisfied the terms and conditions for each disbursement contained in the Reimbursement Agreement. The Trustee shall not be responsible and shall have no liability for the application or disposition by the Borrower of any disbursements made hereunder to the Borrower.

SECTION 5.2 Obligation of the Borrower to Complete the Project and to Pay Costs in Event Project Fund Insufficient. If requested, the Borrower shall make available to the Issuer, the Bank and the Trustee such information concerning the Project as any of them may reasonably request. The Borrower may revise the plans and specifications for the Project, provided, however, that the Project shall not be materially altered in scope, character, value or operation without the prior written consent of the Bank, and provided, further, that the expenditure of moneys for the Project as modified is permitted by the Act and will not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

In the event that the money in the Project Fund available for payment of the costs of the Project shall not be sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit moneys in the Project Fund for the payment of, such costs of completing the Project

as may be in excess of the moneys available therefor in the Project Fund. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE PROJECT FUND, AND WHICH UNDER THE PROVISIONS OF THIS AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE COSTS OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH. The Borrower agrees that if, after exhaustion of the moneys in the Project Fund, the Borrower should pay, or deposit moneys in the Project Fund for payment of, any portion of the costs of the Project pursuant to the provisions of this Section 5.2, it shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, the Bank, or from the owners of any of the Bonds, nor shall they be entitled to any diminution of the amounts payable hereunder.

SECTION 5.3 Investment of Project Fund and Bond Fund Moneys. Any moneys held in the Project Fund or Bond Fund (excluding proceeds of a draw on the Letter of Credit, which shall remain uninvested) shall, pending disbursement and upon written request of the Borrower or oral request of the Borrower later confirmed in writing, be invested only in Permitted Investments in accordance with the provisions of Section 407 of the Indenture, all at such maturities, rates of interest and other specifications as the Borrower may indicate in its request to the Trustee. The investments shall mature not later than the respective dates estimated by the Borrower when the moneys in such Funds shall be needed for the purposes provided in this Agreement and the Indenture, but should the cash balance in a Fund be insufficient for such purpose, the Trustee, if authorized by the Borrower, shall sell the necessary portion of such investments to meet that purpose. Recognizing that such investments shall be made at the written direction of the Borrower, the Issuer agrees to cooperate with the Borrower, and the Borrower covenants that it will restrict the use of the proceeds of the Bonds (and any other funds or moneys which may be deemed to be proceeds of the Bonds pursuant to Section 148(a) of the Code), in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bonds are issued, so that the Bonds will not constitute "arbitrage bonds" under Section 148(a) of the Code.

SECTION 5.4 Certificate as to Completion. Upon the completion of the Project and prior to the final requisition of funds from the Project Fund, the Borrower shall submit to the Trustee and the Bank a completion certificate signed by the Borrower substantially in the form of attached Exhibit A.

All Bond proceeds remaining in the Project Fund after the Completion Date shall be treated as Surplus Bond Proceeds and transferred to the Bond Fund to be applied by the Trustee in the manner provided in Section 11.1 hereof. Notwithstanding the foregoing, Bond proceeds may be retained in the Project Fund longer than three (3) years after the Issue Date provided the Borrower delivers an opinion of Bond Counsel to the Issuer, the Bank and the Trustee to the effect that the retention of such Bond proceeds in the Project Fund will not adversely affect the exclusion of interest on the Bonds from gross income of the Bondholders for federal income tax purposes.

SECTION 5.5 No Warranty by Issuer. THE BORROWER RECOGNIZES THAT THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO

WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE ISSUER'S OR THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 5.5 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OF MISSISSIPPI OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

ARTICLE VI  
USE OF PROJECT MAINTENANCE, TAXES  
AND INSURANCE

SECTION 6.1 Use, Maintenance and Modifications of Project by Borrower. The Borrower shall use, lease for use, or occupy the Project during the term of this Agreement principally for manufacturing purposes as described in Exhibit D hereto. The Borrower does not know of any reason why the Project will not be so used and occupied by it in the absence of supervening circumstances not now anticipated by it or beyond its control. Notwithstanding the foregoing, the Borrower shall have the right to use the Project during the term of this Agreement for any lawful purpose under the Act that will not affect the validity of the Bonds or impair the exclusion of interest on the Bonds from gross income for federal income tax purposes. The failure of the Borrower to use, lease for use, or occupy the Project for its intended purposes shall not in any way abate or reduce the obligation of the Borrower to repay the Loan under the provisions of this Agreement, and shall not be deemed a default under this Agreement in any respect as long as such alternative use is caused by supervening circumstances not now anticipated and does not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes or contravene the Act.

The Borrower agrees that it will keep the Project in good repair and good operating condition, ordinary wear and tear excepted, at its own cost.

The Borrower may remodel the Project or make additions, modifications and improvements to the Project from time to time as the Borrower, in its discretion, may deem to be desirable, the cost of which shall be paid by the Borrower, provided, however, that such additions, modifications and improvements do not materially and adversely alter the scope, character, value or operation of the Project without the prior written consent of the Bank, do not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes and do not contravene the provisions of the Act.

SECTION 6.2 Taxes, Other Governmental Charges and Utility Charges. The Borrower shall pay before any interest, collection fees or penalties shall become due, every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, for the payment of which the Borrower is or shall become liable by reason of its estate or interest in the Project or any portion thereof, by reason of any right or interest of the Borrower in or under this Agreement, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Project or any portion thereof, including, without limitation, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Borrower therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the receipts, income or profits of the Issuer from the Project and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project); provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as they become due. The parties acknowledge that the Project will be subject to ad valorem taxation unless the appropriate local taxing authorities (County and City governing bodies) agree that the Project will be exempt in whole or in part from such taxes.

Notwithstanding the foregoing or any contrary provision in any of the Loan Documents, the Borrower may, at its expense and in its own name, in good faith contest any such taxes, assessments and other charges by appropriate proceedings provided adequate financial reserves have been established on its books and records in accordance with generally accepted accounting principles, and during such contest Borrower's failure to pay such obligations shall not constitute a default of Borrower.

The Borrower shall furnish to the Issuer promptly, upon request, proof of the payment of any such tax, assessment or other governmental or similar charge, or any other charge which is payable by the Borrower as set forth above.

SECTION 6.3 Insurance. The Borrower shall from the date hereof continuously insure the Project or cause the Project to be insured in such amounts and against such risks as are customarily insured against by businesses of like size and character. The Trustee shall have no obligation to monitor the existence or adequacy of any such insurance policies.

#### ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

In the event (a) the Project is destroyed or sustains material damage or (b) title to or temporary use of all or substantially all of the Project is taken in condemnation or by the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, the Borrower shall promptly give written notice thereof to the Issuer, the Bank and the Trustee. The net proceeds of the title insurance and casualty and property insurance carried with respect to the Project or the net proceeds resulting from condemnation or eminent domain proceedings shall be paid to the Bank and subject to the provisions of the

Mortgage (as defined in the Reimbursement Agreement). As soon as practicable, the Bank shall notify the Trustee whether such insurance or condemnation proceeds will be permitted to be used to restore the Project as hereinafter provided or used to prepay the Loan and cause the Bonds to be paid or redeemed to the extent of the available insurance or condemnation proceeds. If the Bank allows such proceeds, or any part thereof, to be used to restore the Project, the Trustee shall deposit the net insurance or condemnation proceeds it receives from the Bank in the Project Fund, which shall be reactivated, or if the Bank elects to cause the Loan to be prepaid to the extent of such net proceeds, such insurance or condemnation proceeds shall be deposited in the Bond Fund and be used to reimburse the Bank for a draw under the Letter of Credit in connection with the redemption of Bonds as provided in Section 217(d) of the Indenture. Prior to their expenditure, such insurance or condemnation proceeds shall be invested by the Trustee in Permitted Investments as directed in writing by the Borrower so as not to have an adverse effect on the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

If the Project is to be restored, the Borrower shall proceed diligently to do so. The Trustee will, upon delivery to the Trustee and the Bank of a certificate or certificates which set forth the Borrower's estimate of the cost of total restoration and which are satisfactory to the Bank, signed by an authorized officer of the Borrower and approved in writing by the Bank, in the same form as required by Section 5.1 hereof, and provided no Event of Default has occurred and is continuing, apply so much as may be necessary of the moneys in the Project Fund to the payment or reimbursement of the costs of such repair, rebuilding or restoration. The Borrower agrees to complete the work thereof and pay the cost thereof in excess of the amount of moneys in the Project Fund if necessary. The Borrower shall not, by reason of the payment of any such excess costs, be entitled to any reimbursement from the Issuer, the Bank or the Trustee or any diminution in or postponement of any obligation hereunder. Any balance of such moneys remaining in the Project Fund after providing for or making payment of all costs of such repair, rebuilding or restoration, or which have not been so used within a reasonable period of time under the circumstances, as determined by the Bank, shall be transferred to the Bond Fund and used to redeem Bonds pursuant to Section 217(d) of the Indenture.

## ARTICLE VIII SPECIAL COVENANTS

SECTION 8.1 Assignment and Pledge of Issuer's Rights; Obligations of Borrower Unconditional. As security for the payment of the Bonds, under the terms of the Indenture the Issuer will assign and pledge to the Trustee all right, title and interest (but none of the obligations) of the Issuer in and to this Agreement and the Promissory Note, including the right to receive payments hereunder and thereunder (except the Unassigned Rights), and hereby directs the Borrower to make such payments directly to the Trustee. The Borrower consents to such assignment and pledge and agrees that it will make payments directly to the Trustee without withholding, defense or set-off by reason of any dispute between the Borrower and the Issuer or the Trustee, or otherwise and hereby further agrees that its obligation to make payments hereunder and to perform its other agreements contained herein are absolute and unconditional. Until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment of the Bonds made in accordance with the Indenture, the Borrower (a) will not suspend or discontinue any Loan Repayments, (b) will perform all its other agreements in this Loan Agreement and (c) will not terminate this Loan Agreement for any cause including

any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the Issuer to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Loan Agreement.

SECTION 8.2 Right of Access to the Project. Subject to the reasonable security and safety requirements of the Borrower, the Borrower agrees that the Issuer, the Bank and the Trustee, and their respective duly authorized agents, shall have the right at all reasonable times upon reasonable notice to enter upon the Project to examine and inspect the same, and shall have the right at all reasonable times to inspect all books and records of the Borrower relating to the Project and make copies thereof.

SECTION 8.3 Maintenance of Existence. The Borrower agrees that throughout the term of this Agreement it shall maintain its existence and shall not merge or consolidate with any other entity and shall not transfer or convey all or substantially all of its assets, property and licenses, except as otherwise permitted under Section 9.1 hereof. Notwithstanding the foregoing, the Borrower may consolidate with or merge into another entity or permit one (1) or more entities to consolidate with or merge into either party, provided that any surviving, resulting or transferee entity shall be (a) the Borrower, or (b) qualified to do business in the State of Mississippi and shall assume in writing or by operation of law all of the obligations of the Borrower under this Loan Agreement, the Indenture, the Reimbursement Agreement and the Remarketing Agreement.

SECTION 8.4 Qualification in State of Mississippi. Subject to the provisions of Section 8.3 hereof, the Borrower agrees that throughout the term of this Loan Agreement, it will be qualified to do business in the State.

SECTION 8.5 Covenant as to Non-Impairment of Tax-Exempt Status. The Borrower covenants that, notwithstanding any provision of this Agreement or the rights of the Borrower hereunder, it will not take, or permit to be taken on its behalf, any action that would impair the exclusion of interest on the Bonds from gross income for federal income tax purposes and that it will take such reasonable action for itself and on behalf of the Issuer as may be necessary to continue such exclusion, including, without limitation, the preparation and filing of any statements required to be filed by it in order to maintain such exclusion.

The Borrower will not cause or permit any proceeds of the Bonds to be invested in a manner contrary to the provisions of Section 148 of the Code and will assure compliance with such requirements on behalf of the Issuer. The Borrower shall calculate and make timely payment to the United States of America, for the account of the Issuer, all amounts required to be so paid in accordance with Section 148 of the Code and shall maintain, on behalf of the Issuer, all records required to be maintained pursuant to Section 148(f) of the Code. The Borrower agrees to comply with the arbitrage rebate requirements described in Section 409 of the Indenture and described in further detail in the Tax Certificate. At least once every five (5) years, commencing with the end of the fifth (5<sup>th</sup>) Bond Year, and not later than sixty (60) days after payment in full of the Bonds, the Borrower will furnish to the Trustee a certificate showing compliance with the applicable provisions of Section 148(f) of the Code, which certificate shall

be accompanied by an opinion of Counsel or certificate of accountants or other consultants experienced in arbitrage rebate matters supporting the matters set forth in such certificate.

The Borrower acknowledges that a failure to abide by the foregoing covenants and the covenants contained in Section 2.1 hereof and in the Tax Certificate dated the date of issuance of the Bonds may result in a Determination of Taxability. In the event of a Determination of Taxability for any reason, the sole and exclusive remedy of the holders of the Bonds and the Trustee on their behalf shall be the early redemption of the Bonds as provided in Section 217(b) of the Indenture.

SECTION 8.6 Indemnity, Expenses.

(a) The Issuer and its members, officers, directors, officials, agents, employees, successors and assigns or other elected or appointed officials of the Issuer, past, present or future (hereinafter the “Indemnified Persons”) shall not be liable to the Borrower for any reason not attributable to its (or their) gross negligence or willful misconduct. The Borrower shall defend, indemnify and hold the Issuer and the Indemnified Persons harmless from any loss, claim, damage, tax, penalty or expense (including reasonable counsel fees), or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from, or in any way connected with: (i) the financing, installation, operation, use or maintenance of the Project, (ii) any act, failure to act or misrepresentation by any Person (other than an Indemnified Person) in connection with the issuance, sale, delivery or remarketing of the Bonds, and (iii) any act, failure to act or misrepresentation by the Issuer in connection with this Agreement or any other document involving the Issuer in this matter which does not represent gross negligence or willful misconduct. If any suit, action or proceeding is brought against the Issuer or any Indemnified Person, that suit, action or proceeding shall be defended by Counsel to the Issuer or the Borrower, as the Issuer shall determine. If the defense is by Counsel to the Issuer, the Borrower shall indemnify the Issuer and Indemnified Persons for the reasonable cost of that defense including reasonable Counsel fees. If the Issuer determines that the Borrower shall defend the Issuer or any Indemnified Person, the Borrower shall immediately assume the defense at its own cost. Neither the Issuer nor the Borrower shall be liable for any settlement of any proceeding made without its consent (which consent shall not be unreasonably withheld).

(b) The Borrower shall also indemnify the Issuer and Indemnified Persons for all reasonable costs and expenses, including reasonable Counsel fees, incurred in: (i) enforcing any obligation of the Borrower under this Agreement or any related agreement, (ii) taking any action requested by the Borrower, (iii) taking any action required by this Agreement or any related agreement or (iv) taking any action considered necessary by the Issuer and which is authorized by this Agreement or any related agreement.

(c) The Borrower also agrees to pay and to indemnify and hold harmless the Trustee, any Person who “controls” the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended, and any member, officer, agent, director, official and employee of the Trustee (collectively called the “Indemnified Parties”) from and against any and all claims, damages, demands, expenses, liabilities and losses of every kind, character and nature (including Counsel fees) asserted by or on behalf of any Person in connection with (i) the issuance, offering, sale, delivery, or remarketing of the Bonds, the Indenture, the Letter of Credit, the Pledge Agreement

and this Agreement and the obligations imposed on the Trustee hereby and thereby; (ii) the design, financing, installation, operation, use, occupancy, maintenance, or ownership of the Project; (iii) any written statements or representations made or given by the Borrower or any of its officers or employees to the Indemnified Parties, with respect to the Borrower, the Project, or the Bonds, including, but not limited to, statements or representations of facts, financial information, or corporate affairs; (iv) damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project; and (v) any loss or damage incurred by the Trustee as a result of violation by the Borrower of the provisions of Section 2.1 hereof or any matters contemplated under Section 8.6(a)(i)-(iii), or arising out of, resulting from, or in any way connected with, the condition, use, possession, conduct, management, planning, design, acquisition, installation, renovation or sale of the Project or any part thereof, to the extent that any of the foregoing is not caused or occasioned by the gross negligence or willful misconduct of such Indemnified Party. In addition to and not in limitation of the immediately preceding sentence, the Borrower also agrees to indemnify and hold the Indemnified Parties and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Trustee's performance under the Indenture and this Agreement, provided, the Trustee has not acted with gross negligence or engaged in willful misconduct. The provisions of this Section 8.6(c) shall survive the termination of the Indenture and this Agreement and the resignation or removal of the Trustee for any reason. The Borrower also covenants and agrees, at its expense, to pay, and to indemnify the Indemnified Parties from and against, all costs, reasonable attorney fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. In the event that any action or proceeding is brought against the Indemnified Parties by reason of any such claim or demand, that action or proceeding shall be defended by Counsel to the Indemnified Parties or the Borrower, as the Indemnified Parties shall determine and consented to by the Borrower. If the defense is by counsel to the Indemnified Parties, the Borrower shall indemnify the Indemnified Parties for the reasonable cost of the defense including reasonable Counsel fees. If the Indemnified Parties determine that the Borrower shall defend the Indemnified Parties, the Borrower shall immediately assume the defense at its own cost. If such separate Counsel is employed, the Borrower may join in any such suit for the protection of its own interests. The Borrower shall not be liable for any settlement of any such action effected without its consent; but if settled with the consent of the Borrower or if there be a final, unappealable judgment for the plaintiff in any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties.

(d) The indemnification provisions herein contained shall not be exclusive or in limitation of, but shall be in addition to, the rights to indemnification of the Indemnified Persons or the Indemnified Parties under any other agreement or law by which the Borrower is bound or to which the Borrower is subject.

(e) If the Issuer is to take any action under this Agreement or any other instrument executed in connection herewith for the benefit of the Borrower, it will do so if and only if (i) the Issuer is a necessary party to any such action or proceeding, (ii) the Issuer has received specific written direction from the Borrower, as required hereunder or under any other instrument executed in connection herewith, as to the action to be taken by the Issuer and (iii) a written agreement of indemnification and payment of costs, liabilities and expenses satisfactory to Issuer has been executed by the Borrower prior to the taking of any such action by the Issuer.

(f) The obligations of the Borrower under this Section 8.6 shall survive any assignment or termination of this Agreement and the resignation or removal of the Trustee for any reason.

SECTION 8.7 Compliance with Laws. The Borrower shall, throughout the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance in all material respects with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, all federal, state and local environmental and health and safety laws, rules, regulations and orders applicable to or pertaining to the Project except (in each case) where such noncompliance by the Borrower could not reasonably be expected to materially adversely affect the operations or financial condition of the Borrower or the ability of the Borrower to perform its obligations under this Agreement.

SECTION 8.8 No Recourse to Issuer. The obligations of the Issuer under this Agreement are special, limited obligations of the Issuer, payable solely out of the revenues and income derived under this Agreement and the Indenture. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the State of Mississippi within the purview of any constitutional limitation or provision, or a charge against the credit or general taxing powers of the State. The Issuer has no power to levy taxes for any purpose whatsoever. Neither the Issuer nor any member, director, officer, employee or agent of the Issuer nor any Person executing the Bonds shall be liable personally for the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. No recourse shall be had for the payment of the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bonds, the Indenture, this Agreement or the Bond Purchase Agreement (or any other agreement entered into by the Issuer with respect thereto) against any past, present or future member, officer, agent or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee or any successor thereof, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture, the Bond Purchase Agreement and this Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Bonds.

SECTION 8.9 Indenture Provisions. The Indenture provisions concerning the Bonds and the other matters therein are an integral part of the terms and conditions of the Loan, and the execution of this Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower hereby agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture. The Borrower acknowledges that it has received an executed copy of the Indenture and is familiar with its terms and provisions.

SECTION 8.10 Recording and Maintenance of Liens.

(a) The Borrower will, at its own expense, take all necessary action to maintain and preserve the liens granted by the Issuer on this Agreement and as set forth in the Indenture so long as any principal installment of, redemption premium, if any, or interest on the Bonds remains unpaid.

(b) The Borrower will, and is hereby authorized to, forthwith after the execution and delivery of this Agreement and the Indenture and thereafter from time to time, cause appropriate financing statements or continuation statements (including any amendments thereof and supplements thereto), to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect the lien and security interest therein granted to the Trustee to the rights of the Issuer assigned under the Indenture, and from time to time will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments necessary for such publication, perfection and protection. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement and the Indenture and such instruments of further assurance.

(c) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments as may be reasonably necessary in connection with such filing or recording.

SECTION 8.11 Rights and Duties of the Issuer.

(a) Remedies of the Issuer. Notwithstanding any contrary provision in this Agreement, the Issuer shall have the right to take any action not prohibited by law or make any decision not prohibited by law with respect to proceedings for indemnity against the liability of the Issuer and its officers, directors, employees and agents and for collection or reimbursement of moneys due to the Issuer under this Agreement for its own account. The Issuer may enforce its rights under this Agreement which have not been assigned to the Trustee by legal proceedings

for the specific performance of any obligation contained herein or for the enforcement of any other legal or equitable remedy, and may recover damages caused by any breach by the Borrower of its obligations to the Issuer under this Agreement, including any amounts required to be paid by the Borrower pursuant to this Agreement hereof, court costs, reasonable attorneys' fees and other costs and expenses incurred in enforcing such obligations.

(b) Limitations on Actions. Without limiting the generality of (c) below, the Issuer shall not be required to monitor the financial condition of the Borrower and shall not have any responsibility or other obligation with respect to reports, notices, certificates or other documents filed with it hereunder.

(c) Responsibility. The Issuer shall be entitled to the advice of Counsel (who may be Counsel for any party) and shall not be liable for any action taken or omitted to be taken in good faith in reliance on such advice. The Issuer may rely conclusively on any communication or other document furnished to the Issuer under this Agreement and reasonably believed by it to be genuine. The Issuer shall not be liable for any action (i) taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it; (ii) in good faith omitted to be taken by it because reasonably believed to be beyond the discretion or powers conferred upon it; (iii) taken by it pursuant to any direction or instruction by which it is governed under this Agreement; or (iv) omitted to be taken by it by reason of the lack of direction or instruction required for such action, nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The Issuer shall in no event be liable for the application or misapplication of funds, or for other acts or defaults by any Person except its own directors, officers and employees. When any consent or other action by the Issuer is called for by this Agreement, the Issuer may defer such action pending such investigation or inquiry or receipt of such evidence, if any, as it may require in support thereof. The Issuer shall not be required to take any remedial action (other than the giving of notice) unless reasonable indemnity is provided for any expense of liability to be incurred thereby. The Issuer shall be entitled to reimbursement for expenses reasonably incurred or advances reasonably made, with interest at the "base rate" of the Trustee, as announced from time to time, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act shall be construed as a requirement to act; and no delay in the exercise of any such right or power shall affect the subsequent exercise of that right or power. The Issuer shall not be required to take notice of any breach or default by the Borrower under this Agreement except when given notice thereof by the Trustee. No recourse shall be had by the Borrower, the Trustee or any Bondowner for any claim based on this Agreement, the Bonds or any agreement securing the same against any director, officer, agent or employee of the Issuer alleging personal liability on the part of such Person unless such claim is based upon the willful dishonesty of or intentional violation of law by such Person. No covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future director, officer, employee or agent of the Issuer in his or her individual capacity, and no Person executing the Bonds shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(d) Financial Obligations. Nothing contained in this Agreement is intended to impose any pecuniary liability on the Issuer nor shall it in any way obligate the Issuer to pay any debt or

meet any financial obligations to any Person at any time in relation to the Project or the Bonds except from moneys received under the provisions of this Agreement; *provided*, however, that nothing contained in this Agreement shall in any way obligate the Issuer to pay such debts or meet such financial obligations from moneys received for the Issuer's own account.

SECTION 8.12 Benefits Under the Act.

(a) The parties hereto acknowledge that the Borrower has been induced to proceed with the acquisition, construction, equipping and installation of the Project in part by the benefits conferred by the Act. The Issuer hereby agrees that the Borrower shall be permitted to take advantage of all of the benefits provided by the Act to the fullest extent therein set forth subject to the rules and regulations of the Issuer and the provisions of the Act. The Issuer agrees that it will not take any action to limit, curtail or otherwise make unavailable to the Borrower any of the benefits available under the Act.

(b) With respect to benefits conferred by the Act referenced in (a) above, the following shall apply:

(i) the maximum benefits accruing in any calendar year with respect to the income tax credit (other than any credits which may be carried forward to future years pursuant to the Act) shall not exceed the payments of the principal of, premium, if any, and interest payments on the Bonds during such year, and the fees and expenses of the Trustee and any other fees and expenses referenced herein.

(ii) the deductibility of interest payments on the Bonds shall be determined in accordance with applicable Mississippi law.

(iii) the Borrower shall request the Trustee to provide the Issuer, not later than ninety (90) days after the end of each calendar year, with a certificate setting forth the amount of all payments made to the Trustee with respect to the Bonds whether for principal, premium, interest or the fees and expenses of the Trustee.

(c) the benefits accruing to the Borrower under this Section 8.12 shall cease in the event:

(i) a Default should occur under this Agreement or an Event of Default should occur under the Indenture; or

(ii) the Borrower should fail to operate the Project for a period of nine (9) consecutive months following the initial start up of the Project except for Force Majeure, strikes, lockouts, damage, destruction, act of God, act of terrorism or in general, reasons beyond the Borrower's reasonable control excepting, however, general economic conditions.

(d) the Borrower agrees to comply with the terms and provisions of the Act in all respects with respect to the benefits available under the Act.

(e) the benefits or credits available under the Act shall cease to accrue on the date the principal and interest on the Bonds are paid in full whether at maturity or by way of redemption, except for any carryforward available under the Act.

(f) the benefits accruing to the Borrower under this Section 8.12 shall be limited to the annual debt service payments on the Bonds for qualified Cost of the Project and shall be reduced by the amount of surplus funds remaining after completion which shall be used to redeem Bonds as provided for in Section 11.1 of this Agreement.

(g) the tax credits allowed as a benefit under the Act shall be further limited so that the credits allowed in any year shall not exceed eighty percent (80%) of the amount of taxes due to the State prior to the application of the credits (as directed in Section 27-7-22.3, Mississippi Code of 1972, as amended). To the extent that the payments of the principal of, premium, if any, and interest payments on the Bonds during any year and the fees and expenses of the Trustee and any other fees and expenses referenced herein exceed the amount of the tax credit authorized by Section 27-7-22.3, Mississippi Code of 1972, as amended, in any taxable year, such excess payment may be recouped from excess credits in succeeding years not to exceed three (3) years following the date upon which the credit was earned.

The Issuer makes no warranty or guaranty concerning the availability or application of the benefits granted or earned by the Borrower under this Section 8.12 or the Act.

**SECTION 8.13 Term Of This Agreement.** This Agreement shall be in full force and effect from the date hereof, and shall continue in effect until the payment in full of all principal of, premium, if any, and interest on the Bonds, or provision for the payment thereof shall have been made pursuant to Article V of the Indenture, all fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Remarketing Agent have been fully paid or provision made for such payment (the payment of which fees, charges, indemnities and expenses shall be evidence by a written certification of the Borrower that it has fully paid all such fees, charges, indemnities and expenses) and all other amounts due hereunder and under the Note have been duly paid or provision made for such payment. All representations, certifications and covenants by the Borrower as to the indemnification of various parties and the payment of fees and expenses of the Issuer as described in Section 8.6 hereof, and all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Agreement and the Indenture.

**SECTION 8.14 Covenant to Provide Ongoing Disclosure.** The Borrower hereby covenants and agrees that, upon delivery by the Borrower of a Conversion Notice pursuant to Section 2.04(a)(1) of the Indenture, the Borrower shall enter into a written undertaking under the Securities and Exchange Act of 1934, as required by Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 under the Securities and Exchange Act of 1934, as amended (17 CFR Part 240, §240.15c2-12) (the "Rule"), provided, however, that the Borrower shall not be obligated to enter into such written undertaking if the Borrower shall furnish to the Trustee, prior to the delivery of such Conversion Notice, an opinion of Counsel that, notwithstanding such election by the Borrower, the Rule is not applicable to the Bonds.

ARTICLE IX  
ASSIGNMENT, LEASING, EQUIPMENT

SECTION 9.1 Transfer, Assignment and Leasing. The Borrower may lease any portion of the Project with the prior written consent of the Bank provided that (i) the transferee intends to operate any transferred portion of the Project as an “economic development project” under the Act, so long as the Bonds are outstanding, and (ii) the Borrower delivers to the Bank, the Issuer and the Trustee in connection with any such leasing an opinion of Bond Counsel that subsequent to the execution of the lease, interest on the Bonds will remain wholly excludable from gross income of the Bondholders for federal income tax purposes. No leasing shall relieve the Borrower from primary liability for any of its obligations hereunder, and in the event of any such leasing the Borrower shall continue to remain primarily liable for the payment of Loan Repayments and for performance and observance of the other agreements herein on its part to be performed and observed.

Subject to the prior written consent of the Bank and the Issuer, this Agreement may be assigned, in whole or in part, and the Project may be sold, transferred or conveyed as a whole or in part, by the Borrower without the necessity of obtaining the consent of the Trustee, subject, however, to the following conditions:

(a) No assignment, sale, transfer or conveyance shall relieve the Borrower from primary liability for any of its obligations hereunder and under the Promissory Note, and if any such assignment occurs, the Borrower shall continue to remain primarily liable to make the payments required to be made by the Borrower hereunder and under the Promissory Note and for performance and observance of the other agreements on its part herein and under the Promissory Note provided to be performed and observed by it;

(b) The Borrower provides to the Issuer and the Trustee and opinion of Counsel to the assignee or purchaser that, subject to paragraph (a) above, the assignee or purchaser has assumed the obligations of the Borrower hereunder to the extent of the interest assigned, sold, transferred or conveyed;

(c) The Borrower shall, within thirty (30) days prior to the delivery thereof, furnish or cause to be furnished to the Issuer, the Bank and the Trustee a true and complete copy of each such assignment or sale agreement, as the case may be, together with (i) any instrument of assumption, and (ii) an opinion of Bond Counsel that such assignment or sale agreement is permitted under this Agreement and the Act and will not adversely affect the exclusion of interest on the Bonds from gross income of the Bondholders for federal income tax purposes; and

(d) The assignee, transferee or purchaser shall continue to use the Project for purposes permitted under the Act for the term of this Agreement.

SECTION 9.2 Substitution and Removal of Machinery and Equipment. Any machinery and equipment financed with Bond proceeds may not be removed from the Project unless (i) other machinery and equipment of equivalent or greater value and utility is substituted therefor within six (6) months of such disposition or (ii) the proceeds of the sale of such machinery and

equipment are used in accordance with the following sentence or (iii) the Borrower receives and provides to the Issuer, the Bank and the Trustee an opinion of Bond Counsel that noncompliance with (i) or (ii) above will not violate the provisions of this Agreement, the Indenture or the Act, or adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. Any proceeds received upon the sale of any of the property which is included in the Project shall be paid by the Borrower to the Trustee for deposit in the Project Fund and (i) will be invested in Permitted Investments as directed by the Borrower at a yield not in excess of the yield on the Bonds and used for the purpose of redeeming the Bonds at the first subsequent call date, or (ii) will be used for the purpose of acquiring property performing the same function at the Project site as the disposed Project property within six (6) months of the date of receipt of such proceeds. Notwithstanding the foregoing, if part or all of the Project wears out or becomes obsolete so that it is no longer functional in any material respect to the Borrower and the Borrower deems it appropriate to dispose of such portion of the Project and, further, if the Borrower or any related party thereto receives no economic benefit from the disposal thereof, then the Borrower may dispose of such property other than as provided above.

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

**SECTION 10.1 Events of Default.** The following shall be events of default under this Agreement and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay the Loan Repayments in the amounts and at the times provided in this Agreement or the Promissory Note; provided, however, that no Event of Default described in this subparagraph (a) shall be deemed to have occurred solely by reason of such failure to make such payments if and to the extent that payments have nonetheless been made by the Bank to the Trustee pursuant to the Letter of Credit for deposit in the Bond Fund at such times and in such manner so as to prevent an event of default described under Section 601(a) or (b) of the Indenture;

(b) Failure by the Borrower to make payments in the amounts and at the times provided in Section 3.4 of this Agreement; provided, however that no Event of Default described in this paragraph (b) shall be deemed to have occurred solely by reason of such failure to make such payments if and to the extent that payments have nonetheless been made by the Bank to the Trustee pursuant to the Letter of Credit for deposit in the Bond Purchase Fund at such times and in such manner so as to prevent an event of default described under Section 601(c) of the Indenture;

(c) Failure by the Borrower to observe and perform any other covenant, condition or agreement on its part to be observed or performed herein or in the Promissory Note for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the Borrower by the Issuer, the Bank or the Trustee; provided, however, that if the failure is such that it can be corrected but not within such thirty (30) day period, and corrective action is instituted by the Borrower within such period and diligently pursued until such failure is corrected, then such period shall be increased to such extent as shall be determined by the Trustee, with the consent of the Bank, to be necessary to enable the Borrower

to observe or perform such covenant, condition, undertaking or agreement through the exercise of due diligence;

(d) Any representation or warranty made by the Borrower in any document delivered by the Borrower to the Trustee or the Bank or the Issuer in connection with the sale and delivery of the Bonds proves to be untrue when made in any material respect (other than representations and warranties as to future events or conditions, which shall not become an Event of Default until after notice and opportunity to cure as provided in paragraph (c) immediately above);

(e) Occurrence of an Event of Default under the Indenture; or

(f) The Borrower (i) shall generally not pay its debts as they become due, (ii) shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, (iv) shall institute any proceeding or voluntary case (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, (v) shall take any action to authorize any of the actions described above in this subsection (f), or (vi) shall have instituted against it any proceeding (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, and, if such proceeding is being contested by the Borrower in good faith, such proceeding shall remain undismissed or unstayed for a period of sixty (60) days.

SECTION 10.2 Remedies on Default. Whenever an Event of Default shall have occurred and be continuing, and if acceleration of the principal amount of the Bonds has been declared pursuant to Section 602 of the Indenture:

(a) The Trustee shall declare all Loan Repayments to be immediately due and payable, whereupon the same shall become immediately due and payable and the Trustee shall thereupon draw upon the Letter of Credit in accordance with its terms and the terms of the Indenture;

(b) Subject to the reasonable security and safety requirements of the Borrower, the Issuer or the Trustee may have access to and inspect, examine, and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower, and

(c) The Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or the Promissory Note or to enforce the performance of any other obligation or agreement of the Borrower under such documents.

Any amounts collected pursuant to action taken under this Section 10.2 shall be applied in accordance with Section 607 of the Indenture.

Notwithstanding any other provision of this Agreement or the Indenture, the Issuer shall be entitled (without limitation to the rights of any other Person) to cause the Borrower to perform the Borrower's obligations under Sections 3.5, 8.6 and 10.4 hereof for the benefit of the Issuer.

SECTION 10.3 No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or the Indenture, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Issuer, the Bank or the Trustee employs attorneys or incurs other expenses for the enforcement or performance or observance of any obligation or agreement on the part of the Borrower contained in the Promissory Note, the Bond Purchase Agreement, the Reimbursement Agreement, the Pledge Agreement, the Indenture or in this Agreement, the Borrower agrees that it will on demand therefor promptly reimburse the reasonable fees of such attorneys and such other expenses so incurred.

SECTION 10.5 No Additional Waiver Implied by One Waiver. In the event any term, condition or covenant contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. Because of the assignment of the Issuer's rights and interest, except for the Issuer's Unassigned Rights, in this Agreement to the Trustee under the Indenture, the Issuer shall have no power to waive or release the Borrower from any Event of Default or the performance or observance of any obligation or condition of the Borrower under this Agreement without the prior written consent of the Trustee and the Bank, but the Issuer shall so waive or release the Borrower if requested by the Trustee and the Bank, provided the Issuer receives an opinion of Counsel that such action will not impose any pecuniary obligation or liability or adverse consequence upon the Issuer and the Issuer has been provided such indemnification from the Borrower, the Trustee or the Bank, as the Issuer deems necessary.

SECTION 10.6 Default by Issuer - Limited Liability. Notwithstanding any provision or obligation to the contrary hereinbefore set forth, no provision of this Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer. The liability of the Issuer hereunder shall be limited to its interest in this Agreement, the Promissory Note, and all other related documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bonds or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein, and shall be

obligated to pay the same only out of the amounts payable by the Borrower hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default shall occur hereunder.

ARTICLE XI  
PAYMENT OF SURPLUS BOND PROCEEDS  
FROM THE BOND FUND

SECTION 11.1 Surplus Bond Proceeds. All Surplus Bond Proceeds transferred to the Bond Fund pursuant to the provisions of Section 5.4 hereof shall be applied by the Trustee to reimburse the Bank to the extent of any drawing on the Letter of Credit in connection with an optional redemption of Bonds as set forth in Section 217(a) of the Indenture. In addition, at the direction of the Bank, Surplus Bond Proceeds held in the Bond Fund shall be paid by the Trustee to the Bank to the extent of any moneys owing under the Reimbursement Agreement as a result of a drawing on the Letter of Credit to pay principal, interest or premium on the Bonds. To the extent that Surplus Bond Proceeds are deposited in the Bond Fund after the third anniversary of the Issue Date, the Borrower shall instruct the Trustee to invest such proceeds in a manner permitted by Section 148 of the Code so that the yield on such investments will not exceed the yield on the Bonds or, in the opinion of Bond Counsel, will not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

ARTICLE XII  
THE BONDS

SECTION 12.1 Issuance of the Bonds. The obligations of the Issuer and the Borrower hereunder are expressly conditioned upon the execution of the Bond Purchase Agreement and payment for the Bonds pursuant thereto.

SECTION 12.2 Compliance with Indenture. The Issuer agrees to comply with the covenants, requirements and provisions of the Indenture and perform all of its obligations thereunder.

SECTION 12.3 Consent to Issuer's Pledge. The Borrower hereby acknowledges and consents to the assignment and pledge by the Issuer to the Trustee, for the benefit of the Bondholders and the Bank, of (a) the Promissory Note and all of the Issuer's rights and powers thereunder; (b) the moneys deposited to the various funds and accounts hereunder and under the Indenture (including investments); and (c) all of the Issuer's rights and powers under this Agreement, including the right to receive Loan Repayments (but excluding the Unassigned Rights) and the right and power to enforce, either jointly with the Issuer or separately, the performance of the obligations of the Borrower under this Agreement. The Borrower further acknowledges and consents to the right of the Trustee and the Bank, as the case may be, to enforce all rights of the Issuer and Bondholders assigned under the Indenture.

SECTION 12.4 Rights of Trustee and Bank Hereunder. The parties hereto recognize and agree that the terms of this Agreement and the enforcement thereof are essential to the security of the Trustee (for the benefit of the Bondholders) and the Bank and are entered into for the benefit of the Trustee (on behalf of the Bondholders) and the Bank. The Trustee (and any assignee of or subrogee to the Trustee) and the Bank shall accordingly have contractual rights and duties in this Agreement and be entitled to require the enforcement of the terms hereof.

Except for the rights of the Borrower set forth in Section 13.1 hereof, the Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund or the Bond Purchase Fund and any moneys deposited therein and that the Bond Fund and the Bond Purchase Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Bondholders and the Bank as provided in the Indenture.

SECTION 12.5 Amendments to Indenture and this Agreement. The Issuer shall not amend nor consent to any amendment to the Indenture or this Agreement except as specified in Article VIII of the Indenture, which Article VIII is incorporated herein by this reference as if it were fully set forth herein. The Borrower hereby agrees to be bound by the provisions of Article VIII of the Indenture.

#### ARTICLE XIII MISCELLANEOUS

SECTION 13.1 Amounts Remaining in Funds. Any amounts remaining in the Project Fund or the Bond Fund upon expiration or sooner cancellation or termination of this Agreement, after the Loan and the Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and the fees, charges and expenses of the Trustee and all other amounts required to be paid under the Indenture, the Reimbursement Agreement and this Agreement have been paid, shall be paid to the Borrower in accordance with Section 504 of the Indenture.

SECTION 13.2 Rights of the Bank. All rights of the Bank under this Agreement to consent to certain extensions, remedies, waivers, actions and amendments hereunder shall cease, terminate and become null and void (a) for so long as the Bank wrongfully dishonors any draft presented in strict conformity with the Letter of Credit and until it has honored a subsequent draft so in conformity, if any, thereunder or (b) if the Letter of Credit is no longer in effect and any and all of the Borrower's obligations to the Bank pursuant to the Reimbursement Agreement have been fully and finally paid and satisfied.

SECTION 13.3 Notices. Except as otherwise provided herein, it shall be sufficient service or giving of any notice, request, complaint, demand or other paper required by this Agreement to be given to or filed with the Issuer, the Trustee, the Bank, the Remarketing Agent, or the Borrower if the same is duly mailed by U.S. Registered or Certified Mail, Return Receipt Requested, postage pre-paid, by express carrier, or sent by facsimile, telecopy or telex or other similar communication, or when given by telephone, confirmed in writing by first-class mail, postage pre-paid, or sent by telecopy, telex or other similar communication, on the same day addressed as specified in Section 904 of the Indenture.

The Borrower, the Issuer, the Bank, and the Trustee may designate, by notice given hereunder, any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent, but no notice directed to any one such entity shall thereby be required to be sent to more than two addresses.

SECTION 13.4 Bondholders' Action. Whenever any consent, approvals, waivers or other actions are required of the Bondholders hereunder, under the Indenture, the Promissory Note or any other instrument or document delivered with respect to the Bonds, such consent shall only be given in compliance with Section 806 of the Indenture.

SECTION 13.5 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower and their respective successors and assigns, subject to the limitation that any obligation of the Issuer created by or arising out of this Agreement shall not be a general debt of the Issuer but shall be payable solely out of the Security, the proceeds of the sale of the Bonds or the net proceeds of any insurance or condemnation awards as provided herein, anything herein contained to the contrary by implication or otherwise notwithstanding.

SECTION 13.6 Severability. If any clause, provision or section of this Agreement be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Issuer or the Borrower, as the case may be, to the full extent permitted by law.

SECTION 13.7 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision or sections of this Agreement.

SECTION 13.8 Governing Law, Jury Trial Waiver. This Agreement shall be governed by and interpreted in accordance with the laws of the State without regard to conflicts of law principles. EACH OF THE BORROWER AND THE ISSUER HEREBY, TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE SECURITY DOCUMENTS, THE PROMISSORY NOTE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

The Borrower irrevocably agrees that, subject to the Issuer's sole and absolute election, any action or proceeding in any way, manner or respect arising out of this Agreement or any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection herewith or therewith, or arising from any dispute or controversy arising in connection with or related to this Agreement or any such amendment, instrument, document or agreement shall be litigated only in the courts having situs within the City of Jackson, the State of Mississippi, and the Borrower hereby consents and submits to the jurisdiction of any local, state or federal court located within such city and state. The Borrower hereby waives any right it may have to transfer or change the venue of any litigation brought against it in accordance with this Section 13.8.

SECTION 13.9 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement as of the day and year first above written.

**MISSISSIPPI BUSINESS FINANCE CORPORATION**, a public corporation duly organized and existing under the laws of the State of Mississippi

By: /s/ Bill Barry

Its: Executive Director

(SEAL)

ATTEST:

By: /s/ Vernon Smith

Its: Secretary

**TREX COMPANY, INC.**, a Delaware corporation

By: /s/ Paul D. Fletcher

Its: Senior Vice President and Chief Financial Officer

PROMISSORY NOTE

\$25,000,000

Jackson, Mississippi  
Dated as of December 16, 2004

FOR VALUE RECEIVED, Trex Company, Inc., a Delaware corporation, (the "Borrower"), promises to pay to the order of the Mississippi Business Finance Corporation, a public corporation duly organized and existing under the laws of the State of Mississippi, (the "Issuer"), the aggregate principal sum of Twenty-five Million and 00/100 Dollars (\$25,000,000) together with (a) interest thereon in an amount sufficient to enable the Issuer to make payment of all interest becoming due and payable on the Issuer's \$25,000,000 Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004 (the "Bonds") in the aggregate principal amount of Twenty-five Million and 00/100 Dollars (\$25,000,000), issued pursuant to a Trust Indenture dated as of December 1, 2004 (the "Indenture") between the Issuer and J.P. Morgan Trust Company, National Association, a national banking association, as Trustee (the "Trustee"), which Indenture and Bonds are incorporated herein by reference and made a part hereof, and (b) such redemption premiums and other amounts as are required to be paid by the Borrower to the Issuer as Loan Repayments as provided in the Loan Agreement, dated as of December 1, 2004 by and between the Borrower and the Issuer (the "Loan Agreement"), which is incorporated herein by reference and made a part hereof.

The foregoing amounts shall be paid by means of Loan Repayments which shall be due and payable (less any credits to which the Borrower may be entitled under the Loan Agreement), in immediately available funds, as follows:

A. On or before 2:00 p.m., New York time on each date on which a payment of interest is due on the Bonds, the Borrower shall pay interest in an amount equal to the aggregate unpaid interest due or to become due on the Bonds on such payment date, less any Eligible Funds (as defined in the Indenture) then held by the Trustee in the Bond Fund (as defined in the Indenture) which are then being held for application to the payment of interest on the Bonds in accordance with the Indenture;

B. On or before 2:00 p.m., New York time on each date on which a payment of principal, Purchase Price (as defined in the Indenture) and premium, if any, is due on the Bonds, whether by maturity, acceleration or otherwise, the Borrower shall pay principal and premium, if any, in an amount equal to principal, Purchase Price and premium, if any, then due or to become due on the Bonds on such payment date, less any Eligible Funds then held by the Trustee in the Bond Fund, other than those Eligible Funds applied to payment of interest on the Bonds as set forth above, which are then being held for the payment of principal, Purchase Price and premium, if any, on the Bonds under the Indenture.

Notwithstanding the foregoing, the Borrower shall pay principal of, premium, if any, and interest on the Bonds to the Trustee so as to permit the redemption of all or a portion of Bonds then outstanding in accordance with Section 217 of the Indenture.

The Borrower shall have the option to make advance payments of Loan Repayments, from time to time, which advance payments shall be deposited with the Trustee in the Bond Fund and shall be applied as provided in the Loan Agreement and the Indenture.

All payments shall be made in coin or currency of the United States of America in immediately available funds at the principal office of the Trustee, or at the office of any successor Trustee.

If the Borrower fails to pay any installment of principal, premium, if any, and interest when due under this Promissory Note and the Trustee fails to receive sufficient moneys pursuant to one or more draws under the Letter of Credit (as defined in the Indenture) to pay any such installment, or upon the occurrence of any one or more of the Events of Default specified in the Loan Agreement, the Trustee then, or at any time thereafter, may under certain conditions specified in Section 602 of the Indenture give notice to the Borrower declaring all unpaid amounts then outstanding hereunder or under the Loan Agreement (including all fees), to be due and payable, and thereupon, without further notice or demand, all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default.

All payments hereon shall be applied first to accrued interest, then to premium, if any, and then to principal.

The undersigned waives (except as provided herein) demand, protest, presentment for payment and notice of nonpayment and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees, and to perform and comply with each of the covenants, conditions, provisions and agreements of the undersigned contained in every instrument evidencing or securing the indebtedness evidenced hereby. No extension of the time for the payment of this Promissory Note made by agreement with any Person now or hereafter liable for the payment of this Promissory Note shall operate to release, discharge, modify, change or affect the original liability under this Promissory Note, either in whole or in part, of the undersigned if not a party to such agreement.

This Promissory Note is issued under and is subject to the terms and conditions of the Loan Agreement.

This Promissory Note and all instruments securing the same are to be construed according to the laws of the State of Mississippi, without regard to conflicts of law principles.

**TREX COMPANY, INC.**, a Delaware corporation

By: /s/ Paul D. Fletcher

Its: Senior Vice President and Chief Financial Officer

PAY TO THE ORDER OF J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE, WITHOUT WARRANTY OR RECOURSE.

**MISSISSIPPI BUSINESS FINANCE CORPORATION**, a public corporation duly organized and existing under the laws of the State of Mississippi

By: /s/ Bill Barry  
Its: Executive Director

(SEAL)

ATTEST:

By: /s/ Vernon Smith  
Its: Secretary

**REIMBURSEMENT AND CREDIT AGREEMENT**

dated as of December 1, 2004

By and Between

Trex Company, Inc.

and

JPMorgan Chase Bank, N.A., as Issuing Bank and

in connection with the Letter of Credit  
to be issued securing

\$25,000,000

Mississippi Business Finance Corporation  
Variable Rate Demand Environmental Improvement Revenue Bonds  
(Trex Company, Inc. Project), Series 2004

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## REIMBURSEMENT AND CREDIT AGREEMENT

THIS REIMBURSEMENT AND CREDIT AGREEMENT, dated as of December 1, 2004 (this **“Agreement”**), by and between TREX COMPANY, INC., a Delaware corporation (the **“Borrower”**), JPMorgan Chase Bank, N.A., as Issuing Bank (in such capacity the **“Bank”**) and Administrative Agent (in such capacity the **“Administrative Agent”**).

### RECITALS:

WHEREAS, the Mississippi Business Finance Corporation (the **“Issuer”**) is issuing its Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004, in the aggregate principal amount of \$25,000,000 (the **“Bonds”**), pursuant to a Trust Indenture dated as of the date hereof (the **“Bond Indenture”**) by and between the Issuer and J.P. Morgan Trust Company, National Association, as trustee for the Bonds (the **“Bond Trustee”**);

WHEREAS, the proceeds of the Bonds will be used to finance all or a portion of (i) the costs of the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi, to be used by the Borrower in connection with the manufacture of non-wood decking, railing and fencing products (the **“Project”**); and (ii) certain costs of issuance of the Bonds;

WHEREAS, the Issuer and the Borrower are entering into a Loan Agreement dated as of the date hereof (the **“Loan Agreement”**) pursuant to which the Authority will agree to lend the proceeds of the Bonds to the Borrower, and the Borrower will agree to, inter alia, make payments sufficient to pay the principal and Purchase Price (as defined in the Bond Indenture) of, and redemption premium, if any, and interest on the Bonds as the same become due and payable;

WHEREAS, the Borrower has requested the Bank to issue the Letter of Credit (the **“Letter of Credit”**) in the stated amount of \$25,308,220 to be available to be drawn upon to provide funds for the payment of principal of and interest on the Bonds when due and for the purchase of the Bonds upon their tender pursuant to the Bond Indenture;

WHEREAS, any Bonds pledged to the Bank or the Administrative Agent by application of amounts drawn under the Letter of Credit to pay the Purchase Price of any Bonds duly tendered or deemed tendered for purchase shall be registered in the name of the Bank or their designee or nominee as pledgee until the Bank shall have been reimbursed for the amount so drawn and interest thereon in accordance with this Agreement and the Note (as hereinafter defined), which reimbursement may be satisfied by the payment of the principal of and interest on the Bonds so pledged, as provided herein and in the Bond Indenture;

WHEREAS, the Bank has agreed to issue the Letter of Credit and to administer the Reimbursement Documents (as hereinafter defined) upon the terms and conditions herein set forth;

WHEREAS, the Bank's obligations with respect to the Letter of Credit and its rights under this Agreement and the other Reimbursement Documents may be participated to Bank Participants (as hereinafter defined);

WHEREAS, the Administrative Agent has agreed to maintain the Reimbursement Documents and the documents relating thereto upon the terms and conditions herein set forth; and

WHEREAS, the Borrower's obligations to the Bank are secured by this Agreement upon the terms and conditions herein set forth and by the Bond Indenture, the other Reimbursement Documents and the other Related Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and to induce the Bank to issue the Letter of Credit, the Administrative Agent to act as provided herein and for other valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, the Borrower and JPMorgan Chase Bank, N.A. (as Bank and Administrative Agent) hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01. ***Certain Defined Terms.*** In addition to the terms defined in the Recitals and elsewhere in this Agreement, the following terms shall have the following meanings:

***"Acquisition,"*** by any Person (herein called the "Acquiror"), means any transaction involving the purchase, lease or other acquisition by such Acquiror of (a) all or a material portion of the assets of another Person or (b) all of the capital stock of another Person which would become an Affiliate of the Acquiror as a result thereof.

***"Administrative Agent"*** means JPMorgan Chase Bank, N.A. or a successor administrative agent appointed pursuant to Section 9.01 of this Agreement.

***"Affiliate"*** means (a) any Person that directly, or indirectly through one or more intermediaries, controls the Borrower (a "Controlling Person") or (b) any Person (other than the Borrower or a Subsidiary) which is controlled by or is under common control with a Controlling Person. As used herein, the term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

***"Alternate Credit Facility"*** means an alternate credit facility delivered to the Bond Trustee pursuant to Section 3.08(b) of the Bond Indenture.

***"Applicable Law"*** means all applicable provisions of all present and future laws, ordinances, constitutions, statutes, rules, regulations, requirements, orders, judgments, injunctions and decrees of any Governmental Authority having jurisdiction over the Site or the Facility.

**“Bank Participant”** means any person to whom the Bank has assigned its rights under this Agreement and the other Reimbursement Documents or to which the Bank has sold a participation in rights under this Agreement and the other Reimbursement Documents.

**“Bank Prime Rate”** means that variable rate of interest per annum designated by JPMorgan Chase Bank, N.A. from time to time, as being its prime rate of interest, with a change in the Bank Prime Rate to take effect simultaneously and automatically, without further notice, upon the Bank’s determination and designation from time to time of such prime rate. It is understood that such designated prime rate is merely a reference rate and does not necessarily represent the lowest or best rate being charged to any customer. The Bank’s determination and designation from time to time of its prime rate shall not in any way preclude the Bank from making loans to other borrowers at rates that are higher or lower than or different from the referenced rate.

**“Bond Documents”** means the Bonds, the Bond Indenture, the Mortgage, the Loan Agreement, the Purchase Contract, the Remarketing Agreement and all documents related thereto.

**“Business Day”** means a day other than a Saturday, Sunday or a legal holiday in the State of New York or any other day on which banking institutions chartered under the laws of the State of New York or the United States of America are authorized or required by law to close or a day on which the office of the Bank at which drafts are to be presented under the Letter of Credit or the corporate trust office of the Bond Trustee is authorized to be closed, or the Federal Reserve System is closed.

**“Capital Lease”** means, at any time a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with Generally Accepted Accounting Principles.

**“Capital Stock”** for purposes of the calculation of Fixed Charge Coverage Ratio, means, with respect to any Person, any and all shares, interests, participations and other equivalents (howsoever designated and whether or not voting) in equity of such Person, including, without limitation, all common stock and preferred stock.

**“Cash Equivalents”** means (a) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States of any agency thereof, (b) prime commercial paper (rated A1 or better by S&P or P1 or better by Moody’s) with maturities of ninety (90) days or less, or (c) time deposits with, including certificates of deposit issued by, any office located in the United States of any bank or trust company which is organized under the laws of the United States or any state thereof and has capital, surplus and undivided profits aggregating at least \$250,000,000, provided in each case that such investment matures within one year from the date of acquisition thereof by the Borrower.

**“Certificate of Occupancy”** means a certificate of occupancy (whether temporary or permanent) issued for the Facility or any portion thereof.

**“Change of Control”** shall be deemed to have occurred if any “person” (as such term is used in section 13(d) and section 14(d) (2) of the Exchange Act is in effect on the Issuance Date)

or persons constituting a Group, other than any one or more of the Management Stockholders, becomes the “beneficial owner” (as such term is used in Rule 13d-3 under the Exchange Act as in effect on the Issuance Date), directly or indirectly, of more than 50% of the total voting power of all classes then outstanding of the Voting Stock of the Borrower.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Commitment Letter**” means the commitment letter dated November 3, 2004 from the Bank and subsequently accepted by the Borrower with respect to the terms of the Letter of Credit.

“**Consolidated EBITDA**” means, as of the date of determination, the net income (excluding extraordinary gains and extraordinary non-cash losses) plus interest, taxes, depreciation and amortization of the Borrower and its Consolidated Subsidiaries determined on a consolidated basis as of such date.

“**Consolidated Net Income**” means, for any period, the net income (or loss of the Borrower and its Consolidated Subsidiaries (excluding extraordinary gains and extraordinary non-cash losses as determined in accordance with Generally Accepted Accounting Principles) for such period, as set forth in the financial statements required to be delivered pursuant to Section 6.01(a) or Section 6.01(b) for such period.

“**Consolidated Subsidiary**” means with respect to any Person at any date any Subsidiary of such Person or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements if such statements were prepared as of such date in accordance with Generally Accepted Accounting Principles.

“**Consolidated Tangible Net Worth**” means, as of the date of determination, stockholders’ equity of the Borrower and its Subsidiaries less goodwill and less all other items properly classified as “intangible assets” in accordance with Generally Accepted Accounting Principles.

“**Construction Budget**” has the meaning given to such term in Section 5.16 hereof.

“**Custody, Pledge and Security Agreement**” means the Custody, Pledge and Security Agreement, dated as of the date hereof, by and among Borrower, the Bank and the Bond Trustee for the Bonds, as Custodian.

“**Debt**” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business), (d) all obligations of such Person as lessee under Capital Leases, (e) all obligations of such Person under (i) a synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Debt of such Person (without regard to accounting treatment), (f) all obligations of such Person to purchase securities or other property which arise out of or in

connection with the sale of the same or substantially similar securities or property, (g) all obligations, contingent or otherwise, of such Person to reimburse any bank or other person in respect of amounts paid under a letter of credit, bankers' acceptance or similar instrument, (h) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, (i) all net obligations of any such Person pursuant to Derivatives Obligations which are required to be disclosed as liabilities in accordance with Generally Accepted Accounting Principles, and (j) all obligations of others Guaranteed by such Person; provided, however, that Debt shall not include Guarantees of obligations of the Borrower by any Material Subsidiary.

**"Default"** means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived become an Event of Default.

**"Default Rate"** means a rate equal to the interest rate borne by the Bonds plus an amount equal to two hundred (200) basis points (2.0%) per annum.

**"DENPLAX Agreement"** means the Addenda to Business Agreement and Shareholder Contract dated April 26, 2000 between Empresa de Gestion Medioambiental, S.A., Trex Company, Inc., Sorema, S.A., RIH.Recycling Industries Holding, S.A., and DENPLAX, S.A.

**"Derivatives Obligations"** of any Person means all obligations of such person in respect of any interest rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of the foregoing transactions) or any combination of the foregoing transactions.

**"Domestic Subsidiary"** means a Subsidiary or Affiliate that is a corporation, limited liability company, partnership or other legal entity or joint venture organized or formed under the laws of any state of the United States of America or the District of Columbia.

**"Environmental Indemnity"** means the Environmental Compliance and Indemnification Agreement, dated as of the Issuance Date, from the Borrower to the Bank.

**"Environmental Laws"** means any and all applicable federal, state, regional, local and foreign statutes, laws, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses or other governmental restrictions by (or agreements with) a Governmental Authority relating to the Environment (as defined in the Environmental Indemnity), Environmental Conditions (as defined in the Environmental Indemnity) or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial toxic or hazardous, substances or waste, into the Environment, including, without limitation, ambient air surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, generation or handling of Hazardous Materials (as defined in the Environmental Indemnity).

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

**“ERISA Affiliate”** means any Person who for purposes of Title IV of ERISA is a member of a controlled group, of which the Borrower is a member, is under common control with the Borrower, or is a member of an affiliated service group of which the Borrower is a member in accordance with the provision of Section 414(b), (c), (m) or (o) of the Code.

**“ERISA Event”** means (a) a “Reportable Event” described in Section 4043 of ERISA and the regulations issued thereunder, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that the PBGC be notified within 30 days of the occurrence of such event; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA; (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA; (d) the institution of proceedings to terminate a Plan by the PBGC; or (e) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

**“Event of Default”** shall have the meaning assigned to that term in Section 8.01 of this Agreement.

**“Event of Bankruptcy”** means the Borrower shall have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been the subject of an order for relief under the federal bankruptcy law, or been adjudicated a bankrupt, or filed a petition or an answer seeking reorganization, liquidation or any arrangement with creditors or taken advantage of any insolvency law, or submitted an answer admitting the material allegations of a petition in bankruptcy, reorganization, liquidation or insolvency proceeding; or an order, judgment or decree shall have been entered, without the application, approval or consent of the Borrower, as the case may be, by any court of competent jurisdiction approving a petition seeking reorganization of the Borrower, as the case may be, or appointing a receiver, trustee or liquidator of a substantial part of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; or filed a voluntary petition in bankruptcy; or failed to remove an involuntary petition in bankruptcy filed against it within sixty (60) days of the filing thereof.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time.

**“Facility”** means the Borrower’s facility to be located in Olive Branch, DeSoto County, Mississippi which will be used to manufacture non-wood decking, railing and fencing products.

**“Facility Debt”** means Debt of the Borrower and/or its Subsidiaries that (a) bears interest at a fixed rate, (b) has no principal payments due on or prior to the Stated Expiration Date and (c) has its stated maturity after the Stated Expiration Date.

**“Federal Funds Rate”** means, for any day, the per annum rate equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York (or, if such rate is not published for any day, the Federal Funds Rate shall be the rate determined by the Administrative Agent to be the average rate charged to the Administrative Agent on such day on such transactions).

**“Federal Securities”** means direct obligations of, or obligations the full and timely payment of the principal of and interest on which are backed by the full faith and credit of, the United States of America.

**“Fee Payment Dates”** means (a) the Issuance Date and (b) each April 1, July 1, October 1 and January 1 thereafter.

**“Financial Projections”** means the report dated November 28, 2004 prepared by the Borrower and includes the Operating Budget (consisting of a balance sheet, cash flow statement and income statement) for Fiscal Year 2005, plus four more Fiscal Years.

**“Fiscal Year”** of the Borrower means any period of twelve (12) consecutive calendar months for which financial statements of the Borrower have been examined by its independent certified public accountants, currently a year ending on December 31.

**“Fixed Charge Coverage Ratio”** means for the four-quarter period ending on the date of measurement, the ratio of (a) the sum of Consolidated EBITDA for such four-quarter period plus the consolidated operating lease expense of the Borrower and its Subsidiaries for such four-quarter period minus cash taxes for such four-quarter period minus Maintenance Capital Expenditures for such four-quarter period minus cash dividends and redemptions or purchases of Capital Stock of the Borrower for cash for such four-quarter period made pursuant to Section 6.16(h) of the Credit Agreement dated as of June 1, 2002 by and among the Borrower, Trex Company, LLC and Branch Banking and Trust Company of Virginia, as amended through the date of this Agreement (the “BBT Agreement”) to (b) the sum of current maturities of Long-Term Indebtness of the Borrower and its Consolidated Subsidiaries for such four-quarter period, consolidated interest expense of the Borrower and its Consolidated Subsidiaries for such four-quarter period, and consolidated operating lease expense of the Borrower and its Subsidiaries for such four-quarter period.

**“Foreign Subsidiary” or “Foreign Joint Venture”** means a Subsidiary or Affiliate that is not a Domestic Subsidiary.

**“Funded Debt”** means, as of the date of determination, all of the Debt of the Borrower and its Subsidiaries outstanding on such date, eliminating all offsetting debits and credits between the Borrower and its Subsidiaries and all other items required to be eliminated in the

course of the preparation of consolidated financial statements of the Borrower and its Subsidiaries in accordance with Generally Accepted Accounting Principles.

**“Funded Net Debt”** means Funded Debt of the Borrower less an amount of cash or Cash Equivalents exceeding \$10,000,000 which is held in one or more banks located in the continental United States in one or more accounts of the Borrower.

**“Generally Accepted Accounting Principles”** means generally accepted accounting principles consistently applied and maintained throughout the period indicated and consistent with the prior financial practice of the Borrower, as reflected in the financial statements referred to in Sections 6.05(a) and (b), except for changes permitted by the Financial Accounting Standards Board or any similar accounting authority of comparable standing.

**“Governmental Authority”** means any government or political subdivision, or any agency, commission, department or instrumentality of either, or any court, tribunal, central bank or arbitrator.

**“Group”** means any group of “persons” (as such term is used in section 13(d) and section 14(d)(2) of the Exchange Act as in effect on the Issuance Date) constituting a “group” for the purposes of section 13(d) of the Exchange Act, or any successor provision.

**“Guarantee”** by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against in respect thereof (in whole or in part), provided that the term “Guarantee” shall not include (a) endorsements for collection or deposit in the ordinary course of business or (b) the DENPLAX Agreement. The term “Guarantee” used as a verb has a corresponding meaning.

**“Highest Lawful Rate”** means the maximum legal rate of interest which the Bank is legally entitled to charge, contract for or receive under any law to which such interest is subject.

**“Indebtedness”** means

- (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services;
- (b) obligations as lessee under leases which are, should be or should have been reported as capital leases in accordance with Generally Accepted Accounting Principles;
- (c) current liabilities in respect of unfunded vested benefits under plans covered by Title IV of ERISA;

(d) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss;

(e) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on property, whether or not the obligations have been assumed; and

(f) all other items or obligations which would be included in determining total liabilities on the balance sheet of a Person; provided, however, that “Indebtedness” shall not include trade payables and similar obligations incurred in the ordinary course of business.

**“Insurance Consultant”** means Marsh USA, Inc. or any other Person which is not, and no member, director, officer or employee of which is, an officer or employee of the Borrower, and which is qualified to survey risks and to recommend insurance coverage for corporations comparable to the Borrower.

**“Interest Drawing”** means a drawing under the Letter of Credit to pay interest on the Bonds or the interest portion of the Purchase Price of the Bonds.

**“Interest Rate Agreement”** means an interest rate exchange, hedge or similar agreement entered into to hedge the interest payable on all or part of the Bonds, which agreement may include an interest rate swap, a forward or futures contract or an option (e.g. a call, put, cap, floor or collar) and which agreement does not constitute an obligation to repay money borrowed, credit extended or the equivalent thereof.

**“Inventory”** means all “inventory” (as defined in the UCC) now owned or hereafter acquired by the Borrower, including all goods and merchandise, wherever located, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials and supplies of any kind, nature or description which are used or consumed in the Borrower’s business or used in connection with the packing, shipping, advertising, selling or finishing of such goods or merchandise.

**“Issuance Date”** means the date of issuance of the Letter of Credit.

**“Lien”** means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

**“Loan Agreement”** means the Loan Agreement, dated as of the date hereof by and between the Issuer and the Borrower.

**“Long Term Indebtedness”** means Indebtedness for borrowed moneys having a term from its most recent incurrence or renewal of more than one (1) year.

**“Maintenance Capital Expenditures”** means, as of the date of determination, actual capital expenditures of the Borrower and its Consolidated Subsidiaries for the purpose of maintaining existing assets.

**“Management Stockholder Affiliates”** mean, at any time, and with respect to any Person who is a Management Stockholder, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is controlled by, or is under common control with, such Management Stockholder. As used in this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Management Stockholders”** means Robert G. Matheny, Harold F. Monahan, Paul D. Fletcher, William R. Gupp, David W. Jordan and Philip Pfifer, and their respective Management Stockholder Affiliates.

**“Mandatory Purchase Drawing”** means a drawing on the Letter of Credit to pay the principal portion of the Purchase Price of Bonds tendered or deemed tendered pursuant to Section 2.06 of the Bond Indenture.

**“Material Adverse Effect”** means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the Borrower (or other named party) including, without limitation, the Facility or (b) the ability of the Borrower (or other named party) to carry out its business as of the date of this Agreement or as proposed herein to be conducted or to meet or perform its covenants and obligations under this Agreement, the other Reimbursement Documents or the Related Documents to which it is a party on a timely basis.

**“Material Debt”** means Debt (other than the Notes (as defined in the BBT Agreement) of the Borrower and/or one or more of its Subsidiaries owed to any Person or any Affiliate of such Person, arising in one or more related or unrelated transactions with such Person or any Affiliate of such Person, in an aggregate principal or face amount exceeding \$250,000.

**“Material Plan”** means at any time a Plan or Plans having aggregate Unfunded Liabilities in excess of \$25,000.

**“Material Subsidiary”** means collectively each Domestic Subsidiary that is a member of the Material Subsidiary Group.

**“Material Subsidiary Group”** as of any date means either (a) the smallest number of Domestic Subsidiaries that account for (or in the case of a recently formed or acquired Domestic Subsidiary would so account for on a proforma historical basis), when combined with the Borrower, at least 90% of Consolidated EBITDA for either of the two most recently ended Fiscal Years of the Borrower, or (b) the smallest number of Domestic Subsidiaries that account for (or in the case of a recently formed or acquired Domestic Subsidiary would so account for on a proforma historical basis), when combined with the Borrower, at least 90% of Consolidated Tangible Net Worth for either of the two most recently ended Fiscal Years of the Borrower; provided that any Domestic Subsidiary that accounts for (or in the case of a recently formed or

acquired Domestic Subsidiary would so account for on a proforma historical basis) 7 1/2% of either Consolidated EBITDA for either of the two most recently ended Fiscal Years of the Borrower or Consolidated Tangible Net Worth for either of the past two most recently ended Fiscal Years of the Borrower, shall be included in the Material Subsidiary Group.

**“Matters Contested in Good Faith”** means matters (a) then being contested in good faith by appropriate proceedings diligently and continuously pursued, (b) of which the Administrative Agent has been notified in writing and is being kept informed in such detail as the Administrative Agent may from time to time reasonably request, (c) the enforcement of which is effectively stayed during the period of the contest and (d) with respect to which either (i) adequate reserves in the nature of a cash deposit or pledge of bonds or other securities, or a payment bond of a corporate surety in the face amount equal to the total amount in controversy, reasonably satisfactory to the Administrative Agent, have been furnished or (ii) adequate provision therefor, reasonably satisfactory to the Administrative Agent, has been reserved on the financial statements of the Borrower.

**“Moody’s”** means Moody’s Investors Service, Inc. and its successors and assigns.

**“Mortgage”** means the Land Deed of Trust, dated as of the date hereof, from the Borrower to the trustee named therein for the benefit of the Bank.

**“Mortgaged Personalty”** means the equipment and furnishings, not constituting fixtures, now or hereafter owned by the Borrower, located at the Mortgaged Property or used in the operation of the Facility, together with any additional personal property not included in the foregoing provisions which may be added to the Mortgaged Personalty by a supplemental agreement; provided, however, that Mortgaged Personalty shall not include any equipment, furnishings or other personal property that is not purchased with Bond proceeds.

**“Mortgaged Property”** means the Mortgaged Personalty, the Facility and the Site, all buildings, structures, fixtures and improvements thereon, all rights and easements appurtenant thereto, whether in existence on the Issuance Date or later coming into existence and whether owned by the Borrower on the Issuance Date or acquired hereafter, together with any additional real property not included in the foregoing provisions which may be added to the Mortgaged Property by a supplemental agreement.

**“Multiemployer Plan”** means a Plan which is a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA.

**“Net Proceeds”** means the proceeds of any insurance from an event of damages or destruction, title claim or a condemnation with respect to tangible Property, net of expenses of collecting such proceeds.

**“Note”** means the note, executed by the Borrower on the Issuance Date evidencing unreimbursed drawings on the Letter of Credit.

**“Note Agreement”** means the Note Purchase Agreement dated as of June 19, 2002 by and between the Borrower and the noteholders party thereto relating to the Borrower’s

\$40,000,000 8.32% senior secured notes due June 19, 2009, as it may be amended, restated, supplemented or otherwise modified through the Issuance Date.

**“Obligations”** means all amounts payable to the Bank and Bank Participants pursuant to the Reimbursement Documents or the Related Documents, or any subsequent agreements entered into by Borrower with respect thereto (e.g. Interest Rate Agreements).

**“Obtained Permits”** has the meaning assigned to such term in Section 5.03 hereof.

**“Official Statement”** means the Offering Memorandum, dated December 14, 2004, relating to the issuance of the Bonds including any supplements to such Official Statement.

**“Operating Budget”** means the initial Financial Projections prepared by Borrower and all subsequent budgets furnished pursuant to Section 6.01(c).

**“Optional Tender Drawing”** means a drawing on the Letter of Credit to pay the principal portion of the Purchase Price of Bonds tendered or deemed tendered pursuant to Section 2.05 of the Bond Indenture.

**“PBGC”** means the Pension Benefit Guaranty Corporation or any successor thereto.

**“Permitted Encumbrances”** means

- (a) the liens and security interests created by the Related Documents to secure the Bonds and the Obligations;
- (b) liens for taxes, assessments, special assessments or other governmental charges which are not then delinquent, or, if then delinquent, are Matters Contested in Good Faith;
- (c) utility, access and other easements and rights-of-way, restrictions and exceptions which will not interfere with or impair the operation of any portion of the Mortgaged Property;
- (d) any mechanic's, worker's, laborer's, materialman's, landlord's, carrier's, supplier's or vendor's lien or rights in respect thereof arising in the ordinary course of business with respect to obligations that are not yet due under the contract in question or if such lien is a Matter Contested in Good Faith;
- (e) such minor survey exceptions or minor encumbrances, easements or reservations, or rights of others for right-of-way, utilities and other similar purposes or zoning or other restrictions as to the use of real properties, which are necessary for the conduct of the activities of the Borrower and its Subsidiaries or which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not materially adversely affect the value thereof or impair the property affected thereby for the purpose for which it was acquired or is held;

(f) any lien, easement defect or irregularities of title which are described in the title policy furnished pursuant to Section 4.01(e)(iii) and accepted by the Administrative Agent;

(g) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, other forms of governmental insurance or benefits, or to secure performance of statutory obligations;

(h) liens in favor of Bank of America, N.A. encumbering the Borrower's facility located in Lyon County, Nevada (the "Nevada Real Estate"), which lien is evidenced by that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated September 28, 1999 and recorded on September 30, 1999 in the Official Records of Lyon County, Nevada as Document No. 239622 (the "Nevada Deed of Trust"); and liens securing any refinancing of the Nevada Real Estate, provided that at the time of such refinancing, (i) no Default or Event of Default has occurred or would occur as a result of such refinancing, (ii) the Debt secured by the Nevada Deed of Trust does not exceed 100% of the fair market value of the Nevada Real Estate at the time of such refinancing and (iii) the Debt secured by the Nevada Deed of Trust is permitted under this Agreement;

(i) liens arising in connection with deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety or appeal bonds, and other obligations arising in the ordinary course of business;

(j) liens on unearned insurance premiums held by Persons financing the payment thereof;

(k) liens of or resulting from any judgment of award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Borrower or a Subsidiary shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(l) liens on fixed assets of the Borrower or any Subsidiary which secure only Debt incurred to finance the acquisition of such fixed assets and liens existing on fixed assets at the time of acquisition by the Borrower of any business entity then owning such fixed assets, whether by merger, consolidation or acquisition of substantially all of its assets, and whether or not such existing liens were given to secure the payment of the purchase price of the fixed assets to which they attach (but only to the extent that such liens are incurred substantially contemporaneously with the acquisition of such fixed assets, only to the extent of the lesser of the fair market value or cost of such fixed assets, and only to the extent that the Debt secured thereby is permitted by this Agreement;

(m) liens existing on the Issuance Date and set forth on **Schedule A** attached hereto, and the extension, renewal or replacement of any such lien, provided that (i) such lien attaches only to the same property as the original lien, (ii) the principal amount of Debt secured by such lien is not increased and (iii) at the time of such extension, renewal or replacement, no Default or Event of Default shall have occurred and be continuing;

- (n) interests of lessors under Capital Leases;
- (o) in addition to the liens permitted under clauses (a) to (n) above, liens securing Debt that does not exceed \$250,000 in the aggregate; and
- (p) any other liens approved in writing by the Administrative Agent.

***“Permitted Investments”*** means dollar denominated investments in any of the following:

- (a) Federal Securities;
- (b) debt obligations which are (i) issued by any state or political subdivision thereof or any agency or instrumentality of such state or political subdivision, and (ii) at the time of purchase, rated “AAA” by S&P and rated “Aaa” by Moody’s;
- (c) any bond, debenture, note, participation certificate or other similar obligation which is either (i) issued or guaranteed by the Federal National Mortgage Association, the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal Farm Credit Bank or the Student Loan Marketing Association, or (ii) backed by the full faith and credit of the United States of America;
- (d) U.S. denominated deposit account, CD’s and banker’s acceptances with (i) the Bond Trustee, the Bank or a Bank Participant, or (ii) domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of “A-1” by S&P or “P-1” by Moody’s, without regard to gradation, and in the case of (i) or (ii) which matures not more than 360 days after the date of purchase;
- (e) commercial paper which is rated at the time of purchase within the classification or higher, “A-2” by S&P or “P-2” by Moody’s, without regard to gradation, and which matures not more than 270 days after the date of purchase;
- (f) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by a corporation which are, at the time of purchase, rated by S&P and Moody’s in any of its three highest rating categories without regard to any refinement or gradation of rating category by numerical modifier or otherwise;
- (g) investment agreements with banks that at the time such agreement is executed are rated by S&P or Moody’s in one of the two highest rating categories assigned by S&P or Moody’s (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) or investment agreements with non-bank financial institutions which, (i) all of the unsecured, direct long-term debt of either the non-banking financial institution or the related guarantor of such non-bank financial institution that is rated by S&P or Moody’s at the time such agreement is executed is rated in one of the two highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) for obligations of that nature; or (ii) if such non-bank financial institutions have no outstanding long-term debt that is rated, all of the short-term debt of either the non-banking financial institution or the related guarantor of such non-bank financial institution that is rated by S&P or Moody’s in the highest rating category (without regard to any refinement or gradation of

the rating category by numerical modifier or otherwise) assigned to short term indebtedness by S&P or Moody's;

(h) repurchase agreements with respect to and secured by Government Obligations or by obligations described in clause (b) and (c) above, which agreements may be entered into with a bank (including without limitation the Bond Trustee), a trust company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation, provided that (i) the Bond Trustee or a custodial agent of the Bond Trustee has possession of the collateral and that the collateral is, to the knowledge of the Bond Trustee, free and clear of third party claims, (ii) a master repurchase agreement or specific written repurchase agreement governs the transaction, (iii) the collateral securities are valued no less frequently than monthly, and (iv) the fair market value of the collateral securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%, and (v) such obligations must be held in the custody of the Bond Trustee's agent; and

(i) shares of a money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940 whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000 and having a rating in any of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical qualifier or otherwise) by S&P, Moody's or Fitch, including money market mutual funds from which the Bond Trustee or its affiliates derive a fee for investment advisory or other services to the fund.

For the purpose of this Agreement, Permitted Investments described in clauses (a) through (i) of this definition shall be valued as provided in Section 1.07.

**"Person"** means an individual, partnership, corporation (including a business trust), trust, unincorporated association, joint venture or other entity.

**"Plan"** means a defined benefit plan as defined in Section 3(35) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower or an ERISA Affiliate or (b) was at any time during the last six (6) calendar years preceding the date of this Agreement, sponsored, maintained or contributed to by the Borrower or an ERISA Affiliate.

**"Pledged Bonds"** means Bonds paid or purchased with the proceeds of a drawing under the Letter of Credit and with respect to which the Bank has not received reimbursement as required hereunder, which Bonds have been registered in the name of the Bank or their designee or nominee, as pledgee, pursuant to the Custody, Pledge and Security Agreement.

**"Principal Drawing"** means a drawing under the Letter of Credit to pay the principal amount of Bonds, whether at maturity, upon redemption or acceleration thereof.

**"Pro Forma Total Consolidated Debt to Consolidated EBITDA Ratio"** means, as of the date of determination, the pro forma ratio of (a) the total of all debt of the Borrower, its Subsidiaries and the Person being acquired outstanding on such date, after eliminating all offsetting debits and credits between the Borrower and its Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of

the Borrower and its Subsidiaries in accordance with Generally Accepted Accounting Principles to (b) Consolidated EBITDA (excluding the Person being acquired) as of such date.

**“Property”** means any and all right, title and interest of any Person in and to any and all property, whether real or personal, tangible or intangible, and wherever situated.

**“Purchase Contract”** means the Bond Purchase Agreement by and among the Borrower, the Issuer and J.P. Morgan Securities Inc., providing for the purchase of the Bonds.

**“Rating Agency”** means Moody’s, S&P or Fitch.

**“Regulation U”** means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

**“Reimbursement Documents”** means this Agreement, the Environmental Indemnity, the Note, the Custody, Pledge and Security Agreement, the Mortgage and any Interest Rate Agreement entered into with the Bank or any Bank Participant.

**“Related Documents”** means the Bonds, the Bond Indenture, the Remarketing Agreement, the Loan Agreement, the Purchase Contract and all documents related thereto.

**“Remarketing Agent”** means J.P. Morgan Securities Inc. and its successors and assigns, or any other Remarketing Agent approved by the Administrative Agent.

**“Remarketing Agreement”** means, initially, the Remarketing Agreement between the Borrower and the initial Remarketing Agent with respect to the Bonds and thereafter any remarketing agreement with respect to the Bonds entered into by the Borrower and any successor Remarketing Agent in accordance with the provisions of the Bond Indenture.

**“S&P”** means Standard & Poor’s, a division of The McGraw-Hill Companies, and its successors and assigns.

**“SEC”** means the United States Securities and Exchange Commission, and any successor thereto.

**“Security Documents”** means the collective reference to the Mortgage, the Environmental Indemnity, the Custody, Pledge and Security Agreement and all other documents from time to time securing the Obligations.

**“Site”** means the land described in Exhibit 5.11 hereto.

**“State”** means the State of Mississippi.

**“Stated Amount”** means, with respect to the Letter of Credit, the amount set forth on the first page thereof identified as the Maximum Stated Amount as such amount shall be reduced and reinstated in accordance with the provisions thereof.

**“Stated Expiration Date”** means five (5) years after the Issuance Date, as provided in the Letter of Credit, or such later date to which the Letter of Credit is extended.

**“Subsidiary”** means any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Borrower.

**“Total Consolidated Capitalization”** means, as of any date of determination with respect to the Borrower, the sum of Funded Debt and Consolidated Tangible Net Worth.

**“UCC”** means (a) for purposes of the Mortgaged Property, the Uniform Commercial Code in effect in the State, provided that if by reason of mandatory provisions of law, for matters pertaining only to the perfection or the effect of perfection or nonperfection of the security interest in or lien on any of the Mortgaged Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or nonperfection and (b) for purposes of the Pledge Agreement, the Uniform Commercial Code in effect in the State of New York, provided that if by reason of mandatory provisions of law, for matters pertaining only to the perfection or the effect of perfection or nonperfection of the security interest in or lien created under the Pledge Agreement is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or nonperfection.

**“Unfunded Liabilities”** means, with respect to any Plan at any time, the amount (if any) by which (a) the value of all benefit liabilities under such Plan, determined on a plan termination basis using the assumptions prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds (b) the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions), all determined as of the then most recent valuation date for such Plan but only to the extent that such excess represents a potential liability of a member of the Borrower, any Subsidiary or any ERISA Affiliate to the PBGC or any other Person under Title IV of ERISA.

**“Voting Stock”** means, with respect to any Person, capital stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

**“Wholly-Owned Subsidiary”** means, with respect to a Subsidiary, a Subsidiary all the shares, member interests or equivalent equity interests of which (other than any director’s qualifying shares or investments by foreign nationals mandated by applicable law) are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-Owned Subsidiaries.

Section 1.02. **Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

Section 1.03. **Construction.** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular includes the plural and the part includes the whole and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “including” has the meaning “including, but not limited to.” The section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

Section 1.04. **Incorporation of Certain Definitions by Reference.** Any capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Bond Indenture.

Section 1.05. **Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Generally Accepted Accounting Principles.

Section 1.06. **Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.**

(a) Nothing in this Agreement shall be deemed to amend or relieve the Borrower of its obligations under any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the Borrower to take certain actions, or not to take certain actions, with regard for example to permitted liens, incurrence of indebtedness, transfers of assets, maintenance of financial ratios and similar matters, the Borrower nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in (c), all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific sections of any Related Document shall be deemed to incorporate such sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Related Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all Obligations are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such sections

shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

Section 1.07. **Valuation.** For purposes of determining compliance with all covenants and provisions of this Agreement and the other Reimbursement Documents, Property of the Borrower shall be valued (a) with respect to marketable securities, as most recently quoted in the New York Times or Wall Street Journal and, otherwise, as evaluated by a broker, appraiser or other expert appointed by the Borrower and satisfactory to the Administrative Agent and (b) with respect to other Property, the book value of the assets as shown on the most recent audited financial statements of the Borrower.

## **ARTICLE II**

### **AMOUNT AND TERMS OF THE LETTER OF CREDIT**

#### **Section 2.01. *Amount and Terms of Letter of Credit.***

(a) The Bank agrees, on the terms and subject to the conditions hereinafter set forth, to issue the Letter of Credit on the date of delivery of the Bonds to the initial purchaser(s) thereof. The Letter of Credit will be issued in an initial Stated Amount equal to \$25,308,220 representing the aggregate principal amount of the Bonds as of the Issuance Date plus interest on such principal amount for a period of 45 days at a rate equal to 10% per annum and computed on the basis of a 365/366-day year and actual days elapsed. The Letter of Credit shall be issued to the Bond Trustee for the account of the Borrower. The Letter of Credit shall be substantially in the form of **Exhibit 2.01** attached hereto with such changes as the Borrower and the Bank shall agree in writing are necessary or advisable. All drawings on the Letter of Credit shall be honored by the Bank with its own funds and not with funds of the Borrower.

(b) The Letter of Credit shall expire, subject to subsection (c) hereof, at 3:00 P.M. (prevailing Eastern time) on the applicable Stated Expiration Date, or as otherwise provided in the Letter of Credit.

(c) Notwithstanding Section 2.01(b), (i) the Letter of Credit may terminate earlier than the applicable Stated Expiration Date as provided therein, (ii) not later than one hundred fifty (150) days prior to each Stated Expiration Date, the Bank shall notify the Borrower and the Bond Trustee if it will not renew the Letter of Credit for an additional twelve-month period and (iii) the Borrower may elect to terminate the Letter of Credit and replace it with an Alternate Credit Facility as provided in Section 2.01(e) hereof.

(d) The Stated Amount of the Letter of Credit is subject to reduction and reinstatement as provided therein.

(e) The Borrower may provide an Alternate Credit Facility in connection with the Letter of Credit in accordance with the Bond Indenture; provided that, before such substitution takes effect, all Obligations then due and owing shall have been paid and the Borrower shall purchase, or cause to be purchased, all Pledged Bonds at a price of 100% of the principal amount thereof plus accrued and unpaid interest thereon at the rate provided for in Section 4.04 of the Bond Indenture. In the event that the Borrower terminates the Letter of Credit for any reason whatsoever, the Borrower shall pay to the Bank its customary termination

fee; provided that such fee shall not be payable if (i) the unsecured short-term obligations of the Bank have been downgraded by the Rating Agency then rating the Bonds to below P-1, if Moody's, below A-1, if S & P, or below F1, if Fitch, (ii) the long-term obligations of the Bank have been downgraded by the Rating Agency then rating the Bonds to below A3, if Moody's, below A-, if S & P, or below A-, if Fitch or (iii) the Bank wrongfully dishonors or fails to honor a draw under the Letter of Credit.

Section 2.02. **Fees.**

(a) The Borrower hereby agrees to pay to the Bank, in advance, on each Fee Payment Date until the expiration or termination of the Letter of Credit, a nonrefundable facility fee calculated based on the Stated Amount as of the Fee Payment Date and based on a 360 day year but charged on the actual number of days elapsed. The amount payable on the (i) Issuance Date shall be based upon the ratio of Funded Net Debt to Consolidated EBITDA as of September 30, 2004 and based upon the number of days from the Issuance Date through and including March 31, 2005 and (ii) the amount payable on each Fee Payment Date thereafter shall be based upon the ratio of Funded Net Debt to Consolidated EBITDA as disclosed in the Certificate of Compliance most recently delivered for purposes of demonstrating the Borrower's compliance with Section 6.12(b) hereof and based upon the number of days in the calendar quarter commencing on such Fee Payment Date, and, in each case, shall be calculated using the following: (w) less than or equal to 1.00X, the annual facility fee shall be 65 basis points; (x) more than 1.00X but less than or equal to 1.50X, the annual facility fee shall be 75 basis points; (y) more than 1.50X but less than 2.00X, the annual facility fee shall be 85 basis points; and (z) 2.00X or greater, the annual facility fee shall be 100 basis points.

(b) The Borrower shall pay to the Bank a drawing fee on the Issuance Date in the amount of \$3,000 and thereafter annually in advance on each Fee Payment Date, the then current drawing fees of the Bank.

(c) The Borrower shall pay an amount equal to the Bank's administrative costs of amendment or transfer (i) each time an amendment is made to the Letter of Credit on the same day such amendment is made, and (ii) each time a transfer of the Letter of Credit is made on the same day such transfer is made.

(d) The Borrower agrees to pay on demand:

(i) all reasonable out-of-pocket costs and expenses of the Administrative Agent and the Bank in connection with the preparation, execution and delivery of the Letter of Credit, this Agreement and the other Reimbursement Documents and any other documents which may be delivered in connection with the Reimbursement Documents including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Bank and the Administrative Agent with respect thereto;

(ii) all reasonable costs and expenses of the Bank and the Bank Participants in connection with the administration and enforcement (whether by means of legal proceedings or otherwise) of any of their rights under this Agreement, the other

Reimbursement Documents, the Related Documents and such other documents which may be delivered in connection therewith;

(iii) all reasonable fees and out-of-pocket expenses for counsel or other consultants to the Bank and the Bank Participants in connection with advising them as to their rights and responsibilities under this Agreement and the other Reimbursement Documents (which need for advice arises as a result of (A) the action or inaction of the Borrower), (B) any information, certificate or report furnished to the Bank pursuant to the Reimbursement Documents or Related Documents, (C) a Default or Event of Default or (D) responding to requests from the Borrower for approvals, consents and waivers; and

(iv) all reasonable fees, costs and expenses of any other consultants providing services to the Bank and the Administrative Agent in accordance with this Agreement.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution, delivery, filing and recording of this Agreement, the other Reimbursement Documents or the Related Documents, then, if the Borrower lawfully may pay for such stamps, taxes or fees, the Borrower shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the Borrower agrees to save the Bank and the Bank Participants harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such stamps, taxes and fees.

(e) Except for Matters Contested in Good Faith, if the Borrower fails to pay any Liens with respect to the Mortgaged Property, or otherwise incurs any Lien prohibited hereunder with respect to the Mortgaged Property or fails to discharge when due and payable any Indebtedness secured by such Lien (whether or not a Permitted Encumbrance) on the Mortgaged Property or fails to pay when due any premium on insurance required to be maintained hereunder, or otherwise fails to pay any amount necessary for the protection and preservation of the Mortgaged Property, the Administrative Agent may pay the same, at the Bank's option with reasonable notice to the Borrower, together with interest and penalty, and the Borrower agrees to reimburse the Administrative Agent immediately for amounts so paid. With respect to Matters Contested in Good Faith, the Borrower will promptly pay any valid, final and non-appealable judgment enforcing any such Lien or bill and cause the same to be satisfied of record.

(f) Upon the occurrence and during the continuance of an Event of Default or Default, to protect any security interest which the Bank and the Bank Participants are granted in connection with this Agreement, any other Reimbursement Document or any Related Document, the Administrative Agent may, in its sole discretion, upon giving written notice to the Borrower, maintain guards, pay any service bureau or warehouseman, obtain bonds, obtain any record and take any other similar action which shall be reasonable and shall be necessary or appropriate in the Administrative Agent's sole discretion, for the protection and preservation of the Mortgaged Property, and the Borrower agrees to immediately reimburse the Administrative Agent for the amounts so paid.

Section 2.03. **Reimbursement for Letter of Credit Drawings.**

(a) The Borrower agrees to reimburse the Bank without the requirement for notice or demand, both of which are expressly waived by the Borrower, for any amounts drawn on the Letter of Credit on the same Business Day as such drawing is honored by the Bank. The Borrower and the Bank agree that the reimbursement in full for each drawing on the date such drawing is made is intended to be a contemporaneous exchange for new value given to the Borrower by the Bank.

(b) Amounts relating to Principal Drawings not reimbursed by 3:00 P.M. (prevailing Eastern time) in immediately available funds on such Business Day shall bear interest daily at the Default Rate from and including the date of drawing to but excluding the date of reimbursement. Notwithstanding the foregoing, if the Borrower shall maintain a deposit account with the Bank for the purpose of funding the Borrower's reimbursement obligations hereunder and which the Bank is authorized to debit to satisfy such obligations without further instruction from the Borrower (the "Reimbursement Account"), interest shall accrue at the Bank's Prime Rate (and not at the Default Rate) on any Principal Drawing for which reimbursement is not made if at the time such reimbursement was to be paid adequate funds to make such payment were available in the Reimbursement Account.

(c) Amounts relating to tender drawings and the interest portion of drawings not reimbursed by 3:00 P.M. (prevailing Eastern time) in immediately available funds on such Business Day shall bear interest daily at the Bank's Prime Rate plus two hundred basis points (2%) from and including the date of drawing to but excluding the date of reimbursement. Notwithstanding the foregoing, if the Borrower shall maintain the Reimbursement Account with the Bank, interest shall accrue at the Bank's Prime Rate on any tender drawing or the interest portion of drawing for which reimbursement is not made if at the time such reimbursement was to be paid adequate funds to make such payment were available in the Reimbursement Account.

Section 2.04. **Pledged Bonds.**

(a) The Borrower's obligation to reimburse the Bank for any Optional Tender Drawing or Mandatory Purchase Drawing shall be evidenced by the delivery of the Bonds to the Bond Trustee, in its capacity as custodian under the Custody, Pledge and Security Agreement, and registered in the name of the Bank or its designee or nominee as pledgee as provided in Section 4.04 of the Bond Indenture and in the Custody, Pledge and Security Agreement, it being expressly understood that during such time the Bank or its designee or nominee shall be the registered owner, as pledgee, of all such Bonds and shall have all the rights granted to owners of Bonds under the Bond Indenture and such additional rights as may be granted to the Bank thereunder and hereunder.

(b) The Borrower agrees to give (or shall cause the Bond Trustee to give) absolute priority to Pledged Bonds in selecting Bonds for redemption and remarketing pursuant to the Bond Indenture.

(c) Any payment to be made to the Bank, or to the Bank's designee or nominee for the credit of the Bank, in connection with the remarketing of any Pledged Bonds shall be made upon prior written, electronic or telephonic notice from the Remarketing Agent to the Bank (which notice, if in electronic or telephonic form, shall be promptly confirmed in

writing) not later than 3:00 P.M. (prevailing Eastern time) on the date of any such remarketing, (i) stating the amount to be paid and (ii) identifying by number the particular Pledged Bonds remarketed by the Remarketing Agent, the proceeds of the remarketing of which are to be paid to the Bank. Upon payment to the Bank of the principal amount of the remarketed Bonds, and the accrued and unpaid interest thereon, such Pledged Bonds shall be delivered or released to the Bond Trustee for redelivery to the purchasers thereof.

(d) Notwithstanding anything to the contrary contained herein, any amounts paid with respect to the principal of or interest on Pledged Bonds shall be a credit against the obligations of the Borrower set forth in Section 2.03 hereof and set forth in the Note, and such obligations shall be discharged to the extent of such payment. All payments shall be credited to accrued interest and then to principal, and to principal in the inverse order of the date of the drawing or as applicable, to which it relates.

**Section 2.05. *Place and Manner of Payment; Computation of Interest and Fees.***

(a) All payments by the Borrower under this Agreement and the other Reimbursement Documents shall be made in lawful currency of the United States of America and in immediately available funds on the date when such payment is due. All payments to the Bank and Administrative Agent shall be made by federal wire transfer to JPMorgan Chase Bank, N.A. ABA No. 021000021, Account No. 957 082770, Reference: Trex Company (or to such other account as the Bank or Administrative Agent may specify by written notice to the Borrower) with further indication of the purpose of the payment. All payments to the Bank Participants shall be made to the Administrative Agent.

(b) In the event that the date specified for any such payment hereunder is not a Business Day, such payment shall be made not later than the next following Business Day and interest shall be paid at the rate and on the basis of calculation provided for herein on any such payment to the Business Day on which such payment is made.

(c) Computations of the Bank Prime Rate and the Default Rate shall be made by the Administrative Agent on the basis of a 360-day year for the actual number of days (including the first day but excluding the last day) elapsed. Computations of the fees hereunder shall be made by the Administrative Agent on the basis of a year of 360-days for the actual number of days in the computation period.

(d) All payments by the Borrower to the Bank and the Bank Participants shall be made free and clear of and without deduction for any present or future taxes or other amounts for or on account of levies, imposts, duties, deductions, withholdings or other charges of whatsoever nature (including, without limitation, interest, additions to tax and penalties thereon), imposed, levied, collected, withheld or assessed by any Governmental Authority (excluding any taxes based on the income or share capital of such Bank or Bank Participant imposed by the jurisdiction under which such Bank or Bank Participant's principal office is located (or if such Bank or Bank Participant is acting through a branch or agency, by the jurisdiction in which such branch or agency is located) (collectively, the "**Taxes**"). If the Borrower shall be required to withhold or deduct Taxes from any sum payable hereunder (on behalf of any Bank or Bank Participant), (i) the sum payable shall be increased as may be necessary so that such Bank or

Bank Participant receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the Borrower shall make such necessary withholdings and deductions and (iii) the Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority according to Applicable Law so that such Bank or Bank Participant shall not be required to make any deduction or payment of such Taxes. The Bank, the Bank Participants and the Administrative Agent represent that the Borrower is not currently required under Applicable Law to withhold any amounts in respect of payments to the Bank and the Administrative Agent.

(e) Any payment received by the Bank or the Administrative Agent after 3:00 P.M. (prevailing Eastern time) shall be deemed to have been received by the Bank or the Administrative Agent on the next Business Day.

(f) Subject to the provisions of Section 2.03 hereof, any payment which is not received by the Bank or the Administrative Agent on the date due shall bear interest until paid in full at the Default Rate.

Section 2.06. **Increased Payments.** If any change of law or guideline or interpretation or application thereof by any Governmental Authority charged with the interpretation or administration thereof or compliance with any request or directive of any Governmental Authority adopted after the Issuance Date (collectively a “**Change in Law**”):

(i) subjects the Bank or any Bank Participant to taxation with respect to this Agreement, the other Reimbursement Documents, the Letter of Credit or payment by the Borrower of principal, interest, issuance fee or annual Letter of Credit fees, administrative fees or other amounts due from the Borrower hereunder (except for any taxes on the income or share capital of the Bank or a Bank Participant),

(ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds by the Bank or a Bank Participant,

(iii) imposes, modifies or deems applicable any capital adequacy or similar requirement (A) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, the Bank or a Bank Participant, or (B) otherwise applicable to the obligations of the Bank or a Bank Participant under this Agreement, or

(iv) imposes upon the Bank or a Bank Participant any other condition or expense with respect to this Agreement, the Letter of Credit or their making, maintenance or funding of any loan or any security therefor,

and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon the Bank or a Bank Participant with respect to this Agreement, the Letter of Credit, or the making, maintenance or funding of any loan (or, in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on the Bank or a Bank Participant capital, taking into consideration

such Bank's or Bank's Participant's policies with respect to capital adequacy) by an amount which such Bank or Bank Participant deems to be material to it, then the Bank on behalf of itself or any other Bank Participant shall from time to time notify, or cause to be notified, the Borrower in writing of the effective date of such Change in Law and of the amount determined in good faith (using any reasonable averaging and attribution methods) by the Bank or Bank Participant (which determination shall be conclusive absent manifest error) to be necessary to compensate the Bank or Bank Participant for such increase, reduction or imposition. Such amount shall be due and payable by the Borrower on the earlier of thirty (30) days after demand therefor or the next Fee Payment Date which is not less than ten (10) days after the demand therefor. A certificate by the Bank or Bank Participant as to the amount due and payable under this Section 2.06 from time to time and the method of calculating such amount shall be conclusive absent manifest error and shall be provided to the Borrower with the notice described above. The amount payable pursuant to this Section 2.06 shall be payable to the Bank in accordance with Section 2.05(a) or in accordance with such other payment instructions as the Administrative Agent shall advise the Borrower in writing.

Section 2.07. **Recapture.** Any interest payable pursuant to Section 2.03 or otherwise pursuant to this Agreement or the other Reimbursement Documents shall not exceed the Highest Lawful Rate. In the event any interest required to be paid hereunder at any time exceeds the Highest Lawful Rate, the portion of such interest required to be paid on a current basis shall equal such Highest Lawful Rate; provided that the difference between the amount of interest payable assuming no Highest Lawful Rate and the amount paid on a current basis after giving effect to the Highest Lawful Rate shall be carried forward and shall be payable on any subsequent date of calculation so as to result in a recovery of interest previously unrealized (because of the limitation dictated by such Highest Lawful Rate) at a rate of interest, and as part of the interest payable, that, after giving effect to the recovery of such excess and all other interest paid and accrued hereunder to the date of calculation, does not exceed such Highest Lawful Rate.

Section 2.08. **Evidence of Debt.** The Bank and the Administrative Agent shall maintain in accordance with their usual practices an account or accounts evidencing the indebtedness of the Borrower resulting from each drawing under the Letter of Credit and with respect thereto the amounts of principal and interest outstanding and the amounts paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made on the Note and in the accounts maintained by the Bank and the Administrative Agent shall be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded. In the event of a conflict among such accounts, the accounts maintained by the Administrative Agent shall control, absent manifest error.

Section 2.09. **Obligations Absolute.** The reimbursement obligations of the Borrower under this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following:

- (a) any lack of validity or enforceability of the Letter of Credit, the Bonds or any of the Related Documents;

- (b) any amendment, waiver of, consent to or departure from all or any of the Related Documents;
- (c) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Bond Trustee or any other beneficiary, or any transferee, of the Letter of Credit (or any persons or entities for whom the Bond Trustee, any such beneficiary or any such transferee may be acting), any Bank Participant, or any other person or entity, whether in connection with this Agreement, the other Reimbursement Documents, the Related Documents, the transactions contemplated herein or therein or any unrelated transaction;
- (d) any statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
- (e) payment by the Bank under the Letter of Credit against presentation of a draft or certificate which does not comply with the terms of the Letter of Credit, unless such payment was the result of willful misconduct or gross negligence of the Bank; or
- (f) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Section 2.10. **Appraisals.** The Administrative Agent shall caused to be ordered, if deemed necessary in its sole discretion, at the sole cost and expense of the Borrower, an M.A.I. appraisal of the Mortgaged Property in compliance with the Financial Institutes Reform, Recovery and Enforcement Act of 1989 requirements, satisfactory in all respects to the Administrative Agent. The Administrative Agent shall give the Borrower thirty (30) days prior notice of its intent to order any such appraisal. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing hereunder, the Administrative shall not cause to be ordered (a) more than one such appraisal during the initial five (5) year term of the Letter of Credit and (b) more than one such appraisal during each renewal term of the Letter of Credit; provided, however, that nothing contained in this Section is intended to create an obligation on the part of the Bank to agree to any renewal of the Letter of Credit.

### **ARTICLE III** **[RESERVED]**

### **ARTICLE IV** **CONDITIONS PRECEDENT OF ISSUANCE**

Section 4.01. **Documentary Requirements.** The obligations of the Bank to issue the Letter of Credit and the Administrative Agent to administer the Reimbursement Documents are subject to the condition precedent that the Administrative Agent shall have received on or before the Issuance Date the following, each dated such date and in form and substance satisfactory to the Administrative Agent:

(a) *Borrower Corporate Documents.*

(i) *Resolutions.* Copies of the resolutions of the governing body of the Borrower approving the Borrower's execution and delivery of the Reimbursement Documents and the Related Documents to which the Borrower is a party and approving the form of the Related Documents to which it is not a party and the other matters contemplated hereby certified by an officer of the Borrower as being true and complete and in full force and effect on the Issuance Date.

(ii) *Articles of Incorporation*. The Articles of Incorporation of the Borrower certified to be in full force and effect as of a date not more than thirty (30) days preceding the Issuance Date by an appropriate official of the state of incorporation and certified by an officer of the Borrower as being true and complete and in full force and effect on the Issuance Date.

(iii) *By-laws*. The By-laws of the Borrower certified by an officer of the Borrower as being true and complete and in full force and effect on the Issuance Date.

(iv) *Good Standing*. Certificates issued by an appropriate official of the State and the State of Delaware not more than thirty (30) days preceding the Issuance Date, stating that the Borrower is in good standing in such jurisdiction.

(v) *Incumbency Certificate of the Borrower*. Certificates of the Secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign the Reimbursement Documents and the Related Documents to which the Borrower is a party and the other documents to be delivered by it hereunder or thereunder.

(b) Financing Documents.

(i) An executed original of:

- (1) this Agreement;
- (2) the Environmental Indemnity;
- (3) the Commitment Letter;
- (4) the Custody, Pledge and Security Agreement; and
- (5) the Mortgage; and

(ii) Copies of the executed:

- (1) Bond Indenture;
- (2) Purchase Contract;
- (3) Remarketing Agreement; and
- (4) Loan Agreement.

- (iii) The original executed Note.
  - (iv) A specimen of the Bonds.
  - (v) UCC Financing Statements showing the Borrower as debtor and the Bank, in its capacities as Bank and Administrative Agent, as secured party.
  - (vi) A copy of the Official Statement.
- (c) *Real Estate and Related Matters*. With respect to the Mortgaged Property:
- (i) *Survey*. An ALTA survey of the Site and Facility prepared in connection with the acquisition of the Site and Facility which survey shall be acceptable to the Administrative Agent, together with a certification of the Borrower of no material adverse change that is sufficient for issuance of the title policy (described below) without a “survey” exception. The survey shall be certified to the Administrative Agent and the title insurance company.
  - (ii) *Zoning, Approvals, Utilities and Wetlands Exemption*. Evidence of (A) satisfactory zoning and subdivision of the Site for the Facility and (B) the issuance of all necessary permits, licenses and approvals to operate and occupy the Facility, including without limitation permits, licenses and approvals required under federal, state and local laws or regulations with respect to zoning, safety, building, fire protection, storm water management, soil conservation, environmental and similar matters.
  - (iii) *Title Policy*. A mortgagee’s ALTA 1970 title policy (as amended in 1984), issued in a form and by a title company satisfactory to the Administrative Agent. The title policy will include such affirmative coverage endorsements thereto and reinsurance as requested by the Administrative Agent. The title policy shall list the Administrative Agent as an insured party and insure that the Borrower has a good and marketable fee interest in, the land, improvements and fixtures constituting the Mortgaged Property and that the Mortgage is a first priority lien on the Mortgaged Property subject only to matters approved by the Administrative Agent. The amount of insurance shall not be less than the Stated Amount of the Letter of Credit. The title policy shall insure against mechanics and materialman’s liens, shall provide “gap” coverage, shall contain no exceptions for creditors’ rights, survey, parties-in-possession or other exceptions, except as consented to by the Administrative Agent, and shall be accompanied by true and complete copies of all documents or instruments enumerated as exceptions to title and by a lien and judgment report and chattel and tax searches. The Borrower shall also provide an “insured closing letter.”
  - (iv) *Recording*. Evidence that the Mortgage has been recorded in such manner and in such places as may be required by law to fully perfect and protect the lien of the Mortgage and that all filing and recording fees and taxes, if any, have been paid or, in lieu thereof, evidence that the title policy referenced in Section 4.01(c)(iii) insures the Mortgaged Property for the period from the Issuance Date until the actual recording of the Mortgage.

(v) *Perfection of Security Interests*. Evidence that proper financing statements have been duly filed under the UCC in each jurisdiction as may be necessary or desirable to effectively perfect or otherwise establish the security interests in the Mortgaged Personalty created by the Mortgage in favor of the Administrative Agent, to the extent that filing or recording will accomplish perfection, and that all filing fees, if any, have been paid.

(d) *Operating Budget*. A copy of the Operating Budget, attached as **Exhibit 5.16** hereto, reasonably acceptable to the Administrative Agent, certified by an officer of the Borrower as being accurate and complete. The Operating Budget shall provide line item expense allocations in detail sufficient to the Administrative Agent in its reasonable discretion.

(e) *Environmental Report*. Reports to the Administrative Agent or on which the Administrative Agent is expressly authorized to rely, prepared by an environmental consultant acceptable to the Administrative Agent, which report states that, after due investigation of the Site, there is no recognized environmental condition (as defined by ASTM 1527-E-00) that requires further investigation or remediation, except as otherwise approved of by the Administrative Agent.

(f) *Regulatory Approvals*. Copies of each of the Obtained Permits listed in **Exhibit 5.03**, in full force and effect and acceptable to the Administrative Agent, certified by an officer of the Borrower as being true and complete.

(g) *Opinions*. Opinions, dated the Issuance Date, addressed to the Administrative Agent on which the Administrative Agent is expressly authorized to rely:

(i) from counsel to the Borrower, in a form acceptable to the Administrative Agent as to authority, due execution, enforceability, zoning, receipt of required permits and approvals and such other matters as the Administrative Agent may reasonably request;

(ii) from bond counsel, as to the due authorization, execution, delivery and issuance of the Bonds, the tax-exemption of the Bonds, and such other matters as the Administrative Agent may reasonably request; and

(iii) from counsel to the Issuer, as to the due authorization and enforceability of the Bond Indenture, the Purchase Contract and such other matters as the Administrative Agent may reasonably request.

(h) *Insurance Certificates and Letter*. Insurance certificates describing all insurance policies currently in effect with respect to the Mortgaged Property and the Borrower and a certification from the Borrower to the effect that such insurance meets the requirements of Section 6.04 as of the Issuance Date.

(i) *Borrower Certificate*. A certificate acceptable to the Administrative Agent signed by duly authorized officers of the Borrower, dated the Issuance Date, stating that: (i) the representations and warranties of the Borrower contained in Article V and in the other Reimbursement Documents and the Related Documents to which it is a party are correct in all

material respects on and as of the Issuance Date as though made on and as of such date; (ii) no petition by or against the Borrower has at any time been filed under the United States Bankruptcy Code or under any similar act; (iii) no Default or Event of Default has occurred and is continuing, or would result from the execution of this Agreement, the other Reimbursement Documents and the Related Documents to which the Borrower is a party; (iv) the Borrower has complied with all agreements and covenants and satisfied all conditions stated in this Agreement on its part to be performed or satisfied at or prior to the Issuance Date; (v) since the date of the Commitment Letter there has been no event which has caused or might reasonably be anticipated to cause a Material Adverse Effect; and (vi) the assumptions contained in the Financial Projections provided by Borrower to the Administrative Agent provide a reasonable and appropriate basis for the conclusions contained therein, and that there is no known event, circumstance or fact known to Borrower pertaining to the Facility or to management of the Borrower not disclosed by the Borrower which would have a Material Adverse Effect on the assumptions or conclusions stated in such projections.

(j) *Reserved.*

(k) *No Violation Letter.* A letter or letters from the City of Olive Branch, to the Borrower to the effect that there is no record of the Borrower being in violation of any local law, approval or permit with respect to the Facility.

(l) *Trustee's Receipt.* A receipt signed by the Bond Trustee acknowledging receipt of the Letter of Credit.

(m) *Taxes.* Evidence that all past and current (if then due and payable) taxes and assessments applicable to the Facility or payable by the Borrower in connection with the Facility have been paid or are a Matter Contested in Good Faith.

(n) *Miscellaneous.* Such other instruments, documents and opinions as the Administrative Agent shall reasonably require to evidence and secure the Obligations and to comply with the provisions of this Agreement, the other Reimbursement Documents and the Related Documents and the requirements of any Governmental Authority to which any of the Bank, the Bank Participants or the Borrower is subject.

Section 4.02. ***Additional Conditions Precedent.*** The following shall have occurred on the Issuance Date:

(a) *Fees and Expenses.* Payment by the Borrower to the Bank and the Administrative Agent of (i) the fees payable on the Issuance Date pursuant to Section 2.02, (ii) the fees and expenses of counsel to the Bank and the Administrative Agent incurred through the Issuance Date; and (iii) the expenses of the Bank and the Administrative Agent incurred through the Issuance Date.

(b) *Bonds.* The Bonds shall be issued in the aggregate principal amount of \$25,000,000.

(c) *No Material Adverse Effect or Change.* In the judgment of the Administrative Agent, (i) since the most recent date on which the Borrower has supplied

information, financial or otherwise, to the Administrative Agent, there has been no event which has caused or might reasonably be anticipated to cause a Material Adverse Effect on the Borrower and (ii) since the date of the first draft term sheet delivered to the Borrower, in the judgment of the Administrative Agent, there has been no adverse change or disruption in the financial, banking or capital markets or in or affecting the syndication markets for credit facilities similar in nature to this Agreement.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to and for the benefit of the Bank and the Bank Participants that, as of the Issuance Date:

Section 5.01. ***Existence and Power.*** The Borrower is a Delaware corporation duly organized and existing under the laws of the State of Delaware and is authorized to do business in the State with lawful power and authority to enter into the Reimbursement Documents and the Related Documents to which it is a party. The Borrower has the power and authority to conduct its business as currently conducted and to own its assets.

Section 5.02. ***Regulation U; Use of Proceeds.*** The Borrower and its Subsidiaries do not own any “margin stock” (as defined in Regulation U). The proceeds of the Bonds will be used only for the purposes set forth in the Loan Agreement.

Section 5.03. ***Regulatory Authority.*** Attached as **Exhibit 5.03** hereto is a list of all material consents, authorizations, licenses and approvals of Governmental Authorities which have been obtained by the Borrower in connection with the operation of the Facility and the Reimbursement Documents and Related Documents (the “***Obtained Permits***”), and such Obtained Permits constitute all requisite material consents, authorizations, licenses, filings and approvals of all Governmental Authorities which are currently necessary for the Borrower to operate the Facility in accordance with the Reimbursement Documents and the Related Documents. All filings made by the Borrower with Governmental Authorities in connection with the Obtained Permits contain complete and accurate information and all of the Obtained Permits remain in full force and effect as of the Issuance Date. The Borrower and the Facility is in compliance in all material respects with applicable federal, state and local zoning, subdivision, environmental and other Applicable Law.

Section 5.04. ***Due Authorization.*** The execution, delivery and performance by the Borrower of the Reimbursement Documents and the Related Documents to which it is a party are within the corporate power and authority of the Borrower, and have been duly authorized by all necessary corporate action of the Borrower. The Borrower has approved the form of the Related Documents to which it is not a party.

Section 5.05. ***Valid and Binding Obligations.*** The Reimbursement Documents and the Related Documents to which the Borrower is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as such enforceability may be limited by the Borrower’s bankruptcy, insolvency, reorganization,

moratorium or other laws or equitable principles relating to or limiting creditors' rights generally.

Section 5.06. **Noncontravention.** The execution and delivery by the Borrower of the Reimbursement Documents and the Related Documents to which it is a party, and the performance of its obligations hereunder and thereunder, will not violate any existing law or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its property is bound or its articles of incorporation, bylaws or any of the rules or regulations applicable to the Borrower or its property or decree or order of any court or other governmental body.

Section 5.07. **Official Statement.** The information contained in the Official Statement as of its date is correct in all material respects and does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; provided, however, that this representation is not made with respect to any information therein relating to any Person other than the Borrower or any Affiliate thereof.

Section 5.08. **Pending Litigation and Other Proceedings.** Except as set forth on **Exhibit 5.08**, there is no pending action, proceeding, inquiry or investigation against or directly involving the Borrower or any of its Subsidiaries and, to the best of the Borrower's knowledge, there is no threatened action, proceeding, inquiry or investigation affecting the Borrower or any of its Subsidiaries which, in any case, individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or which in any manner questions the validity or enforceability of any of the Reimbursement Documents or the Related Documents.

Section 5.09. **Insurance.** The Borrower currently maintains insurance with financially sound and reputable insurance companies that are not Affiliates of the Borrower. Such insurance is of such type and in such amounts or in excess of such amounts as are customarily insured against by companies of like size and character to those of the Borrower. There are no outstanding premiums due and payable by the Borrower with regard to any of the Borrower's insurance policies.

Section 5.10. **Adequate Assets; Franchises.** The Borrower possesses or, with the passage of time in the ordinary conduct of the affairs of the Borrower, expects to possess adequate assets, franchises, licenses, patents, patent applications, copyrights, trademarks, trademark applications, and trade names, as may be required to continue to conduct its business as heretofore conducted by it.

Section 5.11. **Title to Assets; Priority Security Interest.**

(a) The Borrower has good, indefeasible and marketable title and legal and equitable ownership of the Site described in **Exhibit 5.11** and the remainder of the Mortgaged Property that exists as of the Issuance Date constituting real estate, free and clear of all Liens and adverse claims except for Permitted Encumbrances.

(b) The Borrower and each of its Subsidiaries has good, indefeasible and marketable title and legal and equitable ownership of all of its real properties (other than properties which it leases) and good title to all of its other properties and assets, including the properties and assets reflected in the balance sheet for the Borrower and its Consolidated Subsidiaries (except for properties or assets disposed of in the ordinary course of business), free and clear of all Liens and adverse claims except for Permitted Encumbrances.

(c) Upon the filing of the UCC financing statements referred to in Section 4.01(c)(v) and the filing and recordation of the Mortgage in accordance with Section 4.01(c)(iv), the lien granted by the Mortgage will be, with respect to the real property included in the Mortgaged Property, a valid mortgage lien and, with respect to the Mortgaged Personalty, a valid and perfected first priority security interest securing all Obligations of the Borrower and all amounts payable by the Borrower under the Related Documents, and such Mortgaged Property will be subject to no liens other than Permitted Encumbrances, and the Mortgage will then and thereafter be enforceable as security for the payment of all Obligations of the Borrower and all amounts payable by the Borrower under the Related Documents against the Borrower and all third parties, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditor's rights in general, and except to the extent that the remedies of specific performance and injunction may only be granted in the discretion of the court.

Section 5.12. **ERISA Plans.**

(a) Except where failure to comply could not reasonably be expected to have a Material Adverse Effect, the Borrower and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Except where failure to comply could not reasonably be expected to have a Material Adverse Effect, each Plan is, and has been, maintained in substantial compliance with ERISA and, where applicable, the Code.

(c) No act, omission or transaction has occurred which could result in imposition on the Borrower or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i) or (l) of Section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under Section 409 of ERISA that could reasonably be expected to have a Material Adverse Effect.

(d) No Plan or any trust created under any such Plan has been terminated since September 2, 1974 in a manner that would result in the imposition of a Lien on the Borrower or any ERISA Affiliate pursuant to Section 4068 of ERISA that could reasonably be expected to have a Material Adverse Effect. No liability to the PBGC (other than for the payment of current premiums which are not past due) by the Borrower or any ERISA Affiliate has been or is expected by the Borrower or any ERISA Affiliate to be incurred with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. No ERISA Event with respect to any Plan has occurred that could reasonably be expected to have a Material Adverse Effect.

(e) Full payment when due has been made of all amounts which the Borrower or any ERISA Affiliate is required under the terms of each Plan or Applicable Law to have paid as contributions to such Plan as of the Issuance Date, and no accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, exists with respect to any Plan that could reasonably be expected to have a Material Adverse Effect.

(f) The actuarial present value of the benefit liabilities under each Plan which is subject to Title IV of ERISA does not, as of the end of the Borrower's most recently ended Fiscal Year, exceed the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Plan allocable to such benefit liabilities by an amount that could reasonably be expected to have a Material Adverse Effect. The term "actuarial present value of the benefit liabilities" shall have the meaning specified in Section 4041 of ERISA.

(g) Neither the Borrower nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, maintained to provide benefits to former employees of such entities, that may not be terminated by the Borrower or any ERISA Affiliate in its sole discretion at any time without any material liability, other than liability for continuation coverage described in Part 6 of Subtitle 6 of Title I of ERISA.

(h) Neither the Borrower nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date of this Agreement sponsored, maintained or contributed to, any Multiemployer Plan.

(i) Neither the Borrower nor any ERISA Affiliate is required to provide security under Section 401(a)(29) of the Code due to a Plan amendment that results in an increase in current liability for the Plan.

Section 5.13. **Defaults.** No Default and no Event of Default has occurred and is continuing or exists.

Section 5.14. **Streets.** All streets necessary for the operation of the Facility for its intended purpose have been completed.

Section 5.15. **Utility Services.** All utility services necessary for the operation of the Facility for its intended purpose are available at the Site, including water supply and sanitary and storm sewer facilities, electric and telephone facilities.

Section 5.16. **Construction Budget.** The initial Construction Budget for the Facility attached as **Exhibit 5.16** (the "Construction Budget") sets forth the true, correct and complete good faith estimate of the Borrower on the Issuance Date of all costs necessary to construct the Facility as otherwise represented to the Bank and includes sufficient amounts for payment of all financing costs and expenses in connection with the construction of the Facility.

Section 5.17. **Condemnation, Etc.** The Borrower has no knowledge of any condemnation, zoning or other land use regulation proceedings, either instituted or planned to be instituted, which would adversely affect the Site or use or operation of the Facility.

Section 5.18. **Regulatory Restrictions on Borrowing.** Neither the Borrower nor any of its Subsidiaries is an “investment company” within the meaning of the Investment Company Act of 1940, as amended, a “holding company” within the meaning of the Public Utility Holding Company Act of 1935, as amended, or is otherwise subject to any regulations which restricts its ability to incur Indebtedness.

Section 5.19. **Solvency.** After giving effect to the transactions contemplated by the Reimbursement Documents and the Related Documents, the appraised value of the completed Facility, together with other property of the Borrower, will not be less than the probable liability on its debts, and the Borrower will not have unreasonably small capital to conduct its business.

Section 5.20. **No Material Adverse Change.** Since the most current date on which the Borrower has supplied information, financial or otherwise, to the Administrative Agent:

(a) there has been no change in the assets, liabilities, financial position or results of operations of the Borrower which constitute a Material Adverse Effect;

(b) the Borrower has incurred no obligations or liabilities which would have a Material Adverse Effect; and

(c) the Borrower has incurred no Indebtedness in excess of \$250,000, other than the Obligations, the Bonds, the Material Debt listed on **Exhibit 7.01** hereto or trade accounts payable arising in the ordinary course of the Borrower’s business which are not, based upon commercial terms customary for the Borrower, overdue, and has not guaranteed the obligations of any other Person.

Section 5.21. **Incorporation by Reference.** The representations and warranties of the Borrower contained in the other Reimbursement Documents and in the Related Documents are hereby incorporated by reference in this Agreement, and the representations and warranties made by the Borrower in such sections are hereby made for the benefit of the Bank and the Bank Participants.

Section 5.22. **Accuracy of Information.** All information, reports and other papers and data with respect to the Borrower, the Mortgaged Property and the Facility furnished to the Administrative Agent are complete and correct in all material respects, to the extent necessary to give the Administrative Agent true and accurate knowledge of the subject matter. No fact is known to the Borrower which, in the Borrower’s judgment, may have a Material Adverse Effect which has not been set forth in the Official Statement or in such other information, reports, papers and data disclosed in writing to the Administrative Agent. No document furnished or statement made by the Borrower in connection with the negotiation, preparation or execution of this Agreement contains any untrue statement of a fact material to its creditworthiness or omits to state a material fact necessary in order to make the statements contained therein not misleading.

Section 5.23. **Subsidiaries.**

(a) **Exhibit 5.23** lists each Subsidiary of the Borrower (and the direct and indirect ownership interest of the Borrower therein). Except as set forth on **Exhibit 5.23**, each

such Subsidiary is, and in the case of any additional Subsidiaries formed after the Issuance Date, will be a Wholly-Owned Subsidiary that is duly formed, validly existing and in good standing under the laws of its jurisdiction of formation and have all powers and material Governmental Approvals required to carry on its business as now conducted.

(b) Except as set forth on **Exhibit 5.23**, neither the Borrower nor any of its Subsidiaries are engaged in any joint venture or partnership with any other Person.

(c) All outstanding shares, member interests or equivalent equity interests, as applicable, of each Subsidiary (i) that is a Domestic Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and (ii) that is a Foreign Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable to the extent such concepts are applicable under the law of such Foreign Subsidiary's jurisdiction of formation.

(d) Except as set forth on **Exhibit 5.23**, there are no outstanding stock purchase warrants, subscriptions, options, securities, instruments or other rights of any type or nature whatsoever which are convertible into, exchangeable for or otherwise permit or provide for the issuance of capital stock of the Borrower or any of its Subsidiaries.

Section 5.24. **Reliance by the Bank and any Bank Participants.** All representations and warranties made in this Agreement are made with the understanding that the Bank and any Bank Participants are relying upon the accuracy of such representations and warranties. Notwithstanding that the Bank and any Bank Participants may conduct their own investigation as to some or all of the matters covered by the representations and warranties in the Reimbursement Documents and the Related Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Bank and any Bank Participants are entitled to rely on all representations and warranties as a material inducement to extend the credit evidenced by the Reimbursement Documents.

Section 5.25. **Tax Returns and Payments.** Each of the Borrower and its Subsidiaries has filed all United States federal income tax returns and all other material tax returns, domestic and foreign, required to be filed by it and has paid all taxes and assessments payable by it which have become due pursuant to such returns or pursuant to any assessment received by the Borrower or any Subsidiary, other than those not yet due and except for those which are Matters Contested in Good Faith. Each of the Borrower and its Subsidiaries has paid, or has provided adequate reserves (in the good faith judgment of the management of the Borrower and in accordance with Generally Accepted Accounting Principles) for the payment of all federal, state and foreign income taxes applicable for all prior years and for the current Fiscal Year to the Issuance Date.

Section 5.26. **Intellectual Property.** Each of the Borrower and its Subsidiaries owns or possesses or holds under valid licenses all patents, trademarks, service marks, trade names, copyrights, licenses and other intellectual property rights that are necessary for the operation of their respective properties and businesses, and neither the Borrower nor any of its Subsidiaries is in violation of any provision thereof. Except as set forth in **Exhibit 5.26**, the Borrower and its Subsidiaries conduct their business without infringement or claim of infringement of any material license, patent, trademark, trade name, service mark, copyright, trade secret or any other

intellectual property right, in each case which could reasonably be expected to have a Material Adverse Effect.

Section 5.27. **No Burdensome Restrictions.** No contract, lease, agreement or other instrument to which the Borrower or any of its Subsidiaries is a party or by which any of its property is bound or affected, no charge, restriction, judgment, decree or order and no provision of applicable law or governmental regulation have had or are reasonably expected to have a Material Adverse Effect.

Section 5.28. **Environmental Matters.** In the ordinary course of its business, the Borrower conducts an ongoing review of the effect of Environmental Laws on the business, operations and properties of the Borrower and its Subsidiaries, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital and operating expenditures required for cleanup or closure of properties presently or previously owned, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any licenses, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted at any such facility, any costs or liabilities in connection with off-site disposal of wastes or Hazardous Materials (as defined in the Environmental Indemnity), and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of this review, the Borrower has reasonably concluded that such associated liabilities and costs, including the costs of compliance with Environmental Laws, are unlikely to have a Material Adverse Effect.

Section 5.29. **Employee Relations.** Each of the Borrower and its Subsidiaries has a reasonably stable work force in place. The Borrower knows of no pending, threatened or contemplated strikes, work stoppages, job actions or other collective labor disputes involving its employees or those of any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

Section 5.30. **Documents Evidencing Indebtedness.** Except for those documents made publicly available in the filings made by the Borrower with the Securities and Exchange Commission, the Borrower has provided to the Administrative Agent copies of all loan agreements and other documents evidencing Material Debt of the Borrower.

## **ARTICLE VI**

### **AFFIRMATIVE COVENANTS OF THE BORROWER**

So long as this Agreement has not been terminated or any Obligations are due and owing the Borrower covenants to and for the benefit of the Bank and the Bank Participants to comply with the provisions contained in this Article VI unless the Administrative Agent shall otherwise consent in writing:

Section 6.01. **Reporting Requirements.** The Borrower shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Borrower in accordance with

Generally Accepted Accounting Principles consistently applied, and will furnish to the Administrative Agent, and if requested by the Administrative Agent, to the Bank Participants, the following:

(a) *Annual Financial Statements.* As soon as available, and in any event within 75 days after the close of each Fiscal Year of the Borrower, the Borrower hereby covenants and agrees that it shall deliver, or shall cause to be delivered, the complete audited financial statements of the Borrower including the balance sheet as of the end of such Fiscal Year and the related statements of revenues and expenses and cash flows for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail, certified and prepared by Ernst & Young, LLP or any other independent certified public accountant reasonably acceptable to the Administrative Agent. Such financial statements shall be accompanied by an opinion of a certified public accountant, which opinion shall be signed by such certified public accountant. The opinion of the certified public accountant shall be free of exceptions or qualifications not reasonably acceptable to the Administrative Agent and, in any event, shall be free of any exception or qualification which is of "going concern" or like nature or which relates to a more limited scope of examination and shall be otherwise reasonably acceptable to the Administrative Agent. Such opinion shall in any event contain a written statement of the certified public accountant substantially to the effect that (i) said certified public accountant has examined the financial statements in accordance with Generally Accepted Accounting Principles and accordingly made such tests of accounting records and such other auditing procedures as the certified public accountant considered necessary under the circumstances and (ii) in the opinion of the certified public accountant such financial statements present fairly the financial position of the Borrower as of the end of such Fiscal Year and the results of the Borrower's operations and changes in cash flows for such Fiscal Year, in conformity with Generally Accepted Accounting Principles applied on a basis consistent with that of the preceding Fiscal Year. Such financial statements shall also be accompanied by copies of any management letters delivered by such certified public accountant to the Borrower.

(b) *Quarterly Financial Statements.* As soon as available, and in any event within forty-five (45) days after each of the first three fiscal quarters in each Fiscal Year of the Borrower, the Borrower hereby covenants and agrees that it shall deliver, or shall cause to be delivered, the unaudited financial statements of the Borrower, prepared by management of the Borrower, and in a form comparable to those described in paragraph (a) above. All of said financial statements shall be certified by the chief financial officer of the Borrower as presenting fairly the financial position of the Borrower as of such dates and fiscal periods and the results of its operations and cash flows for such fiscal periods, in conformity with Generally Accepted Accounting Principles applied in a manner consistent with that of the most recently furnished audited financial statements, subject to normal and recurring year-end audit adjustments.

(c) *Operating Budget.* Together with the submission of the annual financial statements described in paragraph (a) above, an annual Operating Budget for the upcoming Fiscal Year, certified by the chief financial officer of the Borrower, which shall include the prior Fiscal Year's budget to actual expenses.

(d) *Certificate of Compliance*. Simultaneously with the delivery of each set of financial statements referred to in Section 6.01(a) and (b), a certificate signed by the chief financial officer of the Borrower, substantially in the form of **Exhibit 6.01(d)** attached hereto, stating, among other things, that (i) under his or her supervision the Borrower has made a review of its activities during the preceding annual or quarterly period, as the case may be, for the purpose of determining whether or not the Borrower has complied with all of the terms, provisions and conditions of this Agreement, (ii) to the best of his or her knowledge the Borrower has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement on its part to be performed and no Default or Event of Default has occurred, or if a Default or Event of Default has occurred such certificate shall specify each such Default or Event Default, the nature and status thereof and any remedial steps taken or proposed to correct such default and (iii) that the financial statements being submitted are true, correct and complete in all material respects.

(e) *Insurance Certification*. Simultaneously with the delivery of each set of annual financial statements referred to in Section 6.01(a), a certificate, dated the date of furnishing, signed by the chief financial officer of the Borrower, to the effect that the Borrower's insurance is in compliance with Section 6.04.

(f) *Audit Letters*. Simultaneously with the delivery of each set of audited financial statements referred to in Section 6.01(a), a complete copy (together with any and all exhibits, reports, letters and schedules referenced therein) of the annual management letter of recommendations provided by the independent certified public accountants in connection with such annual audited financial statements.

(g) *Other Reports*. Promptly after the furnishing thereof, a copy of any financial statement or report furnished to the Bond Trustee or any other holder of the securities of the Borrower pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.01.

(h) *Governmental Filings*. Promptly upon the filing thereof, a copy of any material filing made by the Borrower with any Governmental Authority pursuant to the Applicable Law relating to Facility.

(i) *Licensure and Inspections*. As soon as available, copies of each annual licensure or other inspection report of the Facility by any Governmental Authority.

(j) *Amendments to Other Documents*. Promptly upon execution of any amendment, modification or supplement to any of the Related Documents, a true and correct copy of such amendment, modification or supplement.

(k) *Annual Opinion of Counsel*. Within sixty (60) days after the end of the calendar year ending December 31, 2009 and within sixty (60) days of the end of every fifth year thereafter, an opinion of counsel addressed to the Bank and the Bank Participants (i) stating that such action has been taken with respect to the filing, recording re-filing and re-recording of the Reimbursement Documents and Related Documents or financing statements and continuation

statements with respect thereto as is necessary to perfect or preserve the liens on and security interests in and to the collateral purported to be created in connection with the Reimbursement Documents and Related Documents, and reciting the details of such action or referring to prior opinions of counsel in which such details are given and (ii) stating what, if any, action of the foregoing nature may reasonably be expected to become necessary during the next succeeding twelve (12) months in order to perfect or continue the perfection of the liens on and security interests in the collateral purported to be created in connection with the Reimbursement Documents and Related Documents.

(l) *Other Information.* Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Borrower, the Mortgaged Property or the Facility as the Administrative Agent may from time to time reasonably request.

(m) *Internal Revenue Service.* Promptly upon sending or receiving any correspondence to or from the Internal Revenue Service concerning the tax-exempt status of the Bonds, a copy of such correspondence.

(n) *SEC Filings.* Promptly upon the distribution thereof, one copy of (i) each financial statement, report, notice or proxy statement sent by the Borrower or any Subsidiary to public security holders generally and (ii) each regular or periodic report, registration statement (without exhibits other than on Form S-8) and each prospectus and all amendments thereto filed by the Borrower or any Subsidiary with the SEC and of all press releases and other written communications available generally by the Borrower or any Subsidiary to the public concerning material developments or developments that could reasonably be expected to have a Material Adverse Effect.

Section 6.02. **Remarketing of Bonds.** The Borrower shall require the Remarketing Agreement or the Bond Indenture to contain a provision requiring the remarketing of the Bonds in the following order of priority: (a) Pledged Bonds; (b) Borrower Bonds; and (c) any other Bonds.

Section 6.03. **Notices.** The Borrower shall provide to the Administrative Agent:

(a) *Notice of Default.* Immediately upon becoming aware thereof, notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes a Default or Event of Default.

(b) *ERISA.* Promptly after becoming aware of the occurrence of any ERISA Event or of any “prohibited transaction” (as defined in Section 4975 of the Code or Section 406 of ERISA) in connection with any Plan or any trust created thereunder, a written notice signed by the chief executive officer or chief financial officer of the Borrower specifying the nature thereof, what action the Borrower is taking or proposes to take with respect thereto and, when known, any action proposed to be taken by any Governmental Authority with respect thereto.

(c) *Litigation; Arbitration.* Prompt written notice of all actions, suits and proceedings before any Governmental Authority or other governmental commission, board, bureau, agency or instrumentality, domestic or foreign, or any arbitration body or authority, against or involving the Borrower, any member of Borrower, any of the Borrower’s Subsidiaries,

the Mortgaged Property or the Facility which involve claims which could reasonably be expected to have a Material Adverse Effect.

(d) *Material Adverse Effect*. Promptly after becoming aware thereof, the Borrower shall provide the Administrative Agent with written notice of any event which has or the Borrower reasonably anticipates will have a Material Adverse Effect.

(e) *Difficulty in Obtaining Labor or Materials*. Prompt written notice of (i) any material difficulty in obtaining labor or materials for the Facility in a timely manner, any condemnation or casualty or any other matter which would have a Material Adverse Effect on the operations of the Facility or (ii) any threatened or actual work stoppage at the Facility.

(f) *Claimed Default*. Promptly upon receipt of any notice from, or the taking of any action by, the holder of any Indebtedness of the Borrower with respect to a claimed default, copies of such notice or a report of such action.

(g) *Disputes*. Promptly upon (i) receipt by the Borrower, a copy of any written notice from a party to any contract with Borrower of any dispute thereunder which could reasonably be expected to have a Material Adverse Effect and (ii) transmission by the Borrower, a copy of any written notice sent by the Borrower to a party to any contract with Borrower of any dispute thereunder which could reasonably be expected to have a Material Adverse Effect.

#### Section 6.04. **Insurance.**

(a) *General*. The Borrower shall continuously insure the Mortgaged Property with financially sound and reputable insurance companies that are not Affiliates of the Borrower against fire (with extended coverage) in the full insurable value of the Mortgaged Property, and against such other casualties and in such other amounts as required by the Administrative Agent. The policies shall be of such type and in such amounts (and with such risk retentions and with such deductibles) or in excess of such amounts as are customarily carried by and insures against such risks as are customarily insured against by businesses of like size and character to the Borrower.

(b) *Business Interruption*. In addition to the insurance requirements set forth in clause (a), the Borrower will maintain not less than \$64,000,000 of business interruption insurance at all times (or such lesser amount as the Administrative Agent may agree to in its reasonable discretion).

(c) *Title Insurance*. In addition to the insurance requirements set forth in clauses (a) and (b), the Borrower will obtain title insurance in the Stated Amount of the Letter of Credit insuring the interest of the mortgagee in the Mortgaged Property and the priority of the mortgage lien created by the Mortgage.

(d) *Coverage*. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding clauses, by reason of co-insurance provisions or otherwise, without the prior written consent of the Administrative Agent. The term "full insurable replacement value" shall mean the actual

replacement cost of the Mortgaged Property (excluding foundation and excavation costs and costs of underground flues, pipe, drains and other uninsurable items).

(e) *Cancellation; Insureds.* All policies of insurance shall provide that they may not be canceled, the coverages reduced, the deductibles increased or otherwise modified adversely to the interests of the Bank and the Bank Participants without at least thirty (30) days' prior written notice to the Administrative Agent. The casualty and liability insurance policies relating to the Mortgaged Property shall name the Administrative Agent as an additional insured and a loss payee. The insurance shall require that all insurance proceeds resulting from any casualty claim relating to the Mortgaged Property be paid to the Administrative Agent for the benefit of the Bank and the Bank Participants. All policies of property insurance required hereunder, by naming the Administrative Agent as mortgagee, shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of said policy, notwithstanding any act of the owner of the property which might otherwise result in forfeiture of said insurance.

(f) *Copies of Policies.* Originals or certified copies of the original policies, including all endorsements of all such policies, shall be deposited with the Administrative Agent, provided that in lieu of such policies there may be deposited with the Administrative Agent an original certificate or certificates of the respective insurers originally executed by the authorized agent(s) attesting the fact that the insurance required by this Section 6.04 is in full force and effect and clearly reflecting all coverages, amounts and deductibles. At least five (5) days prior to the expiration of any such policy, the Borrower shall furnish the Administrative Agent evidence satisfactory to the Administrative Agent that the policy has been renewed or replaced or is no longer required by this Agreement.

(g) *Blanket Policies.* In lieu of separate policies, the Borrower may maintain blanket or umbrella policies if such policies provide the same coverage required by this Section 6.04 with protection against each risk and meeting all the other requirements stated herein and the Borrower deposits with the Administrative Agent a certificate or certificates of the respective insurers evidencing such coverage and otherwise meeting the requirements stated herein.

(h) *Unexpired Policies.* The Borrower's rights, if any, to all unexpired insurance policies, including any right to unearned premiums applicable to the Mortgaged Property and all proceeds thereof, shall inure to the benefit of, and pass to the purchaser of, the Mortgaged Property at any foreclosure or trustee's sale conducted pursuant to the terms of the Mortgage.

(i) *Self Insurance.* With the approval of the Administrative Agent, the Borrower may implement an alternative plan for providing against any risks otherwise required hereunder to be insured against under commercial insurance policies, which alternative plan may include a self-insurance or captive insurance company program, but only upon delivery to the Administrative Agent of: (i) a copy of the alternative plan, together with a written description of the plan developed by the Borrower, stating the estimated cost thereof and describing the method of operation of such plan and (ii) a written evaluation by the Insurance Consultant of such alternative plan stating that in its opinion, (A) such alternative plan is in compliance with all applicable laws of the State and Governmental Authorities having jurisdiction and (B) such

alternative plan will provide adequate reserves against the risks, and affords protection which, under the circumstances, is substantially similar to (or better than) the insurance coverage that is to be replaced thereby. So long as the Borrower is exercising any of the options permitted by this subsection (i), it shall engage an Insurance Consultant within 90 days after the commencement of each Fiscal Year to certify as to the requirements of clause (ii) hereof.

Section 6.05. **Maintenance of Mortgaged Property.** The Borrower shall maintain and preserve the Mortgaged Property in good repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary repairs thereto and renewals and replacements thereof. The Borrower may make such replacements, additions, modifications and improvements to the Mortgaged Property as it deems necessary or desirable, subject to the following conditions:

- (a) no building or buildings shall be demolished or removed nor shall any alteration to the Mortgaged Property be made which would substantially impair the structural strength, utility or market value thereof without in each case the prior written consent of the Administrative Agent; and
- (b) all alterations to the Mortgaged Property shall be located wholly within the boundary lines of the real property of the Mortgaged Property and shall become a part of the Mortgaged Property.

Section 6.06. **Preservation of Lien; Recordation of Interest.** The Borrower shall take all necessary action to maintain and preserve the lien and security interest of the Mortgage. The Borrower shall cause to be filed, registered and recorded all necessary financing statements or other instruments, and any amendments or continuation statements relating thereto, necessary to be kept and filed in such manner and in such places as may be required by law to fully preserve and protect the lien and security interest granted by the Borrower in, and all rights of the Bank and the Bank Participants granted by the Borrower with respect to, the Mortgaged Property, the Reimbursement Documents and the Related Documents. The Borrower shall, upon the request of the Administrative Agent, from time to time, execute and deliver and, if necessary, file such further instruments and take such further action as may be reasonably necessary to effectuate the provisions of the Reimbursement Documents and the Related Documents or to protect the interests of the Bank and the Bank Participants in the Mortgaged Property. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Reimbursement Documents, the Related Documents and such instruments of further assurance.

Section 6.07. **Payment of Taxes; Removal of Liens.** The Borrower shall pay all assessments or other governmental charges as the same respectively become due, all taxes and payments in lieu of taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Borrower or the Mortgaged Property or any interest thereon and promptly discharge or cause to be discharged all liens, encumbrances and charges on the Mortgaged Property, or any part

thereof, other than Permitted Encumbrances. Notwithstanding the previous sentence, the Borrower shall not be required to pay any tax, charge, assessment or imposition nor to remove any Lien, nor to comply with any Applicable Law, with respect to any Matters Contested in Good Faith. Notwithstanding the foregoing, if the Administrative Agent shall notify the Borrower that, in the opinion of counsel to the Administrative Agent, by nonpayment of any of the foregoing items the lien of the Mortgage could reasonably be expected to be materially endangered or any of the properties of the Borrower or any substantial part thereof could reasonably be expected to be subject to loss or forfeiture, then the Borrower shall promptly pay all such unpaid items and cause them to be satisfied and discharged.

Section 6.08. **Right of Entry.** Upon reasonable prior notice, the Borrower shall permit the duly authorized representatives of the Bank and the Bank Participants during normal business hours to enter the Mortgaged Property, or any parts thereof, to examine and copy the Borrower's financial and corporate books, records and accounts, and to discuss the affairs, finances, business and accounts of the Borrower with the Borrower's officers, directors and employees to monitor compliance with the provisions of the Reimbursement Documents and the Related Documents.

Section 6.09. **Licensure.**

(a) The Borrower shall maintain all permits required for the occupancy, operation and use of the Facility.

(b) The Borrower shall effect any changes to the operation of the Facility which are necessary to obtain or maintain such Permits. Upon any loss of any such Permit, the Borrower shall immediately send to the Administrative Agent a statement setting forth the reasons given by the Governmental Authority and the actions taken or proposed to be taken to obtain or restore such Permit.

Section 6.10. **Reserved.**

Section 6.11. **Fixed Charge Coverage Ratio.** The Borrower will not, as end of any fiscal quarter, permit the Fixed Charge Coverage Ratio for the four quarter period ended as of the end of such fiscal quarter to be less than 1.50 to 1.00.

Section 6.12. **Leverage Ratios.**

(a) The Borrower will not, as of the end of any calendar month, permit the ratio of Funded Net Debt to Total Consolidated Capitalization, as a percentage, to exceed 50%.

(b) The Borrower will not, as of the end of any fiscal quarter, permit the ratio of Funded Net Debt to Consolidated EBITDA for the four-quarter period ended as of the end of such fiscal quarter to exceed 2.50 to 1.00.

Section 6.13. **Net Worth.** The Borrower will at all times maintain Consolidated Tangible Net Worth at not less than the sum of (a) \$100,000,000, (ii) 100% of the net proceeds of all stock issued after the Issuance Date, plus (c) 50% of Consolidated Net Income after June 30, 2004 (taken as one accounting period), but excluding from such calculation of Consolidated

Net Income for purposes of this clause (c) any quarter in which Consolidated Net Income is negative.

Section 6.14. **Hazard and Condemnation Proceeds.** The Borrower will apply, or cause to be applied, Net Proceeds in accordance with the Mortgage.

Section 6.15. **ERISA Compliance.** Except where failure to comply could not reasonably be expected to have a Material Adverse Effect, the Borrower shall, and shall use its best efforts to cause its ERISA Affiliates to, in a timely fashion, comply with all requirements of ERISA and the Code, including but not limited to paying all contributions required to meet the minimum funding standards set forth in ERISA and the Code with respect to each Plan and to file all annual reports and other disclosures required to be filed pursuant to ERISA or the Code in connection with each Plan. The Borrower shall not terminate or take any other action with respect to, or permit any ERISA Affiliate to terminate or take any other action with respect to, any Plan so as to result in any liability of the Borrower to the PBGC that could reasonably be expected to have a Material Adverse Effect.

Section 6.16. **Compliance with Laws.** The Borrower shall comply in all material respects with all Applicable Laws except for Matters Contested in Good Faith and except where such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 6.17. **Compliance with Other Agreements.** The Borrower will pay, perform and discharge, and will cause each of its Subsidiaries to pay, perform and discharge, at or before their respective due dates, (a) all their respective obligations, liabilities and indebtedness, including all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons which, in any such case, if unpaid, might by law give rise to a Lien upon any of their properties or assets which could reasonably be expected to have a Material Adverse Effect and (b) all lawful taxes, assessments and changes or levies made upon their properties or assets, by any Governmental Authority, except where the item is a Matter Contested in Good Faith.

Section 6.18. **Compliance with Related Documents.** The Borrower shall comply in all material respects with the terms and conditions of the Related Documents.

Section 6.19. **Costs of Appraisal.** The Borrower shall pay all reasonable costs and expenses incurred by the Administrative Agent in connection with any appraisals ordered pursuant to Section 2.10 hereof.

Section 6.20. **Investments.** The Borrower shall invest all amounts on deposit in the funds and accounts established under the Bond Indenture in Permitted Investments. In the event that any such investment shall cease to meet the requirements of a Permitted Investment, the Borrower shall promptly notify the Administrative Agent in writing of the amount and the circumstances and, unless the Administrative Agent shall otherwise advise the Borrower, the Borrower shall liquidate such investment and reinvest the proceeds thereof in a Permitted Investment within ten (10) days of the notice.

Section 6.21. **Guaranty by Material Subsidiary.** The Borrower shall cause any Material Subsidiary which is created to guarantee the Obligations of the Borrower hereunder.

Section 6.22. **Conduct of Business and Maintenance of Existence.** Except as otherwise permitted by Section 7.02, the Borrower will continue, and will cause each of its Subsidiaries to continue, to engage in business of the same general type as now conducted by the Borrower and its Subsidiaries (or complementary thereto), and will preserve, renew and keep in full force and effect, and will cause each of its Subsidiaries to preserve, renew and keep in full force and effect, their respective corporate existence and their respective rights, privileges and franchises (including without limitation their qualification and good standing) necessary or desirable in the normal conduct of business.

Section 6.23. **More Favorable Covenants.** If, after the date hereof, any of the covenants, representations and warranties or events of default, or any other material term or provision, contained in BBT Agreement is amended, restated, supplemented or otherwise modified to make such covenant, representation and warranty or event of default, or any other material term or provision more favorable, in the sole but reasonable opinion of the Administrative Agent, to the lender or lenders under the BBT Agreement than are the terms of this Agreement to the Bank and the Bank Participants, this Agreement shall be amended to contain each such more favorable covenant, representation and warranty, event of default, term or provision, and the Borrower hereby agrees to so amend this Agreement and to execute and deliver all such documents requested by the Administrative to reflect such amendment. Prior to the execution and delivery of such documents by the Borrower, unless the Administrative Agent has waived in writing its rights under this Section 6.23, this Agreement shall be deemed to contain each such more favorable covenant, representation and warranty, event of default, term or provision of the BBT Agreement for purposes of determining the rights and obligations hereunder.

Section 6.24. **Additional Guaranty Agreement Documentation.**

(a) If, at any time after the date hereof, (i) any of the Borrower's Subsidiaries becomes a Material Subsidiary or (ii) the Borrower forms or acquires any Material Subsidiary, then the Borrower shall provide the following documentation to the Administrative Agent:

(i) a guaranty of the Material Subsidiary that guarantees the Obligations, in form and substance acceptable to the Administrative Agent, and duly executed by such Material Subsidiary;

(ii) a certificate from the chief executive officer, chief financial officer or treasurer of such Material Subsidiary, in form and substance reasonably satisfactory to the Administrative Agent, to the effect that all representations and warranties of such Material Subsidiary contained in the guaranty are true, correct and complete in all material respects; that such Material Subsidiary is not in violation of any of the covenants contained in the guaranty; and that no Default or Event of Default has occurred and is continuing or, after giving effect to its execution and delivery of the guaranty, will occur;

(iii) a certificate of the secretary or other appropriate officer or authorized person of such Material Subsidiary certifying as to the incumbency and genuineness of the signature of each officer or authorized signer of such Material Subsidiary executing the guaranty and certifying that attached thereto is (A) a true and

complete copy of the articles of incorporation, articles of organization, partnership agreement or equivalent organizational document of such Material Subsidiary, and all amendments thereto, certified as of a recent date by the appropriate governmental official of its jurisdiction of formation; (B) a true and complete copy of the bylaws, operating agreement, or equivalent agreement of such Material Subsidiary as in effect on the date of such certification; (C) a true and complete copy of the resolutions duly adopted by the board of directors, members, managers or equivalent governing body of such Material Subsidiary authorizing the execution, delivery and performance of the guaranty; and (D) a true and complete copy of each certificate required to be delivered pursuant to Section 6.24(a)(iv) hereof;

(iv) a certificate of good standing of such Material Subsidiary as of a recent date from the appropriate governmental official of its jurisdiction of formation and in each other jurisdiction where such Material Subsidiary is qualified to do business;

(v) a favorable opinion of counsel to such Material Subsidiary addressed to the Administrative Agent in form and substance satisfactory to the Administrative Agent in the exercise of its reasonable discretion with respect to such Material Subsidiary and the guaranty, and such other matters as the Administrative Agent shall request; and

(vi) such other documents, instruments, certificates, opinions and other information as the Bank shall reasonably request.

(b) The Borrower shall pay on demand all reasonable out-of-pockets fees and expenses of the Administrative Agent, including without limitation the reasonable fees and expenses of counsel to the Administrative Agent, incurred in connection with the execution and delivery of a guaranty by a Material Subsidiary and the related documents, agreements, certificates and opinions described in this Section 6.24.

## **ARTICLE VII**

### **NEGATIVE COVENANTS**

The Borrower covenants to the Bank and the Bank Participants unless the Administrative Agent shall agree otherwise in writing, as follows:

Section 7.01. ***Incurrence of Additional Indebtedness.*** The Borrower shall not create, incur, assume or suffer to exist or permit any Subsidiary to create incur, assume or suffer to exist, any Debt, except (a) Debt owing to the Bank or the Bank Participants; (b) Material Debt existing on the Issuance Date and described on **Exhibit 7.01**, and any extension, renewal or refinancing of such Material Debt, provided that any such extension, renewal or such refinancing (i) does not increase the principal amount of such Material Debt at the time of such extension, renewal or refinancing and (ii) is on terms substantially similar to, and no more restrictive than, the original terms of such Material Debt; (c) Debt outstanding under the BBT Agreement and under the Notes (as defined in the BBT Agreement) and the Subsidiary guarantees required pursuant thereto; (d) Debt outstanding under the Note Agreement and under the Notes (as defined in the Note Agreement) and the Subsidiary guarantees required pursuant thereto; (e) Debt owing from

the Borrower to a Wholly-Owned Subsidiary, from a Wholly-Owned Subsidiary to the Borrower, or from one Wholly-Owned Subsidiary to another Wholly-Owned Subsidiary; (f) additional Facility Debt incurred after the Issuance Date, provided that at the time such additional Facility Debt is incurred (i) no Default or Event of Default shall have occurred or will occur as a result of the incurrence of such Facility Debt and (ii) the aggregate principal amount of such additional Facility Debt is not greater than \$10,000,000; and (g) in addition to Debt permitted by clauses (a) through (f) above, Debt incurred after the Issuance Date, provided that at the time such additional Debt is incurred, (i) no Default or Event of Default shall have occurred or will occur as a result of the incurrence of such additional Debt, (ii) the Funded Net Debt to Total Consolidated Capitalization Ratio both immediately prior to the occurrence of such additional Debt shall be at least three percentage points lower than the maximum Funded Net Debt to Total Consolidated Capitalization Ratio required by Section 6.12(a) on the date of the incurrence of such additional Debt and (iii) the Funded Net Debt to Consolidated EBITDA Ratio both immediately prior to the incurrence of such additional Debt and immediately after and giving effect to the incurrence of such Debt shall be at least 0.5 lower than the maximum Funded Net Debt to Consolidated EBITDA Ratio required by Section 6.12(b) on the date of the incurrence of such additional Debt. Any Person which becomes a Subsidiary after the date hereof shall for all purposes of this Section 7.01 be deemed to have created, assumed or incurred at the time it becomes a Subsidiary all Debt of such Person existing immediately after it becomes a Subsidiary.

Section 7.02. ***Consolidation, Merger, Sale and Conveyance.***

(a) Neither the Borrower nor any Subsidiary will, without the prior written consent of the Administrative Agent, consolidate or merge with or into any other Person, provided that so long as no Default or Event of Default shall have occurred or will occur after giving effect thereto, (i) a Subsidiary may merge into the Borrower if the Borrower is the surviving entity and (ii) the Borrower or any Subsidiary may merge into or consolidate with another Person if the Borrower or such Subsidiary, as the case may be, is the entity surviving such merger or consolidation.

(b) Neither the Borrower nor any Subsidiary will, without the prior written consent of the Administrative Agent, convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets (including, without limitation, the sale of any receivables and leasehold interests and any sale leaseback or similar transaction), whether now owned or hereafter acquired except:

(i) the sale of Inventory in the ordinary course of business;

(ii) provided that no Default or Event of Default has occurred or would occur as a result of the consummation of such sale or other disposition, the sale or other disposal of assets (but specifically excluding the real property and the improvements thereon encumbered by the Mortgage) for fair market value which the Borrower determines are no longer needed for the operation of the business of the Borrower and its Subsidiaries; provided that the aggregate net book value of assets so disposed of shall not exceed \$2,500,000 in any Fiscal Year; provided further that if the Borrower or the applicable Subsidiary acquires fixed assets useful and intended to be used in the

operation of the business of the Borrower and its Subsidiaries, such fixed assets have an actual out-of-pocket cost equal to or greater than the proceeds resulting from such sale or other disposition, and such fixed assets are acquired within 210 days of such sale or other disposition, such sale or other disposition shall be excluded from the calculation of the amount in this clause (ii);

(iii) provided that no Default or Event of Default has occurred or would occur as a result of such sale or other disposition, the sale, lease, transfer or other disposition of any assets of any Subsidiary to the Borrower or a Wholly-Owned Subsidiary;

(iv) provided that no Default or Event of Default has occurred and notwithstanding any other provision of this Agreement or in any of the other Reimbursement Documents or Related Documents, upon thirty (30) days prior written notice to the Administrative Agent, (A) the Borrower may create a Wholly-Owned Subsidiary (the "IP Subsidiary") and transfer thereto all patents, trademarks, copyrights and other intellectual property of the Borrower (the "IP"); provided, however, that the IP Subsidiary shall execute and deliver to the Administrative Agent, or cause to be executed and delivered to the Administrative Agent, all of the documentation required by Section 6.24, if any and (B) the IP Subsidiary may license the IP to the Borrower, subject to Section 7.14 hereof; and

(v) the Borrower may terminate the corporate or other existence of DENPLAX, S.A. and surrender its equity interest in DENPLAX, S.A. for no consideration, provided that no Default or Event of Default has occurred or would occur as a result of such termination of existence or surrender of equity interest, and further provided that such termination of existence and surrender of equity interest is deemed prudent in the reasonable business judgment of the Borrower.

#### Section 7.03. ***Investments; Acquisitions.***

(a) *Investments.* Neither the Borrower nor any Subsidiary will hold, make or acquire any Investment in any Person, except:

(i) the Borrower and any Subsidiary may invest in cash and Cash Equivalents;

(ii) the Borrower and any Subsidiary may acquire and hold receivables owing to them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(iii) the Borrower and any Subsidiary may acquire and own investments (including Debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with customers and supplies arising in the ordinary course of business;

(iv) the Borrower and any Subsidiary may make loans and advances to any employees, officers, directors, managers, shareholders, or members of their

immediate families, and to current and/or prospective customers and/or vendors in the ordinary course of business (excluding receivables arising in the ordinary course of business), provided such loans and advances do not exceed at any time, in the aggregate, \$500,000;

(v) any Acquisition permitted by Section 7.03(b);

(vi) the Borrower may invest up to \$300,000 in addition to its existing investment in Winchester Capital, Inc.;

(vii) the Borrower may invest up to \$500,000 in the aggregate, in addition to the value of the IP to be contributed thereto, in the IP Subsidiary;

(viii) the Borrower and/or any Subsidiary may invest in Trex Wood Polymer Espana, S.L., in DENPLAX, S.A. and/or in additional to-be-formed Foreign Subsidiaries and Foreign Joint Ventures, provided that the total investment in all such Foreign Subsidiaries and Foreign Joint Ventures, exclusive of the investment as of the Issuance Date in Trex Wood Polymer Espana, S.L. and the investment as of the Issuance Date of Trex Wood Polymer Espana, S.L. in DENPLAX, S.A., shall not at any time exceed \$3,000,000;

(ix) any Subsidiary may invest in the Borrower; and

(x) the Borrower may hold other Investments not set forth in sub-clauses (i) to and including (ix) above in an aggregate amount not to exceed \$15,000,000 at any time; provided, however, that (A) with respect to the Investments described in sub-clauses (iv), (vi), (vii) and (viii) above, the limits set forth therein may not be exceeded, and (B) any amount invested pursuant to sub-clause (viii) above shall reduce dollar-for-dollar the amount available for other Investments under this sub-clause (x).

(b) *Acquisitions.* The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Acquisition transaction, except that the Borrower and any Subsidiary may (i) acquire all or a material portion of the assets of a Person and (ii) own, purchase or acquire stock, obligations or securities of a Person which following such purchase or acquisition is a Wholly-Owned Subsidiary if (A) the Person being acquired (or whose assets are being acquired) is in the same general type of business as the Borrower (or complementary thereto); (B) the aggregate cash consideration (exclusive of all Debt of such Person being acquired that is not discharged by the seller at the time of such Acquisition, all Debt as to which the Borrower takes subject, and all other liabilities (including contingent earn-out payments) paid or to be paid by the Borrower or the Person being acquired in connection with such Acquisition) paid (1) in connection with any Acquisition (or series of related Acquisitions) shall not exceed \$10,000,000 during any Fiscal Year of the Borrower and (2) in connection with all Acquisitions shall not exceed \$15,000,000 for the period from the Issuance Date to the Stated Expiration Date, (C) the aggregate consideration (including all Debt of such Person being Acquired that is not discharged by the seller at the time of such Acquisition, all Debt as to which the Borrower takes subject, and all other liabilities (including contingent earn-out payments paid or to be paid by the Borrower or the Person being acquired in connection with such Acquisition) paid (1) in

connection with all Acquisitions shall not exceed \$20,000,000 during any Fiscal Year of the Borrower and (2) in connection with all Acquisitions shall not exceed \$30,000,000 for the period from the Issuance Date to the Stated Expiration Date; (D) (1) the ratio referred to in Section 6.12(a) both immediately prior to such proposed Acquisition and immediately after and giving effect to such proposed Acquisition shall be at least three percentage points lower than the maximum such ratio required by Section 6.12(b) on the date of such proposed Acquisition and (2) the Pro Forma Total Consolidated Debt to Consolidated EBITDA Ratio shall be at least 0.5 lower than the maximum such ratio required by Section 6.12(b) on the date of the proposed Acquisition; (E) no Default or Event of Default has occurred or will occur as a result of the Acquisition of such Person; and (F) the Borrower shall have provided the Administrative Agent not less than ten (10) Business Days before the consummation of such Acquisition a certificate in form and substance satisfactory to the Bank that certifies as to each of the items in clauses (A), (B), (C), (D) and (E) of this Section 7.03(b) and includes both pro forma financial statements that demonstrate compliance with clause (D) of this Section 7.03(b) and consolidated financial statements for the Borrower and its Subsidiaries that demonstrate compliance with each of the financial covenants contained in Sections 6.11, 6.12 and 6.13 hereof immediately prior to and after giving effect to such Acquisition, and the Administrative Agent shall have accepted as correct prior to the consummation of such Acquisition such certificate and the calculations and assumptions contained therein and in the financial statements included therewith.

**Section 7.04. *Mortgage, Security Interests and Encumbrances.***

(a) Except for Permitted Encumbrances, the Borrower shall not mortgage, grant a deed of trust or mortgage lien upon, pledge, grant a security interest in, make an assignment of, create, incur, assume or suffer to exist any Lien upon or with respect to the Mortgaged Property.

(b) Except for Permitted Encumbrances, the Borrower shall not grant any security interest in any of its assets except (i) as the same may be granted to the Bank on a pari passu basis and (ii) that the Borrower shall be permitted to grant a purchase money security interest in fixtures and equipment to creditors providing financing for the purchase of such fixtures and equipment, provided that the amount of such Indebtedness does not exceed the purchase price of such fixtures and equipment and provided further that the lien so granted does not extend to any assets of the Borrower not acquired with such purchase money Indebtedness.

(c) The Borrower shall not sell the Mortgaged Property or assign any right to receive income from the sale, lease, use or other disposition of the Mortgaged Property, or file or permit the filing of any financing statement covering any of the Mortgaged Property under the Uniform Commercial Code as in effect in any applicable jurisdiction or any other similar notice of Lien under any similar recording or notice statute, provided that the provisions of this Section 6.07 shall not prevent the creation, incurrence, assumption or existence of Permitted Encumbrances.

**Section 7.05. *Amendments.*** The Borrower shall not amend, modify, terminate or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents except to the extent permitted by this Agreement.

Section 7.06. **Compliance With ERISA.** The Borrower shall not terminate or take any other action with respect to, or permit any of its shareholders or any Affiliate or Subsidiary to terminate or take any other action with respect to, any Plan so as to result in any liability of the Borrower to the PBGC that could reasonably be expected to have a Material Adverse Effect.

Section 7.07. **Accounting Methods and Fiscal Year.** The Borrower shall not adopt, permit or consent to any change in accounting practices other than as required by Generally Accepted Accounting Principles and will not adopt, permit or consent to any change in its established Fiscal Year.

Section 7.08. **Material Subsidiary Guaranty.** Except as permitted or required by the BBT Agreement or the Note Agreement as in effect on the Issuance Date, the Borrower shall not permit any Material Subsidiary to guaranty any obligations other than the Obligations hereunder.

Section 7.09. **Successor Trustee and Remarketing Agent.** The Borrower shall not agree to any successor Bond Trustee or Remarketing Agent, unless such successor is reasonably satisfactory to the Administrative Agent.

Section 7.10. **Tax Exemption.** The Borrower shall not take any action, or omit to take any action, which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest component of the Bonds, and in the event of such action or omission will promptly, upon receiving notice thereof, take all lawful actions, based on advice of counsel, as may be possible to rescind or otherwise to negate the effect of such action or omission.

Section 7.11. **Official Statement Supplements.** The Borrower shall not make any changes in reference to the Bank in any revision of the Official Statement or supplement thereto.

Section 7.12. **Capital Expenditures.** The Borrower and its Subsidiaries shall not make capital expenditures, including payments due under Capital Leases, in any Fiscal Year in excess of \$25,000,000; provided that the Borrower may expend an amount equal to the unspent portion of monies from the immediately preceding Fiscal Year in the succeeding Fiscal Year. Notwithstanding the immediately preceding sentence, the Borrower may make capital expenditures in excess of the amounts set forth in the immediately preceding sentence if, in a particular Fiscal Year, the difference between the figure equal to clause (a) of the definition of the Fixed Charge Coverage Ratio for such Fiscal Year minus non-Maintenance Capital Expenditures for such Fiscal Year divided by the figure equal to clause (b) of the definition of the Fixed Charge Coverage Ratio for such Fiscal Year is equal to or greater than 1.0 to 1.

Section 7.13. **Guarantees.** The Borrower shall not guaranty any debt over \$1,000,000 in the aggregate except the debt of a Material Subsidiary.

Section 7.14. **Transactions with Affiliates.** The Borrower will not and will not permit any Subsidiary to enter into directly or indirectly any transaction or material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than a Subsidiary), except in the ordinary course of the Borrower's or such Subsidiary's business and upon fair and reasonable

**ARTICLE VIII**  
**EVENTS OF DEFAULT**

Section 8.01. ***Events of Default.*** The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary or effected by operation of law) shall be an “**Event of Default**” hereunder unless waived in writing by the Administrative Agent:

- (a) the Borrower fails to pay when due any amount specified herein as and when the same is due and payable;
- (b) the Borrower fails to observe or perform any of the covenants, conditions or provisions of the Reimbursement Documents to which it is a party (other than as specified in subparagraph (a) above) and to remedy such default within thirty (30) days after the Administrative Agent shall have provided the Borrower with notice of such failure;
- (c) any representation or warranty made by the Borrower herein or in any certificate, financial or other statement furnished by the Borrower to the Administrative Agent pursuant to the Reimbursement Documents or the Related Documents proves to have been untrue or incomplete in any material respect when made;
- (d) the Borrower fails to make the payments required under the Loan Agreement when due, except as a result of a wrongful dishonor by the Bank of a properly requested draw under the Letter of Credit and at the time such payment was due under the Loan Agreement adequate funds to make such payment were available in the Reimbursement Account;
- (e) the occurrence of an Event of Bankruptcy;
- (f) any provision of this Agreement or any of the other Reimbursement Documents or Related Documents to which the Borrower is a party at any time for any reason ceases to be the legal, valid and binding obligation of the Borrower or ceases to be in full force and effect, or is declared to be null and void and such result would have a Material Adverse Effect, or the validity or enforceability of any provision of this Agreement or any of the other Reimbursement Documents or Related Documents is contested by the Borrower, or the Borrower renounces the same or denies that it has any further liability hereunder or thereunder;
- (g) the Borrower (i) fails to make any payment or payments of any Indebtedness of the Borrower when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, except for Matters Contested in Good Faith, or (ii) fails to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument (other than any failure to perform any term contemplated by sub-clause (i) hereof), except for Matters Contested in Good Faith, if, in either case, the effect of such failure to perform or observe is to accelerate, or to

permit the acceleration, mandatory redemption or tender of, the maturity of any Indebtedness of the Borrower in excess of \$250,000;

(h) an event of default has occurred and is continuing as defined in any other credit agreement under which the Borrower is now or hereafter obligated to the Bank;

(i) any party to any of the Related Documents fails duly to perform any obligation thereunder and such failure has a Material Adverse Effect;

(j) the Facility or any portion thereof is subject to any material condemnation or similar proceeding;

(k) the Facility suffers a loss by fire or other casualty and such loss is not fully insured (excluding any deductible amount permitted hereunder) and any deficiency exceeding \$50,000 between the amount of insurance paid with respect to such loss and the cost of repairing the destruction is not timely paid to the Administrative Agent to be applied pursuant to the terms of the Mortgage;

(l) any material permit or approval issued by any Governmental Authority with respect to the occupancy, operation or use of the Facility is revoked, suspended or annulled which has a Material Adverse Effect;

(m) a survey at any time shows that the improvements constituting the Facility encroach upon any street, easement, right of way or adjoining property or violate any setback requirement or that any adjoining structure encroaches on the Mortgaged Property to an extent that has a Material Adverse Effect;

(n) the Borrower or any ERISA Affiliate shall fail to pay when due an amount or amounts aggregating in excess of \$250,000 which it shall have become liable to pay under Title IV of ERISA or notice of intent to terminate a Material Plan shall be filed under Title IV of ERISA by either the Borrower, any ERISA Affiliate, any Plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Plan must be terminated; or there shall occur a complete or partial withdrawal from, or default, within the meaning of Section 4219(c)(5) of ERISA, with respect to one or more Multiemployer Plans which could reasonably be expected to cause one or more of the Borrower, any Subsidiary or any ERISA Affiliate to incur a current payment obligation in excess of \$250,000;

(o) a Change of Control shall occur;

(p) the loss or material impairment of any material license which is required to operate the Facility and provided that if such reinstatement or reissuance of such license is diligently pursued, such loss or impairment shall have remained uncured for a period of fourteen (14) Business Days; and

(q) any judgment involving monetary damages shall be entered against the Borrower which shall become a lien on the Borrower's properties or assets or any portion thereof or interest therein and such execution, attachment or similar process is not released, bonded, satisfied, vacated or stayed within thirty (30) days after its entry or levy, and said writ of execution, attachment, levy or judgment shall involve monetary damages aggregating more than \$250,000.00; or a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in any of the properties or assets of the Borrower or the seizure or foreclosure of any of the properties or assets of the Borrower pursuant to process of law or by respect of legal self-help, involving monetary damages aggregating more than \$250,000.00 unless said execution, attachment, seizure or foreclosure is stayed or bonded within thirty (30) days after the occurrence of same;

Section 8.02. ***Consequences of an Event of Default.*** If an Event of Default specified in Section 8.01 hereof has occurred and is continuing, the Administrative Agent may:

(a) by notice to the Borrower, declare the outstanding amount of the Obligations, to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(b) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Reimbursement Documents or to enforce performance or observance of any obligation, agreement or covenant of the Borrower under the Reimbursement Documents, whether for specific performance of any agreement or covenant of the Borrower or in aid of the execution of any power granted to the Administrative Agent in the Reimbursement Documents or the other Related Documents;

(c) deliver a notice to the Bond Trustee that an Event of Default has occurred and is continuing and direct the Bond Trustee to accelerate the Bonds; or

(d) exercise, or cause the Bond Trustee to exercise, any and all remedies as it may have under the Reimbursement Documents and Related Documents.

Section 8.03. ***Remedies Cumulative; Solely for the Benefit of the Bank and Bank Participants.*** To the extent permitted by, and subject to the mandatory requirements of, Applicable Law, each and every right, power and remedy herein specifically given to any of the Bank or the Bank Participants in the Reimbursement Documents and the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Bank and the Bank Participants, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Bank and the Bank Participants specified herein are for the sole and exclusive benefit, use and protection of the Bank and the Bank Participants, and the Bank and the Bank Participants are entitled, but shall have no duty or obligation to the Borrower, the Bond Trustee or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Administrative Agent hereunder or under any of the other Reimbursement Documents or Related Documents.

Section 8.04. ***Waivers or Omissions.*** No delay or omission by any of the Bank or the Bank Participants in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right, remedy or power or be construed to be a waiver of any Default by the Bank or the Bank Participants or to acquiescence therein. No express or implied waiver by any of the Bank or the Bank Participants of any Default shall in any way be, or be construed to be, a waiver of any future or subsequent Default.

Section 8.05. ***Continuance of Proceedings.*** In case any of the Bank or the Bank Participants shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Reimbursement Documents or Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank and the Bank Participants shall have the unqualified right so to do and, in such event, the Borrower, the Bank and the Bank Participants shall be restored to their former positions with respect to the Obligations, the Reimbursement Documents, the Related Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourse and powers of the Bank and the Bank Participants hereunder shall continue as if the same had never been invoked.

Section 8.06. ***Injunctive Relief.*** The Borrower recognizes that in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under the Reimbursement Documents, any remedy of law may prove to be inadequate relief to the Bank and the Bank Participants; therefore, the Borrower agrees that the Bank and the Bank Participants, if the Bank or the Bank Participants so request, shall be entitled to temporary and permanent injunctive relief in any such case.

Section 8.07. ***Power of Attorney.*** For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by Article VIII, the Borrower hereby irrevocably constitutes and appoints each of the Bank, the Bank Participants and the Administrative Agent (individually) its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in Article VIII, in the name and on behalf of Borrower. This power of attorney is a power coupled with an interest and cannot be revoked.

## **ARTICLE IX**

### **THE ADMINISTRATIVE AGENT**

Section 9.01. ***Appointment.*** JPMorgan Chase Bank, N.A. is hereby appointed to act as Administrative Agent under this Agreement and the other Reimbursement Documents for the Bank and the Bank Participants. Subject to the provisions of this Article IX, the Bank and each of the Bank Participants hereby irrevocably authorizes, and each holder of any note by the acceptance of such note shall be deemed irrevocably to authorize, the Administrative Agent to

take such action on their behalf under the provisions of this Agreement and the other Reimbursement Documents and any other instruments and agreements referred to herein or therein, and to exercise such powers and to perform such duties hereunder and thereunder, as are specifically delegated to or required of the Administrative Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto. JPMorgan Chase Bank, N.A. agrees to act as Administrative Agent on behalf of the Bank and the Bank Participants to the extent provided in this Agreement.

**Section 9.02. *Duties and Immunities.***

(a) The Administrative Agent (which term as used herein includes its affiliates and its and its affiliates' officers, directors, employees and agents) shall not have any duties or responsibilities except those expressly set forth in this Agreement and the Reimbursement Documents. The duties of the Administrative Agent shall be administrative in nature; the Administrative Agent shall exercise in good faith the same commercially reasonable care which it would exercise in dealing with loans for its own account and shall not have by reason of this Agreement or any Reimbursement Document a trustee or fiduciary relationship in respect of the Bank or the Bank Participants; and nothing in this Agreement or any Reimbursement Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any Reimbursement Document, except as expressly set forth herein or therein.

(b) Each of the Bank and the Bank Participants expressly acknowledges (i) that the Administrative Agent has not made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by the Administrative Agent to the Bank or any Bank Participant; (ii) that the Administrative Agent is not responsible to the Bank or any Bank Participant for any recitals, statements, representations or warranties contained in this Agreement or the other Reimbursement Documents or the Related Documents, or in any certificate or other document referred to or provided for in, or received by it under, this Agreement or any other Reimbursement Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Reimbursement Document or for any failure by the Borrower or any other Person to perform any of its obligations under this Agreement or any other Reimbursement Document or the Related Documents; (iii) that the Administrative Agent shall not be required to initiate or conduct any litigation or collection proceedings under this Agreement or any other Reimbursement Documents or Related Documents; (iv) that the Administrative Agent shall not be responsible for any action taken or omitted to be taken by it under this Agreement or any other Reimbursement Document, except for its own gross negligence or willful misconduct or the failure to observe the standard of care set forth in this Article IX with respect to documents and sums of money held by it; and (v) that the Administrative Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide the Bank or any Bank Participant with any credit or other information, whether coming into their possession before the making of any loan advances hereunder or at any time or times thereafter, except for notices, reports or other information, if any, expressly required to be furnished to the Bank or the Bank Participants by the Administrative Agent hereunder.

(c) The Administrative Agent may employ agents and attorneys-in-fact, shall be entitled to rely on good faith of independent counsel and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Administrative Agent shall maintain complete books and records with respect to the Obligations and shall make the same available for review by the Bank and the Bank Participants at its offices during normal business hours. The Administrative Agent may deem and treat the payee of the Note as the holder of such note for all purposes of this Agreement. The Administrative Agent shall deliver to the Bank and the Bank Participants copies of all written reports, notices and other communications received or delivered by the Administrative Agent, in its capacity as such, to or from the Borrower, promptly after receipt of same, unless the Borrower shall have been required pursuant to this Agreement to deliver copies of such written report, notice or other communication directly to the other party, the Bank and the Bank Participants.

(d) The Administrative Agent shall be entitled to rely upon any writing, facsimile transmission, telex or teletype message, resolution, notice, consent, certificate, letter, cablegram, statement, order or other document or conversation by telephone or otherwise believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper party or parties, and upon opinions of counsel and other professional advisers selected by the Administrative Agent.

Section 9.03. **Defaults and Notices; Exercise of Remedies.** The Administrative Agent shall be under no obligation to the Bank and the Bank Participants to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Reimbursement Document or Related Document on the part of the Borrower or any other Person, or the financial condition of the Borrower or the existence or possible existence of a Default. In the absence of actual knowledge, the Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default or Event of Default unless the Administrative Agent has received notice from the Bank, a Bank Participant, the Bond Trustee or the Borrower specifying such Default or Event Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, the Administrative Agent shall give prompt notice of such Default or Event of Default to each of the Bank and the Bank Participants.

Section 9.04. **Non-Reliance.** The Bank and each Bank Participant agrees that it has, independently and without reliance on the Administrative Agent and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and the Facility, has made its own decision to enter into this Agreement and that it will, independently and without reliance upon the Administrative Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis in connection with its participation in loan of credit made pursuant to the Letter of Credit.

Section 9.05. **Indemnification.** The Bank and each Bank Participant agrees to reimburse and indemnify the Administrative Agent (to the extent not reimbursed by the Borrower after commercially reasonable efforts to obtain such reimbursement), for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which are imposed on, incurred by

or asserted against the Administrative Agent in its capacity as such, in any way relating to or arising out of this Agreement, the Note or any other Reimbursement Documents or Related Documents or any action taken or omitted by the Administrative Agent hereunder or thereunder; provided that the Bank and the Bank Participants shall not be liable to the Administrative Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent that the same result from the gross negligence or willful misconduct of the Administrative Agent.

Section 9.06. **Individual Capacity.** With respect to the obligations of the Borrower relating to the Letter of Credit and the Note, JPMorgan Chase Bank, N.A. shall have the same rights and powers hereunder as any other Bank Participant, and may exercise the same as though it were not the Administrative Agent, and the terms “Bank Participant” and “holders of Notes” shall, unless the context hereof otherwise indicates, include JPMorgan Chase Bank, N.A. in its individual capacity. JPMorgan Chase Bank, N.A. may, without liability to account, make loans to, accept deposits from, act as trustee under indenture of, and generally engage in any kind of banking or trust business with the Borrower and its related entities as though it were not acting as the Administrative Agent hereunder.

Section 9.07. **Distributions.** Whenever the Bank or the Administrative Agent receives any payment on behalf of a Bank Participant it shall distribute the same to the appropriate Bank Participant, in lawful money of the United States and in like kind of funds received by it. All such payments received prior to 3:00 P.M. (prevailing Eastern time), shall be so paid on the date received or, if received later than 3:00 P.M. (prevailing Eastern time), on the next succeeding Business Day.

Section 9.08. **Successors.** The Administrative Agent may resign at any time by giving written notice thereof to each of the other Bank Participants and the Borrower, such resignation to become effective upon the discharge of the Administrative Agent from its duties under this Agreement, as set forth in this Section 9.08. Upon the resignation of the Administrative Agent, at no expense to the Borrower, and with Borrower’s prior written consent, the Bank may appoint another entity to act as Administrative Agent. Upon the acceptance by a successor to the Administrative Agent of its appointment as the Administrative Agent, hereunder, such successor to the Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties under this Agreement and, except as set forth in the following sentence, all of its rights, powers and privileges hereunder shall terminate. After any retiring Administrative Agent’s resignation hereunder, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted by it while it was the Administrative Agent under this Agreement.

## **ARTICLE X**

### **INDEMNIFICATION AND LIABILITY**

Section 10.01. **Indemnification.** In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Borrower hereby agrees (to the extent permitted by law) to indemnify and hold harmless the Bank, Administrative Agent and any Bank Participant and their respective officers, directors and

agents (the “**Indemnitees**”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys’ fees for counsel of the indemnified party’s choice and court costs) which any of the Indemnitees may incur (or which may be claimed against any of the Indemnitees by any Person or entity whatsoever) by reason of or in connection with (a) any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Official Statement or the omission or alleged omission to state in the Official Statement of a material fact necessary to make such statements, in the light of the circumstances under which they are or were made, not misleading (excluding, however, information relating to any Person other than the Borrower); (b) the execution and delivery or transfer of, or payment or failure to pay under, the Reimbursement Documents; (c) the issuance and sale of the Bonds; (d) the use of the proceeds of the Bonds; (e) the use or occupancy of the Facility by the Borrower or any other Person; (f) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default by the Borrower under this Agreement or the other Reimbursement Documents or Related Documents; or (g) involvement of the Bank, Administrative Agent or any Bank Participant in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Bank’s issuance of the Letter of Credit, their entering into this Agreement or action taken thereunder or under any of the Reimbursement Documents or any other event or transaction in connection with or contemplated by any of the foregoing; provided however, that the Borrower shall not be required to indemnify the Bank, the Administrative Agent or any Bank Participants for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (i) the willful misconduct or gross negligence of the Bank in determining whether a certificate presented under the Letter of Credit complied with the terms thereof or (ii) the Bank’s willful or grossly negligent failure to pay under the Letter of Credit after the presentation to it by the Bond Trustee of a sight draft and certificate strictly complying with the terms and conditions thereof, unless the Bank in good faith believes that it is prohibited by law or other legal authority from making such payment. If any proceeding shall be brought or threatened against an Indemnitee by reason of or in connection with the events described in clause (a), (b), (c), (d), (e), (f) or (g) (and except as otherwise provided in the proviso above), the applicable Indemnitee shall promptly notify the Borrower in writing and the Borrower shall assume the defense thereof, including the employment of counsel chosen by the Indemnitee (with fees and terms reasonably satisfactory to the Borrower) and the payment of all costs of litigation. Notwithstanding the preceding sentence, each of the Indemnitees shall have the right to employ their own respective counsel and to determine their own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of Indemnitee or the applicable Bank Participant unless (i) the employment of such counsel shall have been authorized in writing by the Borrower or (ii) the Borrower, after due notice of the action, shall not have employed counsel satisfactory to such Indemnitee or Bank Participant in the exercise of their reasonable discretion, as the case may be, to have charge of such defense, in either of which events the reasonable fees and expenses of the respective counsels for such Indemnitee or Bank Participants shall be borne by the Borrower to the extent that such action is covered by this indemnification provision. The Borrower shall not be liable for any settlement of any such action effected without its consent. Nothing under this Section 10.01 is intended to limit the Borrower’s payment of Obligations.

Section 10.02. **Liability of the Bank.** As between the Borrower, on the one hand and the Bank and the Bank Participants, on the other hand, the Borrower assumes all risks of the acts or omissions of the Bond Trustee and any transferee of the Letter of Credit with respect to its use of

the Letter of Credit. None of the Bank, the Bank Participants nor any of their respective officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Bond Trustee and any transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, except only that the Borrower shall have a claim against the Bank, and the Bank shall be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or punitive, damages suffered by the Borrower to the extent to which the Borrower proves were caused by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms thereof or (ii) the Bank's willful or grossly negligent failure to pay under the Letter of Credit after the presentation to it by the Bond Trustee of a sight draft and certificate strictly complying with the terms and conditions thereof; provided that the maximum amount of damages recoverable by the Borrower as provided above is expressly limited to the Stated Amount of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank and the Bank Participants may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

The Bank shall not be liable in any way for any failure on its part to honor any draft under the Letter of Credit as a result of any act or omission (whether rightful or wrongful) of any Governmental Authority or any other cause beyond the control of the Bank.

Section 10.03. **Facsimile Transmission.** At the request of the Borrower, the Letter of Credit provides that demands for payment thereunder may be presented to the Bank by, among other methods, facsimile transmission. The Borrower acknowledges and assumes all risks relating to the use of such demands for payment transmitted by facsimile transmission and agrees that its obligations under this Agreement shall remain absolute, unconditional and irrevocable as provided in Section 2.09 if the Bank honors such demands for payment transmitted by facsimile transmission.

Section 10.04. **No Implied Covenants.** The duties and obligations of the Bank with respect to demands for payment under the Letter of Credit shall be determined solely by the express provisions of, or those incorporated by reference into, the Letter of Credit, and no implied covenants or obligations relating to the Letter of Credit or the making of any payment thereunder shall be read into this Agreement or the Letter of Credit against the Bank.

Section 10.05. **Survival.** The obligations of the Borrower under this Article X shall survive the payment of the Bonds and the Obligations and the termination of this Agreement.

Section 10.06. **Absolute and Unconditional Agreement.**

- (a) The obligations of the Borrower under this Article X shall be a continuing, absolute and unconditional indemnity, without regard to:
  - (i) any limitation, discharge, cancellation, invalidity, rejection or unenforceability of the Obligations or the Reimbursement Documents or any part thereof; and

(ii) any circumstance whatsoever which constitutes or might be construed to be an equitable or legal discharge of the Borrower from the Obligations.

(b) The Borrower's liability hereunder shall not be conditioned or contingent upon the pursuit by the Bank or the Bank Participants of any right or remedy against Borrower or any other Person at any time and shall not be affected or limited in any manner by any action taken by the Bank or the Bank Participants in connection with exercise of any remedies under the Reimbursement Documents.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 11.01. **No Broker.** The Borrower represents and warrants to the Bank and the Bank Participants that no broker was involved in procuring the Letter of Credit, except any such broker whose commission has been paid in full by the Borrower on the Issuance Date, and agrees to indemnify and save harmless the Bank and the Bank Participants from and against any and all claims for any brokerage commission arising out of the Letter of Credit or the transactions contemplated hereby.

Section 11.02. **Further Assurances.** From time to time upon the request of the Administrative Agent, the Borrower shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the Administrative Agent may reasonably deem necessary or desirable to confirm this Agreement, the other Reimbursement Documents and the Related Documents, to carry out the purpose and intent hereof and thereof or to enable the Bank and the Bank Participants to enforce any of its rights hereunder or thereunder.

Section 11.03. **Amendments and Waivers.** The Bank, the Bank Participants and the Borrower may from time to time enter into agreements amending, modifying or supplementing this Agreement, the other Reimbursement Documents or the Related Documents or changing the rights of the Bank, the Bank Participants or the Borrower hereunder or thereunder, and the Bank and the Bank Participants may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Borrower hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

Section 11.04. **No Implied Waiver; Cumulative Remedies.** No course of dealing and no delay or failure of the Bank or the Bank Participants in exercising any right, power or privilege under this Agreement, the other Reimbursement Documents or the Related Document (including any delay in sending the notice required for an Event of Default) shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial

exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Bank and the Bank Participants under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank and the Bank Participants would otherwise have under any Reimbursement Document or Related Document, at law or in equity.

Section 11.05. **Notices.** All notices, requests, demands, directions and other communications (collectively “**notices**”) under the provisions of this Agreement shall be in writing (including telexed and facsimile communication) unless otherwise expressly permitted hereunder and shall be sent and deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next Business Day; (iii) if by telex, when appropriate answer back is received; (iv) if by telephone, when given to a person who confirms such receipt; and (v) if by facsimile, when confirmation of receipt is obtained. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

If to Borrower:

Trex Company, Inc.  
160 Exeter Drive  
Winchester, Virginia 22603  
Attention: Paul D. Fletcher, Senior Vice President, Chief Financial Officer  
Telephone: 540.542.6939  
Facsimile: 540.542.6889

If to the Bank (as Bank and Administrative Agent):

JPMorgan Chase Bank, N.A.  
277 Park Avenue  
22nd Floor  
New York, NY 10172  
Attention: Sandra BVW Braun, Vice President  
Telephone: 212.622.3622  
Facsimile: 646.534.0692

With a copy to:

McCarter & English, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, NJ 07102  
Attention: Jacqueline P. Shanes, Esq.  
Telephone: 973.622.4444  
Facsimile: 973.624.7070

If to the Bond Trustee:

J.P. Morgan Trust Company, National Association  
1 Liberty Place  
Suite 4700  
1650 Market Street  
Philadelphia, PA 19103  
Attention: Institutional Trust Services  
Telephone: 215.640.3414  
Facsimile: 215.640.3430

If to the Issuer:

Mississippi Business Finance Corporation  
753 Riverside Drive  
Jackson, Mississippi 39202  
Attention: Executive Director  
Telephone: 601.355.6232  
Facsimile: 601.355.3888

The Bank and the Bank Participants may rely on any notice (including telephoned communication) purportedly made by or on behalf of the Borrower, and shall have no duty to verify the identity or authority of the Person giving such notice. Whenever the Bank and the Bank Participants or the Administrative Agent are required or empowered to provide any notice, consent, approval or direction under this Agreement, such notice, consent, approval or direction shall be given by the Administrative Agent, and the Borrower and the Bond Trustee may conclusively rely on any such communication made or purportedly made by or on behalf of the Administrative Agent. Whenever notices are required to be given to the Bank and the Bank Participants, such notices shall be given to the Administrative Agent.

Section 11.06. ***Right of Setoff.***

(a) Upon the occurrence of an Event of Default, the Bank and the Bank Participants may, at any time and from time to time, without notice to the Borrower or any other Person (any such notice being expressly waived), set-off and appropriate and apply, against and on account of, any Obligations of the Borrower to the Bank and the Bank Participants, without regard to whether or not the Bank or the Bank Participants shall have made any demand therefor, and although such Obligations may be contingent or unmatured, any and all deposits (general or special, including but not limited to indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by the Bank or the Bank Participants to or for the credit or the account of the Borrower.

(b) The Bank and the Bank Participants agree to promptly notify the Borrower after any such set-off and application referred to in subsection (a) above, provided that the failure to give such notice shall not affect the validity of such set-off and application. Subject to the provisions of subsection (a) above, the rights of the Bank and the Bank Participants under this

Section 11.06 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Bank and the Bank Participants may have.

Section 11.07. **No Third Party Rights.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

Section 11.08. **Severability.** The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 11.09. **Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.**

(a) THIS AGREEMENT AND THE OTHER REIMBURSEMENT DOCUMENTS, EXCEPT AS OTHERWISE EXPRESSLY STATED THEREIN, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (AND, FOR PURPOSES OF DETERMINING THE HIGHEST LAWFUL RATE, APPLICABLE FEDERAL LAW IF THE APPLICATION OF FEDERAL LAW RESULTS IN A HIGHER RATE OF INTEREST) WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) THE BORROWER CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE OF NEW YORK, CITY OF NEW YORK, AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN THE CITY OF NEW YORK. THE BORROWER ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF NEW YORK AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE BORROWER'S ACTIONS TOOK PLACE IN THE STATE OR ELSEWHERE IN THE UNITED STATES. THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE THE BANK FROM OBTAINING JURISDICTION OVER THE BORROWER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) THE BORROWER, THE BANK AND THE BANK PARTICIPANTS AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER REIMBURSEMENT DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE BORROWER, THE BANK AND THE BANK PARTICIPANTS TO ENTER INTO THIS AGREEMENT AND THAT THE EXECUTION AND DELIVERY

OF THIS AGREEMENT BY THE BORROWER, THE BANK AND THE BANK PARTICIPANTS IS MADE IN RELIANCE UPON SUCH WAIVER. THE BORROWER, THE BANK AND THE BANK PARTICIPANTS EACH FURTHER WARRANT AND REPRESENT THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE BY EACH PARTY HERETO, FOLLOWING CONSULTATION WITH THEIR RESPECTIVE LEGAL COUNSEL.

(d) The waivers made pursuant to this Section 11.09 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 11.10. **Commitment Letter; Prior Understandings.** This Agreement and the other Reimbursement Documents supersede the Commitment Letter and any other draft term sheets and all other prior understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein.

Section 11.11. **Duration.** All representations and warranties of the Borrower contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement or the other Reimbursement Documents, any investigation by the Borrower or the approval of any disbursements, honoring of any drawings under the Letter of Credit. All covenants and agreements of the Borrower contained herein shall continue in full force and effect from and after date hereof until the later of (a) the Expiration Date of the Letter of Credit and (b) payment in full of the Note, interest thereon and all other Obligations of the Borrower.

Section 11.12. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

Section 11.13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. The Borrower may not assign its rights or obligations under this Agreement or the other Reimbursement Documents or Related Documents without the prior consent of the Administrative Agent, the Bank and each Bank Participant. The Bank may participate portions of its interests in accordance with Section 11.14.

Section 11.14. **Participations.** The Bank and any Bank Participant may, in the ordinary course of its business and in accordance with Applicable Law, at any time sell participations to Bank Participants in all or a portion of its rights and obligations under this Agreement and the other Reimbursement Documents; provided that

- (i) the Bank's or the Bank Participant's obligations under this Agreement and the other Reimbursement Documents shall remain unchanged;
- (ii) the Bank shall remain responsible for the performance of its obligations under the Letter of Credit;

- (iii) the Bank shall remain responsible to the Borrower for the performance of the obligations under the Reimbursement Documents; and
- (iv) the Borrower shall continue to deal solely and directly with the Bank or the Administrative Agent as provided herein in connection with the Bank's or the Bank Participant's rights and obligations under this Agreement, the other Reimbursement Documents and the Related Documents.

The Administrative Agent shall give the Borrower notice of any participation. The Borrower authorizes the Bank to provide financial and operational information previously provided to the Bank or to the Administrative Agent to potential Bank Participants. All amounts payable by the Borrower under the Reimbursement Documents shall be determined as if the Bank had not sold any Participations.

The Borrower agrees that if amounts outstanding under this Agreement and the Note are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of a Default, each Bank Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement and any Note to the same extent as if the amount of its participating interest were owing directly to it as the Bank under this Agreement or any note.

Section 11.15. **Reasonableness Standard.** If the Bank, in its capacity as the Bank or Administrative Agent, agrees in any provision of this Agreement to act reasonably in granting or withholding any consent, approval or the like, and the Bank has sold or hereafter shall sell participations in the Letter of Credit, then the Bank, the Bank Participants or the Administrative Agent shall not act unreasonably if it withholds any consent, approval or the like if participants entitled to consent to or approve the request do not do so.

Section 11.16. **Preferences.** To the extent that any of the Bank or the Bank Participants receive any payment from or on behalf of the Borrower which payment or any part thereof is subsequently:

- (a) invalidated;
- (b) declared to constitute a fraudulent conveyance or preferential transfer;
- (c) set aside; or
- (d) required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause,

then, to the extent of such payment received, the obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment has not been received by the Bank or such Bank Participant.

Section 11.17. **Independence of Covenants.** Except in those cases where a provision is expressly intended to supersede another provision hereof, all covenants contained in this Agreement shall be given independent effect so that if a particular action or condition is not

permitted by any of such covenants, the fact that such action or condition would be permitted by an exception to, or otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or condition exists.

Section 11.18. **Security and Subrogation Under Related Documents.** The Borrower and the Bank Participants intend that (i) the obligations of the Borrower under this Agreement and the Reimbursement Documents shall have the benefit and security of the Bond Indenture and the trust estate granted pursuant to the Bond Indenture, subject to the provisions thereof and (ii) in the event of one or more draws under the Letter of Credit and the application of the proceeds thereof to the payment of Bonds, the Bank and the Bank Participants will be subrogated pro tanto to the rights of the Bond Trustee and the holders of the Bonds in and to all funds and security held by the Bond Trustee under the Bond Indenture for the payment of the principal of and interest on the Bonds. In addition, the Bank and the Bank Participants shall have any and all other subrogation rights available to the Bank and the Bank Participants at law or in equity.

Section 11.19. **Rights Cumulative.** All rights, powers and remedies herein given to the Bank and the Bank Participants are cumulative and not alternative, and are in addition to all statutes or rules of law; any forbearance or delay by the Bank and the Bank Participants in exercising the same shall not be deemed to be a waiver thereof, and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof, and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by the Administrative Agent. All representations and covenants by the Borrower shall survive the issuance of the Letter of Credit and the making of the advances thereunder, and the provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 11.20. **Exhibits.** The Exhibits attached to this Agreement are an integral part hereof and are hereby made a part of this Agreement.

Section 11.21. **Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers hereunto duly authorized as of the date first above written.

TREX COMPANY, INC.

By: /s/ Paul D. Fletcher  
Paul D. Fletcher  
Senior Vice President and Chief Financial Officer

JPMORGAN CHASE BANK, N.A., as Bank and  
Administrative Agent

By: /s/ Sandra B. Braun  
Sandra B. Braun  
Vice President

[Signature Page of Reimbursement and Credit Agreement]

## TREX COMPANY, INC.

## REIMBURSEMENT NOTE

TREX COMPANY, INC. (the "Corporation" or the "Maker"), a corporation organized under the laws of the State of Delaware, for value received, hereby promises to pay to JPMORGAN CHASE BANK, N.A. (the "Holder"), the principal sum of \$25,308,220.00 in the amounts and in the manner hereinafter described, and to pay to the Holder interest thereon and certain other amounts payable hereunder, on the dates, in the amounts and in the manner hereinafter described.

Certain capitalized words and terms used in this Note and not defined herein shall have the respective meanings herein given such words and terms in the Reimbursement Agreement as described below.

This Note is issued for the purpose of evidencing and securing the Corporation's payment obligations in respect of the issuance of a letter of credit by JPMorgan Chase Bank, N.A. (the "Bank") under the Reimbursement and Credit Agreement dated as of December 1, 2004 (the "Reimbursement Agreement") in order to secure \$25,000,000 aggregate principal amount of Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004 issued by the Mississippi Business Finance Corporation (the "MBFC") under the Trust Indenture dated as of December 1, 2004 (the "Bond Indenture") between the MBFC and J.P. Morgan Trust Company, National Association, as bond trustee (the "Bond Trustee").

The sums payable under this Note shall be as follows and shall be paid in the manner hereinafter set forth:

(a) The Corporation agrees to reimburse the Bank without the requirement for notice or demand, both of which are expressly waived by the Corporation, for any amounts drawn on the Letter of Credit on the same Business Day as such drawing is honored by the Bank. The Corporation and the Bank agree that the reimbursement in full for each drawing on the date such drawing is made is intended to be a contemporaneous exchange for new value given to the Corporation by the Bank.

(b) Subject to the terms of the Reimbursement Agreement, amounts relating to principal drawings not reimbursed by 3:00 P.M. (prevailing Eastern time) in immediately available funds on such Business Day shall bear interest daily at the Default Rate from and including the date of drawing to but excluding the date of reimbursement.

(c) Subject to the terms of the Reimbursement Agreement, amounts relating to tender drawings and the interest portion of drawings not reimbursed by 3:00 P.M. (prevailing Eastern time) in immediately available funds on such Business Day shall bear interest daily at

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the Bank's Prime Rate plus two hundred basis points (2%) from and including the date of drawing to but excluding the date of reimbursement.

The principal of and interest on this Note, and other amounts required to be paid hereunder, are payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts. The Bank shall not be required to present or surrender this Note to the Corporation in connection with any payment of principal hereof or interest hereon. The Bank, by acceptance hereof, agrees to notify the Corporation (i) promptly upon the receipt of each payment of principal of this Note, such notice to specify the date and amount of such payment, and (ii) immediately in the event of nonpayment by the Corporation of any amount due and payable hereunder.

This Note is subject to all of the terms and conditions of the Reimbursement Agreement, which are hereby incorporated herein, with the same effect as if the Reimbursement Agreement were fully set forth herein. Reference is hereby made to the Reimbursement Agreement, executed counterparts of which are on file with the Corporation and the Bond Trustee, for a description of the security for the Note, the rights and obligations of the Corporation and the Bank, and such other matters affecting the indebtedness evidenced by this Note.

Upon the occurrence of certain "Events of Default" (as defined in the Reimbursement Agreement), the unpaid principal of this Note, may be declared, and thereupon shall become, immediately due and payable as provided in the Reimbursement Agreement.

This Note is issuable only as a registered Note without coupons. Notwithstanding any provision of the Reimbursement Agreement to the contrary, this Note shall not be subject to exchange for a Note or Notes bearing coupons.

This Note is not transferable or assignable to any Person other than the provider of an Alternate Letter of Credit under the Bond Indenture. Ownership of this Note shall be registered on the register to be maintained for that purpose at the Principal Office of the Bond Trustee. Any transfer of this Note shall be made in accordance with the provisions of the Reimbursement Agreement.

This Note is a general obligation of the Corporation, to which its full faith and credit are pledged.

IN WITNESS WHEREOF, the Corporation has caused this Note to be duly executed and attested by persons thereunto duly authorized, as of the day and year first written above.

[SEAL] TREX COMPANY, INC.

Attest:

/s/ Lynn MacDonald  
\_\_\_\_\_  
Lynn MacDonald  
Secretary

By: /s/ Paul D. Fletcher  
\_\_\_\_\_  
Paul D. Fletcher  
Senior Vice President, Chief Financial Officer

**LAND DEED OF TRUST**

among

**TREX COMPANY, INC.,**

as Debtor,

**GARY P. SNYDER,**

as Trustee

and

**JPMORGAN CHASE BANK, N.A.,**

as Beneficiary

Dated as of

December 1, 2004

THIS DEED OF TRUST SECURES A CREDIT LINE TO BE USED FOR COMMERCIAL PURPOSES.

Prepared By:

Record and Return to:

---

Jacqueline P. Shanes  
McCarter & English, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102  
Phone: (973) 622-4444

---

Gary P. Snyder  
Watkins Ludlam Winter & Stennis, P.A.  
P.O. Box 1456  
Olive Branch, Mississippi 38654  
Phone: (662) 895-2996

**Indexing Instructions:**

Lot 1, Trex Subdivision – Plat Book 86 Pages 46-48  
SW Quarter, Section 14 and NW Quarter,  
Section 23, Township 1 South, Range 6 West,  
DeSoto County, Mississippi

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## LAND DEED OF TRUST

THIS LAND DEED OF TRUST (this “Deed of Trust”) dated as of December 1, 2004, is entered into among TREX COMPANY, INC., a corporation organized and existing under the laws of the State of Delaware (“Debtor”), and GARY P. SNYDER as Trustee (“Trustee”), and JPMORGAN CHASE BANK, N.A. as Beneficiary, in its capacities as the Issuing Bank of the hereinafter defined Letter of Credit and as the Administrative Agent under the hereinafter defined Reimbursement Agreement (herein designated as “Secured Party”).

WITNESSETH:

WHEREAS, in order to finance all or a portion of (i) the costs of the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi, to be used by the Debtor in connection with the manufacture of non-wood decking, railing and fencing products and (ii) certain costs of issuance of the Bonds (as hereafter defined), the Debtor has requested that the Mississippi Business Finance Corporation (“Issuer”) issue its Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004, in the aggregate principal amount of \$25,000,000 (“Bonds”) and loan the proceeds thereof to the Debtor (“Loan”) pursuant to the terms and conditions set forth in a Loan Agreement, dated as of December 1, 2004 (“Loan Agreement”); and

WHEREAS, in order to enhance the marketability of the Bonds, the Debtor has requested the Secured Party to issue to the Trustee the Secured Party’s direct pay irrevocable transferable Letter of Credit in the stated amount of \$25,308,220.00 (“Letter of Credit”) to provide payment for and secure the payment of the principal of and interest on, and the purchase price of, the Bonds; and

WHEREAS, the Secured Party will issue the Letter of Credit concurrently with the issuance and delivery of the Bonds pursuant to the Reimbursement and Credit Agreement dated as of December 1, 2004, between the Debtor and the Secured Party (“Reimbursement Agreement”), under which the Debtor will be obligated, among other things, to reimburse the Secured Party, with interest, for all drawings under the Letter of Credit and the Loan and Reimbursement Agreement have a final maturity date of December 1, 2029; and

WHEREAS, as security for all of the Bank Payments Obligations (as defined herein), the Debtor has duly executed and delivered to the Secured Party, this Deed of Trust.

NOW, THEREFORE, in consideration of the existing and future Bank Payments Obligations herein recited, the Debtor hereby conveys, warrants, grants, bargains, sells, assigns, transfers and pledges unto the Trustee, in Trust, with Power of Sale, the land described in Exhibit A, situated in the City of Olive Branch, County of DeSoto, State of Mississippi, together with all improvements and appurtenances now or hereafter erected on, and all fixtures of any and every description now or hereafter attached to, said land. Notwithstanding any provision in this Deed of Trust or in any other agreement with the Secured Party, the Secured Party shall not have a nonpossessory security interest in, and its Collateral or Pledged Estate shall not include, any

household goods (as defined in Federal Reserve Board Regulation AA, Subpart B), unless the household goods are identified in a security agreement and are acquired as a result of a purchase money obligation. Such household goods shall only secure said purchase money obligation (including any refinancing thereof).

THIS CONVEYANCE TO TRUSTEE, HOWEVER, IS IN TRUST WITH POWER OF SALE to secure prompt payment of all existing and future Bank Payments Obligations due by the Debtor to the Secured Party under the provisions of the Reimbursement Agreement. If the Debtor shall pay said Bank Payments Obligations promptly when due and shall perform all covenants made by the Debtor herein, then this conveyance shall be void and of no effect. If the Debtor shall be in default as provided in Section 5.01, then, in that event, the entire Bank Payments Obligations, together with all interest accrued thereon, shall, at the option of the Secured Party, be and become at once due and payable without notice to the Debtor, and the Trustee shall, at the request of the Secured Party, sell the Pledged Estate conveyed, or a sufficiency thereof, to satisfy the Bank Payments Obligations at public outcry to the highest bidder for cash. Sale of the property shall be advertised for three consecutive weeks preceding the sale in a newspaper published in the county where the Pledged Estate is situated, or if none is so published, then in some newspaper having a general circulation therein, and by posting a notice for the same time at the courthouse of the same county. The notice and advertisement shall disclose the names of the original debtors in this Deed of Trust. The Debtor waives the provisions of Section 89-1-55 of the Mississippi Code of 1972 as amended, if any, as far as this section restricts the right of the Trustee to offer at sale more than 160 acres at a time, and the Trustee may offer the property herein conveyed as a whole, regardless of how it is described.

If the Pledged Estate is situated in two or more counties, or in two judicial districts of the same county, the Trustee shall have full power to select in which county or judicial district, the sale of the property is to be made and the Trustee's selection shall be binding upon the Debtor and the Secured Party. Should the Secured Party be a corporation or an unincorporated association, then any officer thereof may declare the Debtor to be in default as provided in Section 5.01 and request the Trustee to sell the Pledged Estate. Secured Party shall have the same right to purchase the property at the foreclosure sale as would a purchaser who is not a party to this Deed of Trust.

From the proceeds of the sale the Trustee shall first pay all costs of the sale including reasonable compensation to the Trustee; then the Bank Payments Obligations due the Secured Party by the Debtor, including accrued interest and attorney's fees due for collection of the debt; then any other debt secured by the Pledged Estate; and then, lastly, any balance remaining to the Debtor or the Debtor's transferee.

IT IS AGREED that this conveyance is made subject to the covenants, stipulations and conditions set forth below which shall be binding upon all parties hereto.

ARTICLE I

DEFINITIONS

Section 1.01. Terms Defined Above. As used in this Deed of Trust, the terms defined in the preamble and recitals hereof shall have the meanings indicated therein.

Section 1.02. Definitions. As used herein the following terms shall have the respective meanings set forth or referred to below.

“Bank Payments Obligations” means with respect to the Secured Party, any loans, advances, debts, liabilities, obligations, contingent obligations, covenants and duties owing by the Debtor to the Secured Party of any kind or nature, present or future arising under the Letter of Credit, the Reimbursement Agreement, the Pledge Agreement or under any Financing Document. The amount of the Bank Payments Obligations shall be established or calculated by the Secured Party from time to time and furnished to the Trustee in writing denominating the interest portion of such Bank Payments Obligations and the principal portion of such Bank Payments Obligations, such establishment or calculation being conclusive of the amount due, absent manifest error; and with respect to a provider of an Alternate Credit Facility other than the Secured Party, such obligations as are provided in any applicable financing document. The term includes, without limitation, all interest, charges, expenses, fees, attorneys’ fees and any other sums chargeable to the Debtor by the Secured Party under the Reimbursement Agreement and any Financing Document.

“Bank Prime Rate” shall have the meaning set forth in the Reimbursement Agreement.

“Business Day” means a day other than a Saturday, Sunday or a legal holiday in the State of New York or any other day on which banking institutions chartered under the laws of the State of New York or the United States of America are authorized or required by law to close or a day on which the office of the Secured Party at which drafts are to be presented under the Letter of Credit or the corporate trust office of the Trustee is authorized to be closed, or the Federal Reserve System is closed.

“Collateral” is defined in Section 6.01 of this Deed of Trust.

“Debtor” is defined in the introduction to this Deed of Trust and shall include not only the original Debtor hereunder, but also the owner (or owners, if one or more, jointly and severally) of the Pledged Estate or any part thereof, at any time or from time to time, as the case requires.

“Default Rate” shall have the meaning set forth in the Reimbursement Agreement.

“Environmental Indemnity Agreement” means the Environmental Compliance and Indemnity Agreement, dated December 16, 2004, by and between the Debtor and the Secured Party.

“Event of Default” is defined in Section 5.01 hereof.

“Facility” means the Site and all Improvements, Fixtures and Personalty now or hereafter located thereon which comprises the manufacturing facility owned and operated by the Debtor. The Facility is located on an approximately 101.80-acre site in the City of Olive Branch, County of DeSoto, State of Mississippi.

“Financing Documents” means this Deed of Trust, the Reimbursement Agreement, the Pledge Agreement, the Environmental Indemnity Agreement, the Trust Indenture, the Loan Agreement, the Note and each of the other documents, instruments and agreements referred to therein or contemplated thereby.

“Fixtures” means all goods, fixtures, furnishings, building materials, and equipment financed with proceeds of the Bonds and owned by the Debtor now or hereafter attached to or installed or placed in or about each and every Improvement on the Site for use as part thereof or in conjunction with the use and occupancy of such Improvements, including, but not limited to, all materials, supplies, equipment, apparatus, tracks, ramps, loading platforms, machinery, motors, elevators, escalators, fittings, doors, windows, signs, pylons, screening, awnings, shades, blinds, carpet, floor coverings, draperies, furnaces, boilers, gas and oil and electric burners and heaters, ducts, vents, hoods, flues and registers, hot water heaters, sinks, stoves, ovens, cabinets, countertops, refrigerators, heating, cooling and air conditioning equipment, fans, ventilators, wiring, panels, all lighting fixtures and globes and tubes, time clocks, computer systems and other electrical equipment, all television and radio antenna systems, including satellite dish antennas, and all plumbing and plumbing fixtures and equipment, sprinklers and sprinkler equipment, and all trees, plants, shrubs and other landscaping, all of which are and shall be deemed to be a permanent accession to the Site and Improvements thereon, and all recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

“Generally Accepted Accounting Principles” means generally accepted accounting principles consistently applied and maintained throughout the period indicated and consistent with the prior financial practice of the Debtor, as reflected in the financial statements required under the Reimbursement Agreement, except for changes permitted by the Financial Accounting Standards Board or any similar accounting authority of comparable standing.

“Governmental Authority” means any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

“Highest Lawful Rate” means the maximum legal rate of interest which the Trustee or the Secured Party is legally entitled to charge, contract for or receive under any law to which such interest is subject.

“Impositions” means (a) all real estate and personal property taxes, charges, assessments, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary or extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, charged or imposed upon or with respect to the Pledged Estate or the ownership, use, or occupancy or enjoyment thereof, or any portion thereof, or the sidewalks, streets or alleyways adjacent thereto, (b) any charges, fees, licenses, payments or other sums payable for any easement, license or agreement maintained for the benefit of the Pledged Estate, and (c) all water, gas, sewer, electricity, telephone, garbage collection and other utility charges, rents and fees appurtenant to or used in connection with the Pledged Estate which if unpaid, would become a lien on the Pledged Estate.

“Improvements” means all buildings and improvements of every kind and description now situated or hereafter placed or erected upon the Site including, without limitation, improvements constituting the Facility and all additions, alterations, betterments or appurtenances thereto and all reversions and remainders therein.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, as well as the interest of a vendor or lessor under any conditional sales agreement, capital lease or other title retention agreement relating to such asset.

“Permitted Encumbrances” shall be defined as follows:

- (a) the liens and security interests created by the Related Documents to secure the Bonds and the Bank Payments Obligations;
- (b) liens for taxes, assessments and special assessments which are not then delinquent, or, if then delinquent, are Matters Contested in Good Faith (as defined in the Reimbursement Agreement);
- (c) utility, access and other easements and rights-of-way, restrictions and exceptions which will not interfere with or impair the operation of any portion of the Pledged Estate;
- (d) any mechanic’s, laborer’s, materialman’s, supplier’s or vendor’s lien or rights in respect thereof if payment is not yet due under the contract in question or if such lien is a Matter Contested in Good Faith;
- (e) such minor defects and irregularities of title as normally exist with respect to properties similar in character to the Pledged Estate which do not materially adversely affect the value of the Pledged Estate or impair the property affected thereby for the purpose for which it was acquired or is held;

(f) any lien, easement defect or irregularities of title which are described in the title policy furnished pursuant to Section 4.01(e)(iii) of the Reimbursement Agreement and accepted by the Secured Party;

(g) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, other forms of governmental insurance or benefits, or to secure performance of statutory obligations; and

(h) liens approved in writing by the Secured Party.

"Person" means an individual, partnership, corporation (including a business trust), trust, unincorporated association, joint venture or other entity.

"Personalty" means all of the right, title and interest of the Debtor in and to all refundable, returnable or reimbursable fees, license fees, deposits or other funds or evidences of credit or indebtedness to the extent funded or financed with proceeds of the Bonds deposited by or on behalf of the Debtor with any Governmental Authority, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs to the extent funded with proceeds of the Bonds, and all other personal property, including furniture, furnishings, equipment, machinery, building materials and goods (other than the Fixtures) of any kind or character as defined in and subject to the UCC and which are now or hereafter located or to be located upon, within or about the Site or the Improvements, or which are now being or may hereafter be used upon, within or about the Site or the Improvements or which are in any way related to the ownership, use, leasing, maintenance, repair, alteration, reconstruction or operation of the Project, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof, to the extent any of the foregoing are purchased with proceeds of the Bonds.

"Phase I Environmental Assessment" means the Phase I Environmental Assessment prepared by Mostardi Platt Environmental, dated November 11, 2003.

"Pledge Agreement" means the Custody, Pledge and Security Agreement executed by and among the Debtor, the Trustee and the Secured Party dated as of December 1, 2004.

"Pledged Estate" means the Facility, Site, Improvements, Fixtures, Personalty and Rents, together with all betterments, improvements, additions, alterations and appurtenances, substitutions, replacements and reversions thereof and thereto and proceeds thereof and all reversions and remainders therein and any and all other security and collateral of every nature whatsoever, now or hereafter given for the performance and discharge of the Bank Payments Obligations. As used in this Deed of Trust, the term Pledged Estate is expressly defined as

meaning all or, where the context permits or requires, any portion of or interest in the Facility, Site, Improvements, Fixtures, Personalty or Rents.

“Reimbursement Agreement” means the Letter of Credit and Reimbursement Agreement, dated as of December 1, 2004, by and between the Debtor and the Secured Party.

“Rents” means all leases, oil, gas or other mineral royalties, bonuses and rental income, rentals, including, without limitation, insurance pertaining to the Pledged Estate, and all of the Debtor’s right, title and interest in and to any awards, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority for the Pledged Estate including through eminent domain or condemnation and those from any vacation of, or any change of grade in or to any streets affecting the Site or the Improvements or which may be received or receivable by the Debtor from any hiring, using, letting, leasing, subhiring, subletting or subleasing of or otherwise from the whole or any portion or portions of the Facility at any time while any portion of the Bank Payments Obligations secured hereby remains unpaid.

“Site” means the tract of land located in the City of Olive Branch, County of DeSoto, Mississippi, more particularly described by metes and bounds in Exhibit A, attached hereto and incorporated herein by this reference for all purposes, together with all the rights, rights of way, easements, profits, privileges, tenements, hereditaments and appurtenances, now or hereafter in any way appertaining or belonging thereto, and any part thereof, including any claim at law or in equity, and any after acquired title and reversion in or to each and every part of the Site and all streets, roads, highways, alleys, strips or gores of land adjacent to or adjoining the same.

“State” means the State of Mississippi.

“UCC” means the Uniform Commercial Code in effect in the State.

Section 1.03. Interpretations. The table of contents and article and section headings of this Deed of Trust are for reference purposes only and shall not affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa.

Section 1.04. References, etc. Any reference in this Deed of Trust to a document or instrument shall mean such document or instrument and all exhibits thereto, as amended or supplemented from time to time. Any reference in this Deed of Trust to any Person as a party to any document or instrument shall include its successors and assigns to such status and in the case of the Debtor shall also include its subsidiaries, if any, which are permitted or required under Generally Accepted Accounting Principles to be consolidated with the Debtor in its financial statements.

Section 1.05. Incorporation of Certain Definitions by Reference. Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Reimbursement Agreement, or if not defined therein, in the Bond Indenture.

Section 1.06. Accounting Terms and Determinations; Incorporation of UCC Definitions. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with Generally Accepted Accounting Principles as in effect from time to time, applied on a consistent basis. Except as otherwise defined or indicated by the context herein, all terms which are defined in the UCC shall have their respective meanings as used in Article 9 of the UCC.

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ARTICLE II  
[RESERVED]

ARTICLE III

REPRESENTATIONS AND WARRANTIES

The Debtor hereby unconditionally warrants and represents to the Secured Party (which representations and warranties will survive the creation and performance of the Debtor's obligations hereunder) as follows:

Section 3.01. Warranties of Title.

- (a) The Debtor has good and marketable title to the Pledged Estate, free and clear of every Lien, other than the Permitted Encumbrances;
- (b) The Debtor is lawfully and indefeasibly seized, in fee simple, of the real property comprising a part of the Pledged Estate hereby conveyed and has full right and power to grant, convey and pledge the Pledged Estate to the Trustee;
- (c) The Debtor is the legal and equitable owner and holder of the Pledged Estate, free of any adverse claim or Lien except those provided for in the Permitted Encumbrances;
- (d) The Debtor will forever warrant and defend the title to the Pledged Estate unto the Secured Party against the claims and demands of all Persons whomsoever except those claiming under the Permitted Encumbrances; and
- (e) The Debtor has not entered into any sales agreement, option, assignment, sublease, pledge, mortgage, deed of trust, financing statement, security agreement or any other arrangement regarding the Pledged Estate apart from the Financing Documents.

Section 3.02. Lien of this Deed of Trust. This Deed of Trust constitutes a valid and subsisting first lien on the Site and the Improvements and Fixtures associated therewith and a valid, subsisting first priority security interest in and to the Fixtures, Personalty and Rents in accordance with the terms hereof.

Section 3.03. Financings. The only financings secured by the Pledged Estate are the Bank Payments Obligations.

Section 3.04. Impositions and Other Payments. The Debtor has filed all ad valorem tax returns required to be filed by the Debtor by all Governmental Authorities having jurisdiction over the Pledged Estate and has paid all other Impositions which have become due pursuant to such returns or pursuant to any assessments received by the Debtor and the Debtor knows of no basis for any additional assessment against the Pledged Estate in respect of any Impositions. The Debtor shall pay all Impositions not later than their respective due dates, except those Impositions which are matters contested in good faith and nonpayment of which

will not materially adversely affect the Pledged Estate. Not later than ten (10) days after such due dates the Debtor shall produce to the Secured Party receipts for the payment thereof. The Debtor has paid or will pay in full when due (except for such retainages as may be permitted or required by any Governmental Authority or by the terms of any applicable construction or related contract to be withheld by the Debtor pending completion of the Facility or which are being contested in good faith), all sums owing for labor, material, supplies, personal property (whether or not forming a Fixture hereunder) and services of every kind and character used, furnished or installed in or on the Pledged Estate.

Section 3.05. Incorporation of Representations and Warranties by Reference. The Debtor hereby makes to the Secured Party the same representations and warranties as are set forth in the Financing Documents, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Financing Documents shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Secured Party.

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ARTICLE IV

COVENANTS AND OBLIGATIONS OF THE DEBTOR

To protect and maintain the security of this Deed of Trust, in addition to the covenants set out in the Financing Documents, the Debtor unconditionally covenants with the Secured Party as follows, which covenants are, according to their terms, of the essence hereof and will survive the delivery of this Deed of Trust:

Section 4.01. Defects in Title. The Debtor will proceed with diligence to correct any material defect in title to the Pledged Estate, should any such defect be found to exist after the execution and delivery of this Deed of Trust, and in this connection, should it be found after the execution and delivery of this Deed of Trust, that there exists upon the Pledged Estate any Lien (other than a Permitted Encumbrance), equal, inferior, or superior in rank or priority to the lien and security interests created by this Deed of Trust (other than the Permitted Encumbrances), or should any such Lien hereafter arise (other than the Permitted Encumbrances), then, unless the Secured Party shall have given specific prior written consent to the creation or continuation thereof, the Debtor will promptly discharge and remove any such Lien from the Pledged Estate. The Debtor further agrees that the Secured Party may take any action the Secured Party deems advisable to protect and preserve its interest in the Pledged Estate and, in such event, the Debtor will indemnify the Secured Party against any and all reasonable costs, attorneys' fees, and other expenses which the Secured Party may incur in defending against any such adverse claims after providing notice thereof to the Debtor.

Section 4.02. Maintenance and Repair. The Debtor shall, at its own expense, do or cause to be done all things reasonably necessary to preserve and keep in good repair, working order and efficiency, ordinary wear and tear excepted, all of the Pledged Estate, as provided in the Loan Agreement and in the Reimbursement Agreement.

Section 4.03. Incorporation of Covenants and Obligations by Reference. The Debtor hereby makes to the Secured Party the same covenants and agreements as set forth in the Financing Documents, which covenants and agreements, as well as the related defined terms contained therein, are hereby incorporated by reference with the same affect as if each and every covenant and agreement and defined term were set forth herein in its entirety. No amendment to such covenants and agreements or defined terms made pursuant to the Financing Documents shall be effective to amend such covenants and agreements and defined terms as incorporated by reference herein without the consent of the Secured Party given in accordance with the Financing Documents.

EVENTS OF DEFAULT; REMEDIES

Section 5.01. Event of Default.

(a) Any of the following events shall be considered an Event of Default under this Deed of Trust:

(i) the Debtor fails to pay when due any amount specified in the Reimbursement Agreement as and when the same is due and payable;

(ii) the Debtor fails to observe or perform any of the covenants, conditions or provisions of the Reimbursement Documents (as defined in the Reimbursement Agreement) to which it is a party (other than as specified in subparagraph (i) above) and to remedy such default within thirty (30) days after the Secured Party shall have provided the Debtor with notice of such failure;

(iii) any representation or warranty made by the Debtor in the Reimbursement Agreement or in any certificate, financial or other statement furnished by the Debtor to the Secured Party pursuant to the Reimbursement Documents or the Related Documents (as defined in the Reimbursement Agreement) proves to have been untrue or incomplete in any material respect when made;

(iv) the Debtor fails to make the payments required under the Loan Agreement when due, except as a result of a wrongful dishonor by the Secured Party of a properly requested draw under the Letter of Credit and at the time such payment was due under the Loan Agreement adequate funds to make such payment were available in the Reimbursement Account (as defined in the Reimbursement Agreement);

(v) the occurrence of an Event of Bankruptcy (as defined in the Reimbursement Agreement);

(vi) any provision of the Reimbursement Agreement or any of the other Reimbursement Documents or Related Documents to which the Debtor is a party at any time for any reason ceases to be the legal, valid and binding obligation of the Debtor or ceases to be in full force and effect, or is declared to be null and void and such result would have a Material Adverse Effect (as defined in the Reimbursement Agreement), or the validity or enforceability of any provision of the Reimbursement Agreement or any of the other Reimbursement Documents or Related Documents is contested by the Debtor, or the Debtor renounces the same or denies that it has any further liability under the Reimbursement Agreement or thereunder;

(vii) the Debtor (a) fails to make any payment or payments of any Indebtedness (as defined in the Reimbursement Agreement) of the Debtor when due

(whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, except for Matters Contested in Good Faith (as defined in the Reimbursement Agreement), or (b) fails to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument (other than any failure to perform any term contemplated by sub-clause (a) hereof), except for Matters Contested in Good Faith, if, in either case, the effect of such failure to perform or observe is to accelerate, or to permit the acceleration, mandatory redemption or tender of, the maturity of any Indebtedness of the Debtor in excess of \$250,000;

(viii) an event of default has occurred and is continuing as defined in any other credit agreement under which the Debtor is now or hereafter obligated to the Secured Party;

(ix) any party to any of the Related Documents fails duly to perform any obligation thereunder and such failure has a Material Adverse Effect;

(x) the Facility or any portion thereof is subject to any material condemnation or similar proceeding and the Debtor fails or refuses to reasonably use the condemnation proceeds to rebuild the Facility or construct a replacement Facility;

(xi) the Facility suffers a loss by fire or other casualty and such loss is not fully insured (excluding any deductible amount permitted under the Reimbursement Agreement) and Debtor fails to satisfy the requirements of Section 9.04 hereof;

(xii) any material permit or approval issued by any Governmental Authority (as defined in the Reimbursement Agreement) with respect to the occupancy, operation or use of the Facility is revoked, suspended or annulled which has a Material Adverse Effect;

(xiii) a survey at any time shows that the improvements constituting the Facility encroach upon any street, easement, right of way or adjoining property or violate any setback requirement or that any adjoining structure encroaches on the Pledged Estate to an extent that has a Material Adverse Effect;

(xiv) the Debtor or any ERISA Affiliate (as defined in the Reimbursement Agreement) shall fail to pay when due an amount or amounts aggregating in excess of \$250,000 which it shall have become liable to pay under Title IV of ERISA (as defined in the Reimbursement Agreement) or notice of intent to terminate a Material Plan (as defined in the Reimbursement Agreement) shall be filed under Title IV of ERISA by either the Debtor, any ERISA Affiliate, any Plan (as defined in the Reimbursement Agreement) administrator or any combination of the foregoing; or the PBGC (as defined in the Reimbursement Agreement) shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan (as defined in the Reimbursement Agreement); or a condition shall

exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Plan must be terminated; or there shall occur a complete or partial withdrawal from, or default, within the meaning of Section 4219(c)(5) of ERISA, with respect to one or more Multiemployer Plans (as defined in the Reimbursement Agreement) which could reasonably be expected to cause one or more of the Debtor, any Subsidiary (as defined in the Reimbursement Agreement) or any ERISA Affiliate to incur a current payment obligation in excess of \$250,000;

(xv) a Change of Control (as defined in the Reimbursement Agreement) shall occur;

(xvi) the loss or material impairment of any material license which is required to operate the Facility and provided that if such reinstatement or reissuance of such license is diligently pursued, such loss or impairment shall have remained uncured for a period of fourteen (14) Business Days (as defined in the Reimbursement Agreement); and

(xvii) any judgment involving monetary damages shall be entered against the Debtor which shall become a lien on the Debtor's properties or assets or any portion thereof or interest therein and such execution, attachment or similar process is not released, bonded, satisfied, vacated or stayed within thirty (30) days after its entry or levy, and said writ of execution, attachment, levy or judgment shall involve monetary damages aggregating more than \$250,000.00; or a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in any of the properties or assets of the Debtor or the seizure or foreclosure of any of the properties or assets of the Debtor pursuant to process of law or by respect of legal self-help, involving monetary damages aggregating more than \$250,000.00 unless said execution, attachment, seizure or foreclosure is stayed or bonded within thirty (30) days after the occurrence of same.

Section 5.02. Remedies. If an Event of Default shall occur and be continuing as provided in Section 5.01 hereof, the Secured Party, or an attorney or agent, without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, may do all or any of the following subject to the terms of the Financing Documents:

(a) Enter upon and take exclusive possession of the Pledged Estate or any part thereof, including all books, records and accounts relating thereto;

(b) Do any and all acts which the Secured Party deems proper to protect the security hereof, including, for the account of the Debtor, making all payments the Debtor is obligated to make under the Financing Documents;

(c) Cause the construction or completion of construction of any Improvements or any portion of the Facility in accordance with the plans and specifications, if applicable;

(d) To the extent permitted by law and the Financing Documents, enter into the Project without being liable for any prosecution or damages therefor and may

dispossess the Debtor and may lease the Project or any part thereof to another party for a term which may extend beyond the term of the Financing Documents and receive the rent therefor, upon such terms as shall be satisfactory to the Secured Party. Such entry by the Secured Party shall not operate to release the Debtor from any sums to be paid or covenants to be performed under the Financing Documents during the full term thereof. In addition, the Debtor agrees that the receipt of rents, awards, and any other moneys or evidences thereof, and any disposition of the same by the Secured Party shall not constitute a waiver of the right of foreclosure and sale of the Project by the Secured Party in the case of an Event of Default. For the purpose of leasing the Project to another party, the Secured Party shall be authorized to make such repairs or alterations in or to the Project as the Secured Party may deem necessary to place the same in good order and condition. The Debtor shall be liable to the Secured Party for the cost of such repairs or alterations and all expenses of such leasing. If the sum realized or to be realized from the leasing is insufficient to satisfy the sum payable by the Debtor under the Financing Documents, the Secured Party, at its option, may require the Debtor to pay such deficiency month by month, or may hold the Debtor liable in advance for the entire deficiency to be realized during the term of the leasing of the Project. Notwithstanding such entry by the Secured Party, the Debtor agrees that it shall not discontinue or take any action to cause the discontinuance of any utility service (including heat) furnished to the Project prior to such entry and the Debtor further agrees any such utility service shall continue to be furnished to the Project at the expense of the Debtor;

(e) Perform any and all conditions and undertakings of any agreement or commitment entered into between the Debtor and any Person, including the Secured Party, provided, however, that if the Debtor retains possession of all or any part of the Pledged Estate after an Event of Default and without the Secured Party's prior written consent thereto, the Secured Party may invoke any and all legal remedies to dispossess the Debtor available to the Secured Party by applicable law. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Pledged Estate after an Event of Default than would have existed in the absence of such sentence;

(f) Either with or without taking possession of the Pledged Estate, either by itself or by any other Person, in such manner, for such time and upon such terms that the Secured Party may deem to be prudent or reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto from time to time as the Secured Party may deem necessary or desirable), hold, lease, manage, operate or otherwise use or permit the use of the Pledged Estate and collect and receive the Rents, including accrued and unpaid Rents, issue binding receipts therefor, and apply the same, less costs of operation and collection (including, but not limited to, the reasonable costs, expenses and fees of a receiver, if any), upon the Bank Payments Obligations secured by this Deed of Trust. The receipt by the Secured Party of any Rents, pursuant to the foregoing, whether prior to or during the pendency of sale proceedings under this Deed of Trust, shall not cure such default, nor affect said notice or proceedings or any sale pursuant thereto, but such Rents, less costs as aforesaid, shall be applied in reduction of the entire Bank Payments Obligations from time to time outstanding and secured hereby; and

(g) The Trustee, at the direction of the Secured Party, may commence foreclosure proceedings on all or any portion of the real property comprising a part of the Pledged Estate, or on any interest in any part thereof it selects, by statutory power of sale or action brought in its own name as plaintiff in a court of competent jurisdiction, in the manner provided by law, and the filing of a complaint to foreclose the same, to the extent permitted by applicable law, shall be conclusive notice of the due exercise of such option; or the Secured Party may execute and deliver to the Debtor written notice of such breach, default or other Event of Default and of its election to cause this Deed of Trust to be foreclosed by action to be brought by the Secured Party as plaintiff in a court of competent jurisdiction in the manner provided by law, as aforesaid; and thereafter the Secured Party shall bring such action. In case of any sale under this Deed of Trust, whether by judicial proceedings or otherwise, the Pledged Estate (and Debtor's interest therein) may be sold in one parcel and as an entirety or in such parcels (or interests), manner or order as the Secured Party in their sole discretion may elect. In the event of foreclosure of this Deed of Trust by action brought by the Secured Party as aforesaid, there shall also be, and is, secured hereby, the payment of all reasonable costs and expenses, including, without limitation, cost of search or other evidence of insurance of title, for the benefit and protection of the Secured Party, and attorneys' fees and expenses (including attorneys' fees and expenses on appeal or arising out of any action in bankruptcy) in a reasonable sum to be fixed by the court in any such action brought to foreclose the same, whether such foreclosure action progresses to judgment or not; and the filing of a complaint in any such action shall render due and payable by the Debtor such cost of search or evidence of insurance of title and attorneys' fees.

If Secured Party invokes the power of sale contained herein and directs Trustee to foreclose on all or part of the Pledged Estate, Trustee may sell all or any part of the Pledged Estate (including any property that may be subject to the provisions of the UCC which may then be security for the debt hereby secured, which sale may be conducted in connection with any sale of real property and fixtures and in accordance with the UCC) after giving notice of the time, place and terms of sale as required by Section 89-1-55 of the Mississippi Code of 1972, as amended, or any successor provisions. If the Pledged Estate is located in two or more counties or in two judicial districts of the same county, whether the Pledged Estate consists of one parcel or more than one parcel, then Trustee shall have full power to select in which county, or judicial district, the sale of all or any part of the Pledged Estate shall be made and its selection shall be binding upon Debtor and Secured Party and all persons claiming through or under them, whether by contract or by law. Trustee shall have full power to fix the day, time, terms and place of sale and may sell the Pledged Estate in parcels or as a whole as Trustee may deem best. Debtor waives the provisions of Section 89-1-55 of the Mississippi Code of 1972, as amended, and any successor provisions, as far as said section restricts the right of Trustee to offer at sale more than one hundred sixty (160) acres at a time, and Trustee may offer the Pledged Estate as a whole or in part and in such order as Trustee may deem best, regardless of the manner in which it may be described. Trustee, without demand on Debtor, shall sell the Pledged Estate at public auction to the highest bidder for cash at such time and place in DeSoto County, Mississippi, as Trustee designates in the notice of sale. Trustee may appoint an agent to conduct foreclosure proceedings and any sale thereunder, which appointment need not be recorded. Any foreclosure sale may be adjourned or continued from time to time in the discretion of Trustee until such time

as such sale can be validly and legally completed. At any sale made to enforce the trust herein given, Trustee shall execute a deed of conveyance or other appropriate instrument conveying the Pledged Estate so sold, which conveyance shall be without any covenant or warranty, express or implied, and shall vest full and perfect title in such purchaser upon payment of the purchase price. The recitals in such instrument shall be prima facie evidence of the truth of the statements made therein, and failure to give any notice to Debtor as provided herein shall not adversely affect any foreclosure sale or create any liability on the part of Trustee or Secured Party to Debtor. Upon any sale pursuant to this Section, 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, Secured Party may bid for and acquire the Pledged Estate or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Debtor secured by this Deed of Trust the net sales price after deducting therefrom the expenses of the sale and the costs of the auction and any other sums which Trustee or Secured Party is authorized to deduct under this Deed of Trust. If the Pledged Estate is sold pursuant to this Section, Debtor or any person holding possession of the Pledged Estate through Debtor shall immediately surrender possession of the Pledged Estate to the purchaser at such sale. If possession is not surrendered, Debtor or such person shall be deemed to be a tenant at sufferance and may be removed by writ of possession or any other lawful means.

Section 5.03. Application of Proceeds. The proceeds of any sale of the Pledged Estate shall be applied by the Trustee to the extent that funds are so available to the following or in such order of priority that the Secured Party, in its sole discretion may determine, subject to the requirements of State law:

- (a) First, to all costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence and any other costs incurred in connection with the sale;
- (b) Second, to all sums secured hereby; and
- (c) Third, the excess, if any, to the person or persons legally entitled thereto.

Section 5.04. Delivery of Possession. Any sale or sales of the Pledged Estate, or any part thereof, under or by virtue of judicial proceedings, regardless of the price paid for the Pledged Estate or any part thereof, shall, to the extent permitted by applicable law, operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor of, in and to the Pledged Estate and the property sold, and shall be a perpetual bar, both at law and equity, against the Debtor, its successors and assigns and against any and all Persons claiming or who shall thereafter claim all or any portion of the property sold from, through, or under the Debtor, its successors or assigns and the Debtor, if requested by the Secured Party so to do, shall join in the execution and delivery of all property conveyances, assignments, and transfers of the property so sold. The rights of the Secured Party to possession or for a receiver are of the essence hereof, and shall continue during the running of the period allowed by law for the reinstatement of the Bank Payments Obligations secured hereby and thereafter until sale of

the Pledged Estate. The Debtor hereby expressly waives and relinquishes any and all rights the Debtor may have by statute or otherwise to the possession of the Pledged Estate and the Rents during pendency of a sale or foreclosure of this Deed of Trust. The Debtor agrees for itself and any and all Persons claiming by, through or under the Debtor that if the Debtor shall hold possession of the Pledged Estate or any part thereof subsequent to sale or foreclosure hereunder, the Debtor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers of such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental on said Pledged Estate and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, damages which may be sustained by the Debtor or any such tenant as a result thereof being hereby expressly waived.

Section 5.05. Reserved.

Section 5.06. Remedies Cumulative, Concurrent and Non-Exclusive. The Secured Party shall have all the rights, remedies and recourses granted herein, in the Financing Documents and as available at law or equity (including specifically those granted by the UCC), and the same:

- (a) shall be cumulative and concurrent;
- (b) may be pursued separately, successively or concurrently against the Debtor, or against the Pledged Estate, at the sole discretion of the Secured Party;
- (c) may be exercised as often as occasion therefor shall arise, it being agreed by the Debtor that the failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse of the Secured Party; and
- (d) are intended to be, and shall be, non-exclusive.

Section 5.07. No Conditions Precedent to Exercise of Remedies. The Debtor will not be relieved from the payment or fulfillment of the Bank Payments Obligations by reason of:

- (a) the failure of the Secured Party to comply with any request of the Debtor, or any other Person so obligated to enforce any provisions of the Financing Documents;
- (b) the release, regardless of consideration, of the Pledged Estate or the addition of any other property to the Pledged Estate;
- (c) any agreement or stipulation between any subsequent owner of the Pledged Estate and the Secured Party extending, renewing, rearranging or in any other way modifying the terms of the Financing Documents without first having obtained the consent of, given notice to, or paid any consideration to the Debtor, who, in such event, shall continue to be

liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by the Secured Party; or

(d) any other act or occurrence, save and except the complete payment and satisfactory fulfillment of all of the Bank Payments Obligations.

Section 5.08. Extension, Rearrangement or Renewal of the Bank Payments Obligations. It is expressly agreed that any of the Bank Payments Obligations at any time secured hereby may be from time to time extended for any period, rearranged, modified, or renewed and that any part of the security herein described, or any other security for the Bank Payments Obligations, may be waived or released without in any way altering, varying or diminishing the force, effect or Lien of this Deed of Trust; and the Lien and security interests granted by this Deed of Trust shall continue as a prior Lien and security on all of the Pledged Estate not expressly so released, until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of the Bank Payments Obligations or any part thereof or the performance of any obligation or liability whatsoever shall in any manner impair or affect the security given by this Deed of Trust and all security for the payment of the Bank Payments Obligations or any part thereof and the performance of any obligation or liability shall be taken, considered and held as cumulative.

Section 5.09. Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by applicable law, the Debtor hereby irrevocably and unconditionally waives and releases:

(a) all benefits that might accrue to the Debtor by virtue of any present or future law exempting the Pledged Estate from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment;

(b) except as expressly provided herein or in the Financing Documents, all notices of any Event of Default or of the Secured Party's election to exercise or the Secured Party's actual exercise of any right, remedy or recourse provided for under the Financing Documents;

(c) any right to a marshalling of assets, right to direct the order in which such property, if consisting of several known lots or parcels, shall be sold, or right to a sale in inverse order of alienation; and

(d) the pleading of any statute of limitations as a defense to any and all Bank Payments Obligations secured by this Deed of Trust;

and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Secured Party, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 5.10. Repayment of Expenses. Repayment of all expenses incurred by the Secured Party hereunder or payments made by the Secured Party on behalf of the Debtor hereunder, or under the Financing Documents, together with interest thereon shall be secured by this Deed of Trust; following the occurrence of an Event of Default, interest thereon shall be at the Default Rate.

## ARTICLE VI

### SECURITY AGREEMENT

Section 6.01. Security Agreement. To the extent that the Pledged Estate may be subject to the UCC, this Deed of Trust shall also constitute and serve as a “security agreement” on personal property within the meaning of, and shall constitute a first and prior security interest under, the UCC with respect to the Pledged Estate which is subject to the UCC, including without limitation, the Personalty, Fixtures and Rents associated with the Project (collectively, the “Collateral”). To this end, the Debtor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER unto the Secured Party a security interest in all of the Debtor’s right, title and interest in to and under all of the other Pledged Estate not constituting real property under the laws of the State to secure the full and timely payment and the full and timely performance and discharge of the Bank Payments Obligations. Upon any default of the Debtor hereunder, the Secured Party, or if the Secured Party directs the Trustee, at the direction of the Secured Party, shall be entitled to exercise with respect to the Collateral all of the rights and remedies set forth herein and in the Financing Documents or otherwise afforded to a secured party under the terms of the UCC, any or all of which remedies or rights may be pursued and exercised concurrently, consecutively, alternatively or otherwise. The Debtor hereby authorizes the filing and refiling of one or more supplemental security agreements and financing statements as the Secured Party may from time to time require covering any property now or hereafter constituting a portion of the Pledged Estate securing the Bank Payments Obligations secured hereunder and such financing statements and other and further assurances as the Secured Party may request to perfect or evidence the security interest herein created and to particularize and identify the Collateral. The Debtor hereby authorizes the Secured Party to file such financing statement or statements pursuant to the UCC, without the signature of the Debtor, as the Secured Party may deem necessary, to perfect such interests or right in its favor. It is the intent of the Debtor and the Secured Party that this Deed of Trust encumber all Personalty and Rents and as to all items contained in the definition of Personalty and Rents which are included in the UCC, be covered by the security interests granted in this Article VI and that all items contained in the definition of Personalty and Rents which are excluded from the UCC be covered by the provisions of Article II and Article VII hereof.

Section 6.02. Fixture Filing. This Deed of Trust shall also constitute a UCC financing statement (the “Fixture Filing”) for all Personalty or Fixtures, now or hereafter so affixed by or on behalf of the Debtor to the Pledged Estate so that such becomes a fixture in accordance with the UCC. Information containing the security interest herein granted may be

obtained at the addresses set forth herein. The address of the Secured Party as the “Secured Party” and the address of the Debtor as the “Debtor” are the addresses set forth in Section 9.07 hereof. The Debtor is a Delaware Corporation and its corporate ID number is 54-1910453.

Section 6.03. Security Agreement; Remedies. If an Event of Default shall occur, the Secured Party, or the Trustee, at the direction of the Secured Party, may, in addition to exercising any and all other rights, remedies and recourses set forth in Article V hereof, and subject to the terms of Section 5.02 with respect to the portion of the Pledged Estate constituting real property hereof, take any or all of the following actions without notice to the Debtor (except where expressly required below or in the Financing Documents):

(a) Declare all or part of the Bank Payments Obligations immediately due and payable in accordance with Article VIII of the Reimbursement Agreement, and enforce payment and performance of the same by the Debtor;

(b) Proceed in the manner set forth in the applicable provision of the UCC relating to the procedure to be followed when a security agreement covers both real and personal property;

(c) Take possession of the Collateral, or at the Secured Party’s request, the Debtor shall, at the Debtor’s cost, assemble the Collateral and make it available at a location to be specified by the Secured Party which is reasonably convenient to the Debtor and the Secured Party. In any event, the risk of accidental loss or damage to, or diminution in value of Collateral shall be on the Debtor, and the Secured Party shall have no liability whatsoever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to risk insured;

(d) Sell, in one or more sales and in one or more parcels, or otherwise dispose of any or all of the Collateral in any commercially reasonable manner as the Secured Party may elect, in a public or private transaction, at any location as deemed reasonable by the Secured Party either for cash or credit or for future delivery at such price as the Secured Party may deem fair, and unless prohibited by the UCC, the Secured Party may be the purchaser of any or all Collateral so sold and may apply upon the purchase price therefor any Bank Payments Obligations secured hereby. Any sale pursuant to this paragraph (d) shall be upon at least ten days notice to the Debtor, which the Debtor agrees is reasonable. Any such sale or transfer by the Secured Party either to itself or to any other Person shall be absolutely free from any claim or right by the Debtor, including any equity or right of redemption, stay or appraisal which the Debtor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. Upon any such sale or transfer, the Secured Party shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. It shall not be necessary that the Collateral or any part thereof be present at the location of any such sale or transfer. The Secured Party, or at the Secured Party’s direction, the Trustee may, at its discretion, provide for a public sale, and any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Secured Party may fix in the notice of such sale. The Secured Party shall not be obligated to make any sale pursuant to any

such notice. The Secured Party may, without notice or publication, adjourn any public or private sale by announcement at any time and place fixed for such sale, and such sale may be made at any time or place to which the same may be so adjourned. In the event any sale or transfer hereunder is not completed or is defective in the opinion of the Secured Party, such sale or transfer shall not exhaust the rights of the Secured Party hereunder, and the Secured Party shall have the right to cause one or more subsequent sales or transfers to be made hereunder. In the event that any of the Collateral not constituting real property is sold or transferred on credit, or is to be held by the Secured Party for future delivery to a purchaser or transferee, the Collateral so sold or transferred may be retained by the Secured Party until the purchase price or other consideration is paid by the purchaser or transferee thereof, but in the event that such purchaser or transferee fails to pay for the Collateral so sold or transferred or to take delivery thereof, the Secured Party shall incur no liability in connection therewith. If only part of the Collateral is sold or transferred such that the Bank Payments Obligations remain outstanding (in whole or in part), the Secured Party's rights and remedies hereunder shall not be exhausted, waived or modified, and the Secured Party is specifically empowered to make one or more successive sales or transfers until all the Collateral shall be sold or transferred and all the Bank Payments Obligations are paid. In addition to all of the rights and remedies set forth herein, the Secured Party shall have all the rights and remedies of a "secured party" under the UCC;

(e) Take possession of all books and records of the Debtor pertaining to the Collateral. The Trustee shall have the authority to enter upon any real property or improvements in order to obtain any such books or records, or any Collateral located thereon, and remove the same therefrom without liability; and

(f) Apply the proceeds of the disposition of Collateral to the Bank Payments Obligations in the manner and priority provided in Section 5.03 of this Deed of Trust. Such application may include, without limitation, the reasonable expenses of retaking, holding, preparing for sale or other disposition, and reasonable attorneys' fees and legal expenses incurred by the Trustee (including attorneys' fees on appeal or incurred in connection with any bankruptcy proceeding).

## ARTICLE VII

### ASSIGNMENT OF RENTS

Section 7.01. Assignment of Rents. For Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, including the Bank Payments Obligations, the receipt and sufficiency of which are hereby acknowledged, the Debtor has GRANTED, BARGAINED, SOLD, ASSIGNED and CONVEYED and by these presents does GRANT, BARGAIN, SELL, ASSIGN and CONVEY absolutely unto the Secured Party, the Rents subject only to the Permitted Encumbrances applicable thereto and the hereinafter referenced limited license; TO HAVE AND TO HOLD the Rents unto the Secured Party forever and the Debtor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Rents unto the Secured Party against every Person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, if the Debtor pays or causes to be paid the Bank Payments Obligations as and when the same shall become due and payable and shall perform and discharge or cause to be performed and discharged the Bank Payments Obligations on or before the date the same are to be performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in the Debtor without the necessity of any further act or requirement by the Debtor or the Secured Party.

Section 7.02. Rights of the Debtor's Limited License. The Secured Party hereby grants to the Debtor a limited revocable license, non-exclusive with the rights of the Secured Party reserved in Section 7.04 hereof to exercise and enjoy all incidences of ownership of the Rents, including specifically, but without limitation, the right to collect, demand, sue for, attach, levy, recover and receive the Rents and to give proper receipts, releases and acquittances therefor, prior to any default in the payment of any Bank Payments Obligations secured hereby, to collect, deliver, disburse and use all such Rents and exercise all rights under the Rents if not otherwise restricted under the Financing Documents. This limited license shall be automatically revoked without notice upon the occurrence of an Event of Default.

Section 7.03. Enforcement of Rents.

(a) So long as the limited license is in effect, the Debtor shall:

(i) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the Debtor as landlord under any lease or agreement;

(ii) maintain each of the leases or agreements in full force and effect during the term thereof, unless the Debtor determines in its reasonable judgment that it is in its best interest to terminate any such lease or agreement;

(iii) appear in and defend any action or proceeding in any manner connected with any lease or agreement;

(iv) deliver to the Secured Party such further information or estoppels, and execute and deliver to the Secured Party such further assurances and assignments, with respect to any leases or agreements as the Secured Party may from time to time request; and

(v) notify the Secured Party immediately of any default asserted by any tenant or other party under such a lease, agreement or contract.

(b) Without the Secured Party's prior written consent, the Debtor shall not:

(i) grant concessions, do or knowingly permit to be done anything to impair the value, in the aggregate, of any of the leases or agreements;

(ii) assign or grant a security interest in or to the limited license or any of the rents, leases or agreements; or

(iii) receive or collect rents from any tenant, subtenant, undertenant, or other occupant of any part of the Pledged Estate, more than one month in advance of the due date or in any amount greater than that permitted by law.

Section 7.04. Suits and Attornment. Upon an Event of Default, the Secured Party hereby reserves and may exercise the right and the Debtor hereby acknowledges that the Secured Party has the right (but not the obligation) to collect, demand, sue for, attach, levy, recover and receive any Rents, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon the Bank Payments Obligations. The Debtor hereby authorizes and directs any Person or lessee of all or any part of the Pledged Estate to deliver any such payments to, and otherwise to attorn all other obligations under the lease or agreements directly to the Secured Party in accordance herewith. The Debtor hereby ratifies and confirms all that the Secured Party shall do or cause to be done by virtue of this Section 7.04.

Section 7.05. No Merger of Estates. So long as any part of the Bank Payments Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Pledged Estate shall not merge, but rather shall remain separate and distinct, notwithstanding the union of such estates, either in the Debtor, the Secured Party or any other Person by purchase or otherwise.

Section 7.06. Conflict. The absolute assignment contained in this Article VII is in addition to, and not in lieu of, Article II hereof. It is the intent of the parties that no conflict exist between the absolute assignment contained in this Article VII and the collateral conveyance contained in Article II hereof. However, if and to the extent such conflict is perceived to exist as to the Rents, such conflict shall be resolved in favor of the absolute assignment contained in this Article VII.

Section 7.07. Assignment of Rents Remedies. Upon the occurrence of an Event of Default, the limited license shall immediately terminate without any notice or other further action being required of the Secured Party. Thereafter, the Secured Party shall have the exclusive right, power and authority to take any and all action in connection with the Rents, regardless of whether a foreclosure or sale of the remainder of the Pledged Estate has occurred under this Deed of Trust or whether the Secured Party has taken possession of the remainder of the Pledged Estate or attempted to do any of the same. The Secured Party may make such expenditures, including reasonable attorneys fees, in connection therewith and each amount so paid or expended with interest at the Default Rate shall become part of the Bank Payments Obligations and be secured hereby. The Secured Party, may, at its option, have the right to apply to a court to have all Rents paid into a court registry pending adjudication of the Secured Party's rights to such Rents. No action referred to in this Article VII taken by the Secured Party shall constitute an election of remedies.

ARTICLE VIII

ENVIRONMENTAL MATTERS

Section 8.01. Definitions. As used in this Article VIII, capitalized terms used but not defined herein shall have the meanings as set forth in the Environmental Indemnity Agreement.

Section 8.02. Representations and Warranties. Except as set forth in Schedule 8.02, and except as disclosed in the Phase I Environmental Assessment, the Debtor hereby makes to the Secured Party the same representations and warranties set forth in Section 1 of the Environmental Indemnity Agreement which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same affect as if each and every representation and warranty and defined term were set forth herein in its entirety.

Section 8.03. Covenants. The Debtor hereby makes to the Secured Party the same covenants set forth in Sections 3 and 4 of the Environmental Indemnity Agreement which covenants, as well as the related defined terms contained therein, are hereby incorporated by reference with the same affect as if each and every covenant and defined term were set forth herein in its entirety.

Section 8.04. General.

(a) The representations, warranties, covenants and indemnities contained in this Article VIII shall continue after and survive the execution and delivery of the Deed of Trust, the discharge of the Bonds, the discharge of the Deed of Trust, the payment in full of the Bank Payments Obligations and any foreclosure of the Deed of Trust and any acquisition of title to the Pledged Estate by the Secured Party and they shall be deemed continuing representations, warranties, covenants and indemnities for the benefit of the Secured Party and any successors and assigns of the Secured Party, including any transferee of the title of the Secured Party or any subsequent purchaser at a foreclosure sale, and any subsequent owner of the Pledged Estate claiming through or under the title of the Secured Party.

(b) The representations and warranties of the Debtor in this Article VIII are based on its investigations of the Pledged Estate, including the Phase I Environmental Assessment, and the Secured Party is entitled to rely thereon notwithstanding any independent investigations by the Secured Party or its employees, agents, contractors or representatives.

(c) The Debtor and its successors and assigns, hereby forfeit and forever waive, release and covenant not to sue the Secured Party with respect to, any claims, rights, remedies or causes of action that the Debtor may have now or in the future or that may arise against the Secured Party under Environmental Laws or any other theory of liability with respect to (i) any environmental matters of any kind or nature whatsoever respecting the Pledged Estate, including without limitation any Environmental Conditions on, at, under or emanating

from the Pledged Estate; and (ii) any of the matters described in the Article VIII, except to the extent such claim, right, remedy or cause of action arises or results from the acts or omissions of the Secured Party or its successors or assigns either before or after any foreclosure pursuant to the terms hereof. It is expressly understood and agreed that to the extent that the Secured Party is strictly liable under any Environmental Law or other law, statute, code, ordinance, regulation, rule or other requirement, the indemnification obligation of the Debtor to the Secured Party under this Article VIII shall likewise be without regard to fault on the part of the Debtor with respect to any violation or condition which results in any liability to the Secured Party.

(d) The Secured Party's rights and remedies against the Debtor under this Article VIII shall be in addition to and not in lieu of all other rights and remedies of the Secured Party under the Deed of Trust and the other Financing Documents, at law or in equity.

(e) The provisions of this Section 8.04 shall survive the repayment of the Bank Payments Obligations and the discharge of this Deed of Trust.

MISCELLANEOUS PROVISIONS

Section 9.01. Trustee Provisions. The following provisions shall govern with respect to the Trustee:

(a) To the extent permitted by law, the Trustee shall not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable to the Debtor under any circumstances whatsoever, nor shall the Trustee be personally liable in case of entry by it, or anyone entering by virtue of the powers herein granted, upon the Pledged Estate for debts contracted or liability or damages incurred in the management or operation of the Pledged Estate. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. The Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. The Debtor will, from time to time, pay the compensation due to the Trustee hereunder and reimburse the Trustee for, and save it harmless against, any and all liability and expenses which may be incurred by it in the performance of its duties.

(b) All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any money received by it hereunder.

(c) The Trustee may resign at any time with or without notice. If the Trustee shall resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by the Secured Party so to do, or if, for any reason, the Secured Party shall prefer to appoint a substitute trustee to act instead of the aforementioned Trustee, the Secured Party shall have full power to appoint a substitute trustee or trustees, either of whom may act, and, if preferred and, to the extent permitted by law, several substitute trustees in succession who shall succeed to all the estates, rights, powers and duties of the aforementioned Trustee.

(d) Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with like effect as if originally named as the Trustee herein; but nevertheless, upon the written request of Secured Party or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and money held by the Trustee to the successor Trustee so appointed in its place.

Section 9.02. No Obligation of the Secured Party. Neither the acceptance by the Secured Party of the assignment granted in Section 7.01 hereof, or the security interest granted in Section 6.01 hereof, nor the granting of any other right, power, privilege or authority in this Deed of Trust, nor the exercise of any of the aforesaid, shall:

(a) prior to the taking of possession of the Pledged Estate by the Secured Party be deemed to constitute the Secured Party as a “Secured Party in Possession”; or

(b) at any time thereafter, obligate the Secured Party:

(i) to appear and defend any action or proceeding relating to the Pledged Estate;

(ii) to take any action hereunder;

(iii) to expend any money or incur any expenses to perform or discharge any obligation, duty or liability with respect to any lease or agreement or with respect to the Personalty, Fixtures, Rents or any other portion of the Pledged Estate;

(iv) to assume any obligation or responsibility for any deposits which are not physically delivered to the Secured Party; or

(v) for any injury or damage to any person or property sustained in or about the Pledged Estate.

Section 9.03. Debtor’s Attorney-in-Fact. The Debtor will pay all costs of filing any financing, continuation or termination statements with respect to the security interests created by this Deed of Trust and shall make, execute and deliver or cause to be made, executed or delivered to the Secured Party, any further instruments, mortgages, conveyances, deeds, certificates and other documents as may, in the opinion of the Secured Party, be reasonably necessary or desirable in order to effectuate, complete, confirm, or perfect or to continue to preserve the obligation of the Debtor under the Bank Payments Obligations and the Lien of this Deed of Trust; and the Secured Party is hereby appointed as the Debtor’s attorney-in-fact to do, at the Secured Party’s option and at the Debtor’s expense, all acts and things which the Secured Party may deem necessary to perfect and continue to perfect the lien and security interest created by this Deed of Trust and to protect the Pledged Estate. After an Event of Default, the Secured Party may execute, sign, endorse, transfer or deliver, in the name of the Debtor, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, certificates of title, applications for certificates of title, or any other documents necessary to evidence, perfect or realize upon the liens and security interests created or secured by this Deed of Trust. This authority shall be considered a power coupled with an interest and shall be irrevocable until all the Bank Payments Obligations secured hereby shall have been paid in full.

**Section 9.04. Casualty Loss, Condemnation, Eminent Domain and Insurance.**

(a) If the Pledged Estate shall be wholly or partially destroyed or damaged by fire or other casualty covered by insurance, or if the Pledged Estate shall be wholly or partially condemned, taken or injured by any person, including any person possessing the right to exercise the power of or a power in the nature of eminent domain or transferred to such a person, by way of a conveyance in lieu of the exercise of such a power by such person, or if any part of the Pledged Estate shall be lost because of failure of title, the Debtor covenants that it will take all actions and will do all things which may be necessary to enable recovery to be made upon such policies of insurance or on account of such taking, condemnation, conveyance, damage, injury or loss of title in order that moneys due on account of losses suffered may be collected and paid to the Secured Party for application as provided herein. Any appraisal or adjustment of loss or damage and any settlement or payment therefor, which may be agreed upon by the Debtor and the appropriate insurer or condemnor or person, shall be evidenced to the Secured Party by a certificate of the Debtor. The Secured Party may rely conclusively upon such certificate.

(b) (i) Subject to the provisions of subsection (iv) below, immediately after occurrence of loss or damage covered by insurance, the Debtor shall notify in writing the Secured Party and an independent architect thereof. An independent architect promptly shall determine and advise the Secured Party and the Debtor, in writing, whether it is practicable to repair, reconstruct or replace such damaged or destroyed or condemned or lost property and, if so, the estimated time and funds required for such repair, reconstruction or replacement; provided that no notice to or the advice of the architect shall be required if the estimated cost of repair, reconstruction or replacement, as set forth in reasonable detail in a certificate of the Debtor delivered to the Secured Party is less than \$1,000,000. The proceeds of insurance shall be applied as provided in subsections (ii) and (iv) below.

(ii) If the proceeds of insurance are in excess of \$1,000,000, such amounts shall be retained by the Secured Party for application as follows:

(A) If the independent architect shall advise to the satisfaction of the Secured Party that such repair, reconstruction or replacement is practicable, and if, within ninety (90) days from the receipt of the independent architect's report (or such later date as may be reasonably acceptable to the Secured Party), the Debtor delivers to the Secured Party: (1) evidence reasonably satisfactory to the Secured Party that, based upon the Debtor's best judgment of the net insurance proceeds anticipated, the Debtor will have sufficient funds from the net insurance proceeds (including business interruption insurance and other available funds) and from reasonably anticipated continued operations to make the payments required of the Debtor under the Reimbursement Agreement, to satisfy the financial covenants set forth in the Reimbursement Agreement, to pay the cost of repairing, restoring or replacing the portion of the Pledged Estate affected by such loss or damage and to pay all operating expenses until completion of the repair, reconstruction or replacement of such part of the Pledged Estate which is affected by such loss or damage and for the first full fiscal year after such completion; (2) an executed construction contract reasonably satisfactory to the Secured Party for such work at a guaranteed maximum price or fixed price; and (3) evidence of the availability of cash or an irrevocable letter of credit in an amount at least equal to the excess, if any, of the funds necessary for payment of the amounts due under such construction contract, over the available net

insurance proceeds, then the Debtor shall promptly proceed to repair, reconstruct and replace such part of the Pledged Estate, including all fixtures, furniture, equipment and affects, to its original condition insofar as possible.

(B) If the independent architect advises that such repair, reconstruction or replacement is not practicable, or if the independent architect's report or the other documents described in (A) above are not delivered within the required time period or are not reasonably satisfactory to the Secured Party, then the Secured Party may elect to have the Loan (as defined in the Loan Agreement) repaid to the extent of such net proceeds and such insurance or condemnation proceeds shall be deposited in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the mandatory redemption of the Bonds.

(iii) The moneys required for such repair, reconstruction and replacement shall be paid by the Secured Party to the Trustee for deposit in the Project Fund established under the Indenture, which shall be reactivated and disbursed in accordance with the provisions of the Indenture.

(iv) Notwithstanding anything in this Section 9.04(b) to the contrary (but subject to the provisions of subsection (v) below), if the estimated cost of such repair, reconstruction or replacement is (A) less than \$50,000, such amounts shall be released by the Secured Party to the Debtor for application toward such lawful purposes as the Debtor may deem appropriate, and (B) equal to or greater than \$50,000 but less than \$1,000,000, the Debtor shall not be required to deliver the items referred to above, the net insurance proceeds shall be paid to the Debtor and the Debtor shall promptly proceed with such repair, reconstruction or replacement. Any net insurance proceeds remaining after the completion of such repair, replacement or reconstruction shall promptly, at the direction of the Debtor, be transferred to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the mandatory redemption of the Bonds.

(v) Notwithstanding anything contained in this Section to the contrary, if an Event of Default has occurred and is continuing hereunder or under the Reimbursement Agreement, any proceeds from insurance shall, at the option of the Secured Party, be transferred by the Secured Party to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the mandatory redemption of the Bonds.

(c) (i) Immediately after the commencement of any condemnation or similar proceedings by a third party in the exercise of a power of eminent domain, or a power in the nature of eminent domain affecting the Pledged Estate, the Debtor shall notify the Secured Party in writing.

(ii) Subject to the provisions of subsection (iii) below, the proceeds of any condemnation award or other compensation paid by reason of a conveyance in lieu of the

exercise of such power, with respect to all or substantially all the Pledged Estate (after deducting any costs or expenses incurred by the Secured Party or the Debtor in collecting the same, the "Net Condemnation Proceeds") shall be paid to the Secured Party which shall transfer such amounts to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the mandatory redemption of the Bonds. Any Net Condemnation Proceeds received for a taking of less than substantially all of the Pledged Estate shall be applied as provided in subsections (iii), (iv) and (v) below.

(iii) Notwithstanding anything in this Section 9.04(c) to the contrary (but subject to the provisions of subsection (vii) below), if the estimated cost of replacing or restoring the portion of the Pledged Estate affected by such taking or conveyance is (A) less than \$50,000, the Debtor shall not be required to deliver the items referred to in subsection (iv) below and the Net Condemnation Proceeds shall be paid to the Debtor for application to such lawful purposes as the Debtor may deem appropriate, and (B) equal to or greater than \$50,000 but less than \$1,000,000, the Debtor shall not be required to deliver the items referred to in subsection (iv) below, the Net Condemnation Proceeds shall be paid to the Debtor and the Debtor shall promptly proceed to replace or restore such portion of the Pledged Estate.

(iv) If, within ninety (90) days of receipt of such condemnation award (or by such later date as may be reasonably acceptable to the Secured Party) or other compensation which is equal to or greater than \$1,000,000, the Debtor delivers to the Secured Party

(A) a written report satisfactory to the Secured Party of an independent architect stating such architect's estimate of the cost of replacing or restoring the portion of the Pledged Estate affected by such taking or conveyance and

(B) evidence reasonably satisfactory to the Secured Party stating that, in the Debtor's best judgment, the Debtor will have sufficient funds from the Net Condemnation Proceeds (and from proceeds of use and occupancy insurance and other available funds and from reasonably anticipated continued operations) to make the payments required of the Debtor under the Reimbursement Agreement, to satisfy the financial covenants set forth in the Reimbursement Agreement, to pay the cost of replacing or restoring the portion of the Pledged Estate affected by such taking or conveyance and to pay all operating expenses until completion of the replacement or restoration of such portion of the Pledged Estate which is affected by such taking or conveyance and for the first full fiscal year after such completion,

then:

(A) The Debtor may elect to replace or restore the portion of the Pledged Estate affected by such taking or conveyance, in which event the Debtor shall promptly proceed to replace or restore such portion of the Pledged Estate, including any fixtures, furniture, equipment and effects, to its original usefulness and condition insofar as possible, provided that the Debtor has delivered to the Secured Party (i) an executed construction contract reasonably satisfactory to the Secured Party for such work at a price not greater than the amount stated in the

independent architect's report and (ii) evidence of the availability of cash or an irrevocable letter of credit in an amount equal to the funds, if any, required by such independent architect's report in excess of the available Net Condemnation Proceeds. The moneys required for such replacement or restoration shall be paid (x) from the Net Condemnation Proceeds on deposit with the Secured Party to the Trustee for deposit in the Project Fund established under the Indenture, which shall be reactivated and disbursed in accordance with the provisions of the Indenture; and (y) to the extent that such proceeds are not sufficient, from moneys to be provided by the Debtor; or

(B) The Debtor may elect, with the consent of the Secured Party, to have all or part of such Net Condemnation Proceeds transferred to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the redemption of the Bonds; or

(C) If the reports required by this subsection (iv) are not delivered within the required time period or are not reasonably satisfactory to the Secured Party, then the Net Condemnation Proceeds shall be deposited with the Secured Party and transferred to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the redemption of the Bonds.

(v) Any Net Condemnation Proceeds remaining after the completion of such replacement or reconstruction shall promptly at the direction of the Debtor be transferred to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the mandatory redemption of the Bonds.

(vi) Notwithstanding the foregoing, if the Debtor advises to the reasonable satisfaction of the Secured Party that (A) the Facility can continue to operate effectively with less than full replacement or restoration of the portion of the Pledged Estate affected by such taking or conveyance and (B) the Debtor can continue to maintain all financial covenants contained in the Reimbursement Agreement for a period of two fiscal years, then any Net Condemnation Proceeds shall be paid to the Debtor for application to such lawful purposes as the Debtor may deem appropriate.

(vii) Notwithstanding anything contained in this Section to the contrary, if an Event of Default has occurred and is continuing hereunder or under the Reimbursement Agreement, any Net Condemnation Proceeds shall, at the option of the Secured Party, be transferred by the Secured Party to the Trustee for deposit in the Bond Fund and used to reimburse the Secured Party for a draw under the Letter of Credit in connection with the mandatory redemption of the Bonds.

Section 9.05. No Waiver by the Secured Party. By accepting payment of any sum secured hereby after its due date, the Secured Party does not waive any late charge thereon not then paid or its right either to require prompt payment when due of all other sums so secured or to declare a default for the Debtor's failure to pay when any amount is due.

Section 9.06. Satisfaction. Except for the provisions which by their express terms survive termination of this Deed of Trust, this Deed of Trust and the lien and security interest created hereby shall be null and void and extinguished, and the Trustee shall, following the written request by, and at the sole cost and expense of the Debtor, execute and record a satisfaction of this Deed of Trust and the Debtor shall be released from the covenants, agreements and obligations of the Debtor contained herein upon the payment and performance of all Bank Payments Obligations secured hereby and termination of all commitments to extend credit.

The recitals in such satisfaction of any matters or facts shall be conclusive proof against all Persons of the truthfulness thereof. The execution and recordation of a satisfaction of this Deed of Trust by the Secured Party shall be sufficient to extinguish all interests of the Secured Party and its respective legal representatives, successors and assigns except those terms which expressly survive the termination of this Deed of Trust.

Section 9.07. Notices. All communications under or in connection with this Deed of Trust shall be in writing and shall be mailed by certified mail, return receipt requested or by overnight express mail with notice for receipt, or otherwise sent by telex, telegram, telecopy or similar form of rapid transmission, or by telephone confirmed by mailing (in the manner stated above) of written confirmation at substantially the same time as such rapid transmission, or personally delivered to an office of the receiving party. All such communications shall be mailed, sent or given to the following addresses:

If to the Debtor:                               Trex Company, Inc.  
160 Exeter Drive  
Winchester, Virginia 22603-8605  
Attention: Senior Vice President and Chief Financial Officer

If to the Trustee:                               Gary P. Snyder  
Watkins Ludlam Winter & Stennis, P.A.  
P.O. Box 1456  
Olive Branch, Mississippi 38654

If to the Secured Party:                       JPMorgan Chase Bank, N.A.  
277 Park Avenue, 22nd Floor  
New York, New York 10172  
Attention: Sandra BVW Braun, Vice President

Section 9.08. Amendment and Waiver. No amendment or waiver of any provision of this Deed of Trust nor consent to any departure by the Debtor therefrom shall in any event be effective unless the same shall be in writing and signed by the Trustee and the Secured Party and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.09. Payment of Costs and Expenses of Secured Party. The Debtor shall promptly pay upon demand all reasonable expenses and costs incurred by the Secured Party, including reasonable attorneys' fees and expenses in connection with (a) any action, proceeding, litigation or claim instituted or asserted by or against the Secured Party or in which the Secured Party become engaged, wherein it becomes necessary in the opinion of the Secured Party to defend or uphold the lien of this Deed of Trust, or the validity or effectiveness of any assignment or any claim, award, payment, property damage insurance policy or any other right or property conveyed, encumbered or assigned by the Debtor to the Secured Party hereunder, or the priority of any of the same, and (b) the exercise or enforcement of any other rights or remedies of the Secured Party hereunder, and in any case, all such reasonable expenses and costs may be added to and become part of the principal indebtedness of the Debtor hereunder, bear interest at the Default Rate, and be secured in all respects hereby as if part of the principal indebtedness of the Debtor hereunder and under the Bank Payments Obligations.

Section 9.10. Taxation of the Bank Payments Obligations and Deed of Trust. If at any time before the Bank Payments Obligations hereby secured are fully paid, any law of the State be enacted deducting from the value of the Pledged Estate for the purposes of taxation the amount of any lien thereon, or imposing upon the Secured Party the payment of the whole or any part of the Impositions herein required to be paid by the Debtor revising or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Secured Party's interest in the Pledged Estate or the manner of collection of taxes, so as to affect adversely this Deed of Trust or the debt hereby secured, or the owner and holder thereof in respect thereto, then, and in any such event, the Debtor upon demand by the Secured Party, shall pay such Impositions or reimburse the Secured Party therefor; provided, however, that if, in the opinion of Counsel for the Secured Party, (a) it would be unlawful to require the Debtor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the Highest Lawful Rate, then, in such event, the Secured Party may elect, by notice in writing given to the Debtor, to declare all of the Bank Payments Obligations secured hereby to be and become due and payable within sixty (60) days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that the Debtor is not obligated to pay any portion of the Secured Party's federal or state income taxes.

Section 9.11. No Credit for Taxes. The Debtor will not claim or demand or be entitled to receive any credit or credits on the Bank Payments Obligations, or on the interest payable thereon, for so much of the taxes assessed against said Pledged Estate as is equal to the tax rate applied to the Bank Payments Obligations due on this Deed of Trust or any part thereof, and no deduction shall be claimed from the taxable value of said Pledged Estate by reason of this Deed of Trust.

Section 9.12. Due on Sale; Assignability. The financial stability and developmental, managerial and operational ability of the Debtor are a substantial and material consideration to the Secured Party in its agreement to enter into the transaction evidenced by the Financing Documents. The Debtor acknowledges that the transfer of the Pledged Estate could significantly and materially alter, impair and reduce the Secured Party's security for the Bank

Payments Obligations. In order, therefore, to induce the Secured Party to accept the Financing Documents, the Debtor agrees not to, directly or indirectly, transfer the Pledged Estate, or any portion thereof, or any interest therein, without the prior written consent of the Secured Party. In the event the Debtor, or any successor in interest of the Debtor, shall transfer the Pledged Estate, or any portion thereof, or any interest therein, to any person without complying with the terms of the Reimbursement Agreement, all Bank Payments Obligations unpaid pursuant to the Financing Documents, the payment of which is secured by this Deed of Trust shall at the option of the Secured Party and without notice or demand, become immediately due and payable, and, in addition, upon any such prohibited transfer, such transfer shall be deemed to be an “Event of Default” hereunder. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. As used herein, “transfer” includes the sale, transfer or conveyance of the Pledged Estate, or any portion thereof, or any interest therein, whether voluntary, involuntary (except by eminent domain), by operation of law or otherwise. The Secured Party shall have the right to assign this Deed of Trust. All of the rights, privileges, remedies and options given to the Secured Party hereunder shall inure to the benefit of its successors and assigns; and all the terms, conditions, promises, covenants, provisions and warranties of this Deed of Trust shall inure to the benefit of and shall bind the representatives, successors and assigns of the Secured Party and the Debtor.

Section 9.13. Severability. Any provision of this Deed of Trust which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 9.14. Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State without giving effect to conflicts of laws.

Section 9.15. Future Advances. This Deed of Trust shall secure the Bank Payments Obligations and any future or protective advances made hereunder or under the Financing Documents. The total amount of indebtedness secured hereby may decrease or increase from time to time.

Section 9.16. Headings. Section headings in this Deed of Trust are included herein for convenience of reference only and shall not constitute a part of this Deed of Trust for any other purpose.

Section 9.17. Entire Agreement. This Deed of Trust constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and is full substitution for any and all prior agreements and understandings between said parties related to such transactions.

Section 9.18. Time of the Essence. Time is strictly of the essence under this Deed of Trust and any amendment, modification or revision hereof.

Section 9.19 Further Action By Debtor. The Debtor shall at its expense promptly upon request of the Secured Party do all reasonable acts and things, including, but not limited to, the execution of any further assurances deemed necessary by the Secured Party, to establish, confirm, maintain, protect and continue the lien created and intended to be created hereby, all assignments made or intended to be made pursuant hereto and all other rights and benefits conferred or intended to be conferred on the Secured Party hereby, and the Debtor shall pay all reasonable costs incurred by the Secured Party in connection therewith, including all filing and recording costs, cost of searches, and reasonable attorneys' fees incurred by the Secured Party.

Section 9.20 Advances by Secured Party. The Secured Party may, but are not obligated to, pay any sum or perform any other obligation for the account of the Debtor which the Debtor has failed to pay or perform (including, but not limited to, procuring insurance), and sums so spent by the Secured Party shall be added to the principal sum secured by this Deed of Trust and be repayable by the Debtor on demand, and shall bear interest from the date of advance by the Secured Party equal to the Default Rate.

Section 9.21 Invalid Provision Disregarded. If any term or provision of this Deed of Trust or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Deed of Trust or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

Section 9.22 Inspection and Repairs by the Secured Party. The Debtor will permit the Secured Party and the Secured Party's representatives to enter the Pledged Estate at reasonable times to inspect the same; provided that so long as there is no uncured or unwaived Event of Default, the Secured Party shall provide the Debtor with prior notice of such inspection. Such right of access shall include, without limitation, the right to enter upon the Pledged Estate to conduct such tests, analyses, environmental audits, inspections and borings as the Secured Party may deem necessary or advisable, in its reasonable discretion. In case of any breach or default by the Debtor in its maintenance and repair obligations with respect to the Pledged Estate under the Reimbursement Agreement, the Secured Party may, at its option, enter the Pledged Estate to protect, restore or repair any part thereof, but the Secured Party shall be under no obligation to do so.

Section 9.23 No Liability of Secured Party. Notwithstanding anything to the contrary contained herein, nothing herein shall cause the Secured Party to be liable for or be bound by any obligations of the Debtor under the Collateral.

THE DEBTOR HEREBY DECLARES AND ACKNOWLEDGES THAT IT HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS DEED OF TRUST.

IN WITNESS WHEREOF, this Deed of Trust has been duly executed as of the day and year first above written.

“Debtor”

**TREX COMPANY, INC.**

By: /s/ Paul D. Fletcher

Paul D. Fletcher

Senior Vice President, Chief Financial Officer

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for the said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, within my jurisdiction, the within named Paul D. Fletcher, duly identified before me, who acknowledged that he is Senior Vice President, Chief Financial Officer of Trex Company, Inc., a Delaware corporation and that for and on behalf of said corporation, and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_  
(Affix official seal)

**TRUST INDENTURE**

**BETWEEN**

---

**MISSISSIPPI BUSINESS FINANCE CORPORATION**

**AND**

**J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION**  
**as Trustee**

---

**RELATING TO:**

**\$25,000,000 Mississippi Business Finance Corporation**  
**Variable Rate Demand Environmental Improvement Revenue Bonds**  
**(Trex Company, Inc. Project), Series 2004**

**Dated as of December 1, 2004**

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## TRUST INDENTURE

THIS TRUST INDENTURE (“Indenture”) dated as of the 1<sup>st</sup> day of December, 2004, between the **MISSISSIPPI BUSINESS FINANCE CORPORATION**, a public corporation duly organized and existing under the laws of the State of Mississippi (the “Issuer”), and **J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States of America, as trustee, and its successor in trust and its assignees (the “Trustee”).

WHEREAS, the Issuer is authorized pursuant to the provisions of Section 57-10-401, et seq., Mississippi Code of 1972, as amended (the “Act”), to issue its revenue bonds to finance the acquisition, construction and equipping of any “project” (as defined in the Act), in furtherance of the public purposes set forth in the Act; and

WHEREAS, the Issuer has agreed to issue its \$25,000,000 Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004 (the “Bonds”), and lend the proceeds of the sale thereof to Trex Company, Inc., a Delaware corporation (the “Borrower”), for the purpose of financing all or a portion of the costs of the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi, to be used by the Borrower in connection with the manufacture of non-wood decking, railing and fencing products (the “Project”), and (ii) to pay a portion of the costs of issuance of the Bonds; and

WHEREAS, the Issuer and the Borrower will enter into a Loan Agreement, dated as of December 1, 2004 (the “Loan Agreement”), pursuant to which the Issuer will agree to lend the proceeds of the Bonds to the Borrower and the Borrower will agree to make payments sufficient to pay the principal and Purchase Price (as hereinafter defined) of, and redemption premium, if any, and interest on, the Bonds as the same become due and payable and to pay administrative expenses in connection with the Bonds; and

WHEREAS, as security for the payment of the Bonds issued pursuant to this Indenture, the Issuer has agreed to assign and pledge to the Trustee, the Security (as hereinafter defined); and

WHEREAS, JPMorgan Chase Bank, N.A., a national banking association (the “Bank”), will issue a Letter of Credit (as hereinafter defined) in favor of the Trustee, for the account of the Borrower, obligating the Bank to pay to the Trustee during the periods described therein, upon request and in accordance with the terms thereof, the amounts described therein for the purpose of making certain payments on or with respect to the Bonds (other than Bonds pledged to the Bank, which Bonds shall not be entitled to any benefit of the Letter of Credit); and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued and delivered as in this Indenture provided, the legal, valid, binding and enforceable limited obligations of the Issuer, according to the import thereof, and to create a valid assignment and pledge of the Security to the payment of the Bonds, have been done and performed, and the

execution and delivery of this Indenture and the execution, issuance and delivery of the Bonds, subject to the terms hereof, have in all respects been authorized;

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings herein expressed, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS

All terms used herein which are not defined herein but are defined in the Loan Agreement identified below shall have the meanings therein set forth, which definitions are by this reference incorporated herein and made a part hereof. In addition to terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of the terms and words herein defined:

**“Act”** means Section 57-10-401 et seq., Mississippi Code of 1972, as amended.

**“Act of Bankruptcy”** means the filing of a petition in bankruptcy (or the other commencement of a bankruptcy or similar proceeding) by or against the Issuer, the Borrower, or any Insider of the Borrower or the Issuer under any applicable bankruptcy, insolvency, reorganization or similar law, now or hereafter in effect.

**“Alternate Letter of Credit”** means an irrevocable letter of credit authorizing drawings thereunder by the Trustee, issued by a national banking association, a bank, a trust company or other financial institution, and satisfying the requirements of Section 308 hereof.

**“Authorized Denominations”** means denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof.

**“Bank”** means initially JPMorgan Chase Bank, N.A., a national banking association, in its capacity as the issuer of the initial Letter of Credit, its successors in such capacity and their assigns, and, upon the acceptance of any Alternate Letter of Credit by the Trustee, the issuer of such Alternate Letter of Credit, its successors in such capacity and their assigns.

**“Beneficial Owner”** means, when the Bonds are held in a book-entry only system, the owner of a Bond or portion thereof for federal income tax purposes.

**“Bond”** or **“Bonds”** means the Bonds authorized to be issued pursuant to Sections 201 and 202 hereof.

**“Bond Counsel”** means Watkins Ludlam Winter & Stennis, P.A. or other nationally recognized bond counsel selected by the Borrower and reasonably satisfactory to the Trustee.

**“Bond Fund”** means the fund created by Section 401 of this Indenture.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement among the Underwriter, the Issuer and the Borrower, dated December \_\_, 2004, relating to the initial purchase of the Bonds.

**“Bond Purchase Fund”** means the fund created by Section 403 of this Indenture.

**“Bond Register”** means the books of the Issuer kept by the Trustee to evidence the registration, transfer and exchange of Bonds.

**“Bond Resolution”** means the resolution adopted by the Issuer on November 17, 2004, authorizing and approving the issuance and sale of the Bonds pursuant to this Indenture.

**“Bondholder”** or **“holder”** means the Registered Owner of any Bond.

**“Borrower”** means Trex Company, Inc., a Delaware corporation.

**“Borrower Bonds”** means Bonds, other than Pledged Bonds, the Registered Owner or Beneficial Owner of which is the Borrower (or any affiliate of the Borrower). For purposes of this definition, (a) an “affiliate” means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Borrower; and (b) “control” means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**“Business Day”** means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which banking institutions in the city in which the administrative trust office or the payment trust office of the Trustee (or its bond registrar, paying agent or tender agent offices) is located or the principal office of the Remarketing Agent is located or the office of the Bank at which action is to be taken to realize moneys under the Letter of Credit are required or authorized by law or executive order to be closed, or (iv) a day on which the New York Stock Exchange is closed.

**“Cede”** means Cede & Co., as nominee of the Depository.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed) promulgated thereunder and under the Internal Revenue Code of 1954, as amended.

**“Conversion Date”** means the Business Day on which the Fixed Rate on the Bonds shall be effective pursuant to Section 204 hereof.

**“Conversion Notice”** means the notice given by the Borrower of its intent to convert the interest rate on the Bonds to the Fixed Rate pursuant to Section 204(a)(1) hereof.

**“Costs of the Project”** shall have the meaning specified in the Loan Agreement.

**“Counsel”** means an attorney, or firm thereof, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia.

**“Depository”** means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book entry system to record ownership of book entry interests in Bonds, and to effect transfers of book entry interests in Bonds in book entry form, the use of which will not impair the federal tax exemption of interest on the Bonds, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

**“Determination of Taxability”** means a determination that the interest income on any of the Bonds is included in gross income of the Bondholder or Beneficial Owner for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(a) The day on which the Borrower is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, based upon any filings of the Borrower, or upon any review or audit of the Borrower, or upon any other grounds whatsoever, the interest on the Bonds is includable for federal income tax purposes in the gross income of any current or former holder or Beneficial Owner thereof;

(b) The day on which the Borrower receives notice from the Trustee in writing that the Trustee has been advised in writing by any current or former holder or Beneficial Owner of a Bond that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such current or former holder or Beneficial Owner which asserts in effect that the interest on the Bonds received by such current or former holder or Beneficial Owner is includable for federal income tax purposes in the gross income of such current or former holder or Beneficial Owner;

(c) The day on which the Borrower is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bonds is includable for federal income tax purposes in the gross income of any current or former holder or Beneficial Owner of such Bonds;

(d) The day on which the Borrower is advised in writing that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bonds is includable for federal income tax purposes in the gross income of any current or former holder or Beneficial Owner of such Bonds; or

(e) The date specified in a written opinion to the Borrower and the Trustee from Bond Counsel as the day on which interest on the Bonds first became or will become includable for federal income tax purposes in the gross income of any current or former holder or Beneficial Owner of such Bonds;

*provided, however, (i) no Determination of Taxability shall occur if the interest on any of the Bonds is included in gross income for federal income tax purposes solely because such Bonds were held by a Person who is a Substantial User or a Related Person, and (ii) no Determination of Taxability shall occur under subparagraph (a), (b) or (c) of this paragraph unless the Borrower has been afforded the opportunity, at its expense, to contest any such conclusion and/or assessment after furnishing the Trustee, the Issuer and the Bank, within thirty (30) days after the occurrence of an event described in subparagraph (a), (b) or (c) of this paragraph, with an opinion of Bond Counsel to the effect that there is a reasonable likelihood that the Borrower will prevail in such contest, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined. The Borrower shall promptly notify the Trustee, the Bank and the Issuer of any event described in subparagraph (a), (c), (d) or (e) of this paragraph and shall further promptly notify the Trustee, the Bank and the Issuer of any final determination if the Borrower has contested under subparagraph (a), (b) or (c) of this paragraph. The Borrower shall be deemed to have been afforded the opportunity to contest the occurrence of a Determination of Taxability if it shall have been permitted to commence and maintain any action in the name of any current or former holder or Beneficial Owner of such Bonds to judgment and through any appeals therefrom or other proceedings related thereto.*

**“Eligible Funds”** means moneys held by the Trustee which consist of any of the following:

(a) Moneys representing the proceeds from the remarketing by the Remarketing Agent of Bonds tendered for purchase pursuant to Section 205 or 206 hereof to any person other than the Borrower, the Issuer, any Insider of the Borrower or the Issuer, or any other person obligated (as guarantor or otherwise) to make payments on the Bonds or under the Loan Agreement or the Reimbursement Agreement, which in each case were at all times since their receipt by the Trustee held in a separate and segregated account or accounts or sub-account or sub-accounts in which no moneys which were not Eligible Funds were at any time held;

(b) Amounts paid by the Bank to the Trustee under the Letter of Credit which were at all times since their receipt by the Trustee held in a separate and segregated account or accounts or sub-account or sub-accounts in which no moneys other than those drawn under the Letter of Credit were at any time held; or

(c) Moneys with respect to which the Trustee has received an unqualified opinion of Counsel familiar with bankruptcy matters (which may assume that no Bondholder is an Insider of the Borrower or the Issuer) to the effect that the use of such moneys to pay the principal of, premium, if any, Purchase Price or interest on the Bonds would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code in the event of the filing of a petition thereunder by or against the Issuer or the Borrower.

Notwithstanding the foregoing, (i) when used with respect to the payment of any amounts due in respect of Pledged Bonds, the term “Eligible Funds” shall mean any moneys held by the Trustee and the proceeds from the investment thereof, except for moneys realized under the Letter of Credit and (ii) if the Bonds are not secured by a Letter of Credit during the Fixed Rate

Period, the term “Eligible Funds” shall mean any moneys furnished to the Trustee and the proceeds of the investment thereof.

“**Eligible Funds Account**” means the account within the Bond Fund established pursuant to Section 401 of the Indenture.

“**Event of Default**” means any of the events specified in Section 601 hereof.

“**Favorable Opinion of Bond Counsel**” means an opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that the action proposed to be taken is not prohibited by the laws of the State or this Indenture and will not adversely affect any exclusion by the holders or Beneficial Owners from gross income for federal income tax purposes of interest on the Bonds.

“**Fixed Rate**” means the interest rate on the Bonds during the Fixed Rate Period established pursuant to Section 203(c) hereof.

“**Fixed Rate Determination Date**” means the date on which the Remarketing Agent determines the Fixed Rate, which shall be a Business Day not more than twenty (20) Business Days nor less than five (5) Business Days prior to the Conversion Date.

“**Fixed Rate Period**” means the period from and including the Conversion Date to and including the date of payment in full of the Bonds.

“**Government Obligations**” means obligations of the United States, its agencies, or United States government sponsored enterprises, or obligations the timely payment of principal and interest on which is unconditionally guaranteed by the United States or its agencies.

“**Government Obligations Fund**” means a fund which is composed solely of Government Obligations and repurchase agreements secured by Government Obligations; *provided* that if the Bonds are then rated, such fund must be rated by each Rating Agency then rating the Bonds at least as high as the then current rating on the Bonds at the time of such investment.

“**Indenture**” means this Trust Indenture dated December 1, 2004 between the Issuer and the Trustee, as amended or supplemented from time to time as permitted hereby.

“**Insider**” means an “insider” as defined in Title 11 of the United States Code, as amended from time to time, or any substitute or replacement legislation (the “Bankruptcy Code”).

“**Interest Payment Date**” means (i) during the Variable Rate Period, the first Business Day of each month, commencing with the first Business Day of the month following the Issue Date, (ii) the Conversion Date, and (iii) following the Conversion Date, each June 1 and December 1.

**“Issue Date”** means the date on which the Bonds are delivered to the purchaser or purchasers thereof upon original issuance.

**“Issuer”** means the Mississippi Business Finance Corporation, a public corporation duly organized and existing under the laws of the State of Mississippi, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

**“J.J. Kenny Index”** means, as of any date, the index of thirty (30) day yields on high grade tax-exempt municipal bonds as determined by J.J. Kenny Co., Inc. or any successor thereto and published on such date (or, if not published on such date, on the most recent day prior thereto on which such index shall have been so published).

**“Letter of Credit”** means a letter of credit satisfying the requirements of Section 308 hereof, including any extensions or amendments thereto, and including any Alternate Letter of Credit delivered pursuant to Section 308.

**“Letter of Credit Account”** means the account within the Bond Fund established pursuant to Section 401 of this Indenture.

**“Letter of Representations”** means the blanket agreement of the Issuer to comply with the operational arrangements of The Depository Trust Company and any similar agreements with respect to a successor Depository.

**“Liquidity Drawing”** means a drawing under the Letter of Credit in accordance with the terms thereof to pay the Purchase Price of tendered Bonds.

**“Loan Agreement”** means the Loan Agreement dated as of December 1, 2004, between the Issuer and the Borrower, as the same may be amended or supplemented from time to time as permitted thereby.

**“Loan Repayments”** means all amounts required to be paid by the Borrower to the Issuer (and the Trustee as the assignee of the Issuer) pursuant to the Promissory Note and Section 3.2 of the Loan Agreement.

**“Mandatory Tender Date”** means any date on which the Bonds are required to be tendered for purchase in accordance with Section 206 hereof.

**“Municipal Swap Index”** means the Bond Market Association Municipal Swap Index as of the most recent date for which such index was published or such other weekly, high-grade index comprised of seven-day, tax-exempt variable rate demand notes produced by Municipal Market Data, Inc. or its successor, or otherwise designated by the Bond Market Association.

**“Non-Eligible Funds Account”** means the account within the Bond Fund established pursuant to Section 401 of this Indenture.

**“Outstanding,”** when used with reference to the Bonds at any date as of which the amount of outstanding Bonds is to be determined, means all Bonds which have been authenticated and delivered by the Trustee hereunder, except:

- (a) Bonds canceled or delivered for cancellation at or prior to such date;
- (b) Bonds deemed to be paid in accordance with Section 502 hereof;
- (c) Bonds in lieu of which others have been authenticated under Sections 212, 213 and 214 hereof;
- (d) Unsurrendered Bonds; and

(e) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer or the Borrower, except that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being Outstanding only Bonds of which the Trustee has actual notice to be so held.

**“Participant” or “Participants”** means securities brokers and dealers, banks, trust companies and clearing corporations which participate in the Depository with respect to the Bonds.

**“Permitted Investments”** means any of the following which are not prohibited under applicable law:

- (i) Government Obligations;
- (ii) Obligations of a state of the United States, the District of Columbia or any possession of the United States, or any political subdivision thereof, which are described in Section 103(a) of the Code and are rated at the time of purchase in one of the highest three major grades as determined by at least one national rating service or are secured, as to payments of principal and interest, by a letter of credit provided by a financial institution or insurance provided by a bond insurance company which itself or its debt is rated at the time of purchase in one of the highest three major grades as determined by at least one national rating service;
- (iii) Banker’s acceptances, commercial accounts, certificates of deposit, or depository receipts issued by a bank, trust company, savings and loan association, savings bank, credit union or other financial institution whose deposits are, as appropriate, insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any successor entities and whose reported capital and surplus equal at least \$40,000,000;

(iv) Commercial paper rated at the time of purchase within the two highest classifications established by not less than two national rating services, and which matures within two hundred seventy (270) days after the date of issue;

(v) Repurchase agreements against obligations itemized in paragraph (i) above which must be executed by a bank or a trust company or by members of the Association of Primary Dealers or other recognized dealers in United States securities, the market value of which must be maintained at levels at least equal to the amounts advanced and which must be held in the custody of the Trustee or the Trustee's agent;

(vi) Any fund or other pooling arrangement which exclusively purchases and holds the investments itemized in (i) through (v) above, including without limitation, one or more money market mutual fund portfolios of the JPMorgan Funds or any other mutual fund for which the Trustee or any of its affiliates serves as an investment manager, administrator, servicing agent, and/or custodian or subcustodian, notwithstanding that (A) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (B) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (C) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates.

(vii) An investment agreement or guaranteed investment contract with a provider whose unsecured long-term debt is rated at the time of purchase within the two highest rating classifications established by at least one national rating service or an investment agreement or guaranteed investment contract which is guaranteed by an entity meeting the provider requirements described in this subparagraph (vii); or

(viii) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, which shares, at the time of purchase, are rated by at least one national ratings service within the two (2) highest rating classifications (without regard to any refinements or gradation of rating classification by numerical modifier or otherwise) assigned by such service for an obligation of that nature including without limitation, one or more money market mutual fund portfolios of the JPMorgan Funds or any other mutual fund for which the Trustee or any of its affiliates serves as an investment manager, administrator, servicing agent, and/or custodian or subcustodian, notwithstanding that (A) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (B) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (C) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates.

**"Pledge Agreement"** means, with respect to the Letter of Credit, the agreement which governs the terms of any Pledged Bonds, and initially shall mean the Custody, Pledge and

Security Agreement dated as of December 1, 2004 among the Borrower, the Trustee and the Bank, as the same may be amended or supplemented from time to time.

**“Pledged Bonds”** means, at the time of determination thereof, any Bonds or beneficial interests in Bonds purchased by the Trustee with payments made under the Letter of Credit as described in Section 404 hereof and pledged to the Bank pursuant to the provisions of the Pledge Agreement.

**“Project”** means the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi to be used by the Borrower in connection with the manufacture of non-wood decking, railing and fencing products, all as more fully described in attached Exhibit D to the Loan Agreement.

**“Project Fund”** means the fund created by Section 402 of this Indenture.

**“Promissory Note”** means the Promissory Note given by the Borrower to the Issuer and assigned to the Trustee pursuant to the Loan Agreement, in the form of attached Exhibit C to the Loan Agreement, as the same may be amended, modified or supplemented in accordance with the terms of the Loan Agreement.

**“Proposed Conversion Date”** means any date designated by the Borrower as the Conversion Date in accordance with Section 204 of this Indenture.

**“Purchase Price”** means one hundred percent (100%) of the principal amount of the Bond or Bonds (or portions thereof in Authorized Denominations) to be purchased pursuant to the provisions of Sections 205 or 206 hereof plus accrued interest, if any, thereon to the purchase date.

**“Rating Agency”** means Moody’s Investors Service and/or Standard & Poor’s Ratings Group or their successors and assigns, according to which of such rating agencies then rates the Bonds; and *provided* that if neither of such rating agencies then rates the Bonds, the term “Rating Agency” shall be deemed to refer to any nationally recognized securities rating agency.

**“Record Date”** means with respect to each Interest Payment Date (i) on and prior to the Conversion Date, the Trustee’s close of business on the Business Day next preceding such Interest Payment Date, and (ii) after the Conversion Date, the Trustee’s close of business on the fifteenth (15<sup>th</sup>) day of the calendar month next preceding such Interest Payment Date, regardless whether such day is a Business Day.

**“Registered Owner”** means the person or persons in whose name or names a Bond is registered on the registration books of the Issuer maintained by the Trustee for that purpose in accordance with the terms of this Indenture.

**“Reimbursement Agreement”** means with respect to each Letter of Credit, the agreement pursuant to which such Letter of Credit is issued, including all amendments thereof and supplements thereto, and initially shall mean the Reimbursement and Credit Agreement,

dated as of December 1, 2004, between the Bank and the Borrower, as the same may be amended or supplemented from time to time.

**“Related Person,”** with reference to any Substantial User, means a “related person” within the meaning of Section 147(a) of the Code,

**“Remarketing Agent”** means the Remarketing Agent appointed and serving in such capacity under Section 709 hereof and any successors thereto. The initial Remarketing Agent shall be J.P. Morgan Securities Inc., a Delaware corporation with an office located in Chicago, Mississippi.

**“Remarketing Agreement”** means the Remarketing Agreement dated as of December 1, 2004, between the Borrower and the Remarketing Agent, as from time to time supplemented and amended, and, unless the context or use indicates another or different meaning or intent, any remarketing agreement among the Borrower and the Remarketing Agent, as from time to time supplemented and amended, which provides that it is a Remarketing Agreement for purposes of this Indenture.

**“Replacement Bonds”** means Bonds issued pursuant to Section 214 hereof.

**“Security”** means the revenues (including Loan Repayments), funds, rights and interests specified in Section 301 of this Indenture.

**“Special Tax Counsel”** means McGuire Woods LLP, or any other nationally recognized counsel expert in the law concerning tax exempt obligations.

**“State”** means the State of Mississippi.

**“Stated Expiration Date”** means the date (as such date may be extended from time to time) on which the Letter of Credit is stated to expire or terminate in accordance with its terms other than by virtue of the replacement of such Letter of Credit with an Alternate Letter of Credit in accordance with the terms of Section 308 hereof.

**“Substantial User”** means, with respect to any “facilities” (as the term “facilities” is used in Section 147(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

**“Surplus Bond Proceeds”** means all moneys transferred from the Project Fund to the Bond Fund after the Completion Date pursuant to Section 5.4 of the Loan Agreement and any investment earnings thereon.

**“Trustee”** means J.P. Morgan Trust Company, National Association, acting in its capacity as the trustee under this Indenture, and any permitted successor trustee under Article VII of this Indenture.

**“U.C.C.”** means the Uniform Commercial Code of the State as now or hereafter amended, whether or not such code is applicable to the parties or the transaction.

**“Underwriter”** means J.P. Morgan Securities Inc., a Delaware corporation.

**“Unsurrendered Bonds”** means Bonds (or portions thereof in Authorized Denominations) which are not tendered as required under the provisions of Section 205 and Section 206 hereof, but for which there has been irrevocably deposited in the Bond Purchase Fund an amount sufficient to pay the Purchase Price thereof and of all other Bonds (if any) not tendered or deemed to be tendered for purchase on the date specified in Section 205 hereof or on a Mandatory Tender Date.

**“Variable Rate”** means the interest rate on the Bonds during the Variable Rate Period established pursuant to Section 203(b) hereof.

**“Variable Rate Period”** means the period from and including the Issue Date to the earlier of (i) the Conversion Date or (ii) the day of payment in full of the Bonds.

## 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 II. Pursuant to the Bond Resolution, the total aggregate principal amount of Bonds that may be issued and outstanding hereunder is expressly limited to an aggregate amount of \$25,000,000, subject to the provisions of Sections 212, 213 and 214 hereof.

SECTION 202. Issuance of Bonds. The Bonds (i) shall be designated “Mississippi Business Finance Corporation Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004,” (ii) shall be dated the Issue Date, (iii) shall bear interest from the Issue Date or such later date to which interest has been paid, until paid, at the rates established pursuant to Section 203 hereof (computed on the basis of a 365/366-day year, as the case may be, on actual days elapsed prior to the Conversion Date and a 360-day year of twelve 30-day months thereafter), and (iv) shall mature, unless sooner paid, on December 1, 2029.

The Bonds shall be issued as registered bonds without coupons and shall be issued in Authorized Denominations. The Bonds issued hereunder shall be numbered consecutively from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

The principal and Purchase Price of and the redemption premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America. The principal of and redemption premium, if any, on the Bonds and the Purchase Price of the Bonds shall be payable at the payment trust office of the Trustee currently located in Dallas, Texas or other designated office of the Trustee. The interest on the Bonds shall be paid by check or draft of the

Trustee mailed to the Persons in whose names the Bonds are registered on the Bond Register at the close of business on the Record Date next preceding each Interest Payment Date; *provided, however*, any Registered Owner of Bonds in the aggregate principal amount of \$1,000,000 or more as of the close of business on the Record Date preceding any Interest Payment Date may, by prior written instructions filed with the Trustee on or before the second (2<sup>nd</sup>) Business Day preceding such Record Date (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments for any period be made by wire transfer to any bank located in the continental United States.

If any payment of interest or principal or redemption premium on the Bonds is due on a date not a Business Day, payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date which is fixed for such payment, and no interest shall accrue on such amount for the period after such due date so long as such amount is paid on the next succeeding Business Day.

The provisions of the Bonds shall control to the extent of any conflict with the provisions hereof.

SECTION 203. Interest Rates on Bonds.

(a) The Bonds shall bear interest as provided herein from the Issue Date to the date of payment in full of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date for the period from and including the prior Interest Payment Date to but excluding such Interest Payment Date. The interest rate on the Bonds will be determined as provided in this Section 203; *provided* that (i) the Variable Rate shall not exceed the lesser of ten percent (10%) per annum or the maximum rate permitted by applicable law and (ii) the Fixed Rate shall not exceed the maximum rate permitted by applicable law. Interest on the Bonds will be payable at the Variable Rate from the Issue Date until the earlier of the Conversion Date or the date of payment in full of the Bonds.

(b) During the Variable Rate Period, the Variable Rate shall be determined by the Remarketing Agent by 4:30 p.m. New York City time on each Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day) and shall be the minimum rate necessary (as determined by the Remarketing Agent based on the examination of tax-exempt obligations comparable to the Bonds known to the Remarketing Agent to have been priced or traded under then-prevailing market conditions) for the Remarketing Agent to sell such Bonds on the effective date of such Variable Rate at their principal amount (without regard to accrued interest). The first Variable Rate shall apply to the period beginning on the Issue Date and ending on the next Wednesday. Thereafter, each Variable Rate shall apply to the period beginning on the Thursday of the week in which such Variable Rate is set and ending on the following Wednesday, or earlier, if ending on the Conversion Date. If no Remarketing Agent is serving hereunder, or if for any reason the Remarketing Agent has not determined the Variable Rate on a Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day), the Variable Rate for the Bonds shall be equal to the Municipal Swap Index; *provided* that if such index is no longer provided by Municipal Market Data, Inc. or its

successor, the rate shall be equal to the J.J. Kenny Index or if such index is not available, such other index (or percentage of an index) deemed appropriate for tax-exempt securities of the nature of the Bonds as the Remarketing Agent may have previously selected, or, if no rate or index is provided, the new rate shall be the same as the rate for the preceding week. The Remarketing Agent shall promptly notify the Bondholders and the Bank by first-class mail of any change in the interest rate determination method as described in the preceding sentence.

(c) The Bonds shall bear interest at the Fixed Rate during the Fixed Rate Period. The Fixed Rate for the Bonds shall be determined by the Remarketing Agent on the Fixed Rate Determination Date and shall be the rate determined by the Remarketing Agent on the Fixed Rate Determination Date to be the rate which, if borne by the Bonds, would, in the judgment of the Remarketing Agent having due regard to prevailing market conditions for revenue bonds or other tax-exempt securities comparable to the Bonds, be the interest rate necessary, but would not exceed the interest rate necessary, to enable the Remarketing Agent to remarket the Bonds tendered (or deemed to have been tendered) for purchase at a price of par (exclusive of accrued interest, if any) on the Fixed Rate Determination Date; *provided, however*, that the Fixed Rate shall not exceed the maximum rate permitted by applicable law. If for any reason the Remarketing Agent fails to determine the Fixed Rate by the close of business on the fifth (5<sup>th</sup>) Business Day preceding the Proposed Conversion Date, the Bonds shall continue to bear interest at the Variable Rate as described in Section 204(b) hereof. The Fixed Rate for the Bonds shall be set forth in a written notice of the Remarketing Agent sent by facsimile to the Borrower, the Issuer and the Trustee by the Remarketing Agent on the Fixed Rate Determination Date.

(d) The determination of the Variable Rate or the Fixed Rate by the Remarketing Agent shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Remarketing Agent and the Bondholders.

(e) In determining the interest rate that the Bonds shall bear as provided in this Section 203, neither the Remarketing Agent nor the Trustee shall have any liability to the Issuer, the Borrower, the Trustee or any Bondholder except for its gross negligence or willful misconduct.

(f) The Remarketing Agent shall give the Trustee facsimile notice by 4:30 p.m. New York City time on the date on which a Variable Rate is set, such Variable Rate as determined pursuant to Section 203(b) hereof. The Borrower, the Issuer, the Bank or any Bondholder may request that the Remarketing Agent identify the Variable Rate with respect to the Bonds at any time and the Remarketing Agent shall identify such Variable Rate promptly via facsimile and/or verbally if so requested. Using the interest rates provided by the Remarketing Agent, the Trustee shall calculate the amount of interest to be paid on each Interest Payment Date. The Trustee shall notify the Borrower of the amount of interest to be paid on each Interest Payment Date during the Variable Rate Period as soon as practicable. If the Bonds are in a book-entry only system, the Trustee shall notify the Depository of the amount of interest to be paid on each Interest Payment Date and the Remarketing Agent shall confirm such amount in accordance with the requirements of the Letter of Representations.

SECTION 204. Conversion of Interest Rate on Bonds.

(a) During the Variable Rate Period, the interest rate on the Bonds, at the option of the Borrower, shall be converted from the Variable Rate to the Fixed Rate, upon delivery by the Borrower to the Trustee, the Remarketing Agent, the Bank and the Issuer:

(1) On any Business Day during the Variable Rate Period, of a notice (the "Conversion Notice") stating (i) that the Borrower intends to convert the interest rate on the Bonds to the Fixed Rate and specifying the Proposed Conversion Date, which date shall be a Business Day at least forty-five (45) days after the date on which the Trustee receives the Conversion Notice, (ii) that the Borrower has obtained the written consent of the Bank to the giving of such Conversion Notice (and attaching such written consent), and (iii) whether the Bonds will be secured by a Letter of Credit during the Fixed Rate Period; and

(2) By 10:00 a.m. New York City time on the Proposed Conversion Date, of (i) a Favorable Opinion of Bond Counsel as to the conversion of the interest rate on the Bonds; (ii) if the Borrower elects to secure the Bonds with a Letter of Credit during the Fixed Rate Period, an amendment to the Letter of Credit then in effect or an Alternate Letter of Credit, in either case to be effective on the Proposed Conversion Date and meeting the requirements of Section 308 hereof; and (iii) a written undertaking by the Borrower, satisfactory in form and substance to the Remarketing Agent and the Issuer, whereby the Borrower agrees to comply with the continuing disclosure requirements of subsection (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, as then applicable; *provided, however*, that the Borrower shall not be required to make such a written undertaking if the Remarketing Agent provides the Issuer, the Trustee and the Borrower with an opinion of counsel that an exemption from compliance with Rule 15c2-12 is available and applies.

(b) If (i) the Trustee receives written notification from the Borrower by the close of business on the Fixed Rate Determination Date of the Borrower's decision not to elect the conversion of the interest rate on the Bonds to the Fixed Rate on the Proposed Conversion Date; (ii) the Borrower fails to satisfy the conditions of Section 204(a)(2) hereof; or (iii) the Remarketing Agent fails to determine the Fixed Rate by the close of business on the fifth (5<sup>th</sup>) Business Day preceding the Proposed Conversion Date, the interest rate on the Bonds shall not be converted to the Fixed Rate on the Proposed Conversion Date. In such event, the Bonds shall bear interest for the remaining portion of the current interest rate period at the Variable Rate then in effect, or for an interest rate period at the Variable Rate in effect for the immediately preceding interest rate period, and will continue to remain outstanding in accordance with the terms of this Indenture as if no such election had been made by the Borrower to convert the interest rate borne by the Bonds to the Fixed Rate; *provided, however*, that the Bonds will continue to be subject to mandatory tender on the Proposed Conversion Date pursuant to Section 206 hereof. The Trustee shall promptly notify the Issuer by mail (and shall promptly notify the Bank and the Remarketing Agent by telephone) upon the occurrence of any of the events

identified in clauses (i), (ii) or (iii) of this subsection (b) and in the event that the interest rate on the Bonds is not converted on the Proposed Conversion Date as provided herein.

(c) No conversion of the interest rate on the Bonds shall occur under this Section 204 if at the time of such conversion an Event of Default has occurred hereunder and is continuing with respect to the Bonds.

(d) The Bonds shall not be subject to optional or mandatory tender for purchase as provided in Sections 205 and 206 hereof after the Conversion Date.

SECTION 205. Purchase of Bonds at Option of Bondholder. The holder of any Bond shall have the right to tender such Bond to the Trustee as tender agent for purchase in whole or in part (in any Authorized Denomination) on any Business Day during the Variable Rate Period, but not thereafter, at a Purchase Price equal to one hundred percent (100%) of the principal amount of Bonds (or portions thereof in Authorized Denominations) tendered plus accrued interest to the specified purchase date. In order to exercise such option with respect to any Bond or portion thereof, the holder thereof must give to the Trustee as tender agent at its designated corporate trust office by 9:00 a.m. New York City time at such office on a Business Day at least seven (7) days immediately preceding the proposed purchase date (i) telephonic notice of tender (which telephonic notice must be confirmed by written notice, which may be by facsimile transmission, of tender in the form provided in this Indenture or such other form acceptable to the Trustee received by the Trustee as tender agent on a Business Day not more than two (2) Business Days after such telephonic notice) or (ii) written notice, which may be by facsimile transmission, of tender to the Trustee as tender agent (which written notice of tender shall be in the form provided in this Indenture or shall be in such other form acceptable to the Trustee).

If the Bonds are in a book-entry only system, such notice of tender shall be given, or caused to be given, by any Beneficial Owner of Bonds (through its Participant in the Depository) to the Trustee and delivery of Bonds shall be effected by causing such Participant to transfer its interest in the Bonds equal to such Beneficial Owner's interest on the records of the Depository to the Participant account of the Remarketing Agent with the Depository. The Remarketing Agent shall ascertain such information as it deems sufficient to verify the identity of such Beneficial Owners including the Participant in whose account such Beneficial Owner's Bonds are recorded and shall promptly confirm such notice telephonically to the Trustee as tender agent together with such Participant account information. Upon the delivery of such written notice of tender, such election to tender shall be irrevocable and binding upon the holder (or Beneficial Owner) thereof. At or before 10:00 a.m., New York City time, on the specified purchase date, the Registered Owner or Beneficial Owner of each Bond as to which such written notice of tender has been given shall deliver each Bond to be purchased as a whole or in part (in any Authorized Denominations) and an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on such Bond or in such other form acceptable to the Trustee) to the Trustee, as tender agent, at its designated corporate trust office, and any Bond which is not so tendered, but for which there has been irrevocably deposited in the Bond Purchase Fund Eligible Funds in an amount sufficient to pay

the Purchase Price thereof and all other Bonds tendered or deemed tendered for purchase on such specified purchase date, shall be deemed to have been tendered by the holder thereof and purchased from such holder on the specified purchase date. If the Bonds are in a book-entry only system, the requirement for physical delivery of the Bonds in connection with a demand for purchase under this Section 205 shall be deemed satisfied when the ownership rights in the Bonds are transferred by Participants on the records of the Depository to the Participant account of the Remarketing Agent. The Trustee shall, in its sole discretion, determine whether, with respect to any Bond, the Registered Owner or Beneficial Owner thereof has properly exercised the option to have his Bond purchased as a whole or in part.

If any such notice of tender for purchase shall have been given to the Trustee as tender agent pursuant to this Section 205, the Trustee as tender agent shall promptly give telephonic or telecopier notice, promptly confirmed by a written notice, to the Remarketing Agent, the Bank and the Borrower on the same date that the Trustee as tender agent receives notice of the tender for purchase, if possible, or on the immediately following Business Day, specifying the principal amount of Bonds as to which notice of tender for purchase has been given and the proposed date of purchase. On the specified purchase date, the Trustee as tender agent shall purchase, or cause to be purchased, all Bonds as to which written notices of tender for purchase have been received at a Purchase Price equal to the principal amount thereof plus accrued interest, if any, thereon to the specified purchase date. Funds for payment of the Purchase Price of Bonds tendered for purchase shall be withdrawn by the Trustee as tender agent from the Bond Purchase Fund as provided in Section 404 of this Indenture.

If there have been irrevocably deposited in the Bond Purchase Fund Eligible Funds in an amount sufficient to pay the Purchase Price of all Bonds tendered or deemed to be tendered for purchase on the specified purchase date, the holder of any Unsurrendered Bond shall not be entitled to receive interest on such Unsurrendered Bond on and after the specified purchase date and all such Unsurrendered Bonds shall be deemed to have been tendered for purchase and purchased pursuant to this Section 205 on such specified purchase date. The Trustee shall issue a new Bond or Bonds in the same aggregate principal amount of any Unsurrendered Bonds which are not tendered for purchase on any specified purchase date and, upon receipt of any such Unsurrendered Bonds from the holder thereof, the Trustee shall pay the Purchase Price of such Unsurrendered Bonds plus accrued interest, if any, thereon to the specified purchase date to the holders thereof and such Unsurrendered Bonds shall be canceled as provided in Section 215 of this Indenture. If the Bonds are in a book-entry only system and Bonds are purchased pursuant to this Section 205, the Beneficial Owner shall cause its Participant in the Depository to record the transfers of the Bonds in its books for the accounts of the Participants purchasing the same.

SECTION 206. Mandatory Tender of Bonds.

(a) During the Variable Rate Period, each Bondholder shall be required to tender its Bonds to the Trustee as tender agent for purchase on each date described below (each of the dates described below being a "Mandatory Tender Date"):

- (i) On each Proposed Conversion Date;

(ii) On the date upon which an Alternate Letter of Credit is to be substituted for the Letter of Credit then in effect;

(iii) On the Interest Payment Date next preceding the Stated Expiration Date of the Letter of Credit then in effect, if the Trustee has not received at least forty-five (45) days (or such shorter period as shall be acceptable to the Trustee, but not less than thirty (30) days) prior to the Interest Payment Date next preceding the Stated Expiration Date of the current Letter of Credit either an extension of the then existing Letter of Credit or an Alternate Letter of Credit meeting the requirements of Section 308 hereof; and

(iv) On each optional redemption date for which the Borrower with the written consent of the Bank has elected to purchase Bonds in lieu of an optional redemption pursuant to Section 217(a) hereof.

(b) At least twenty (20) days, but not more than forty-five (45) days, prior to each such Mandatory Tender Date, the Trustee, at the expense of the Borrower, shall give notice of such mandatory tender by first class mail to the holders of all Bonds at their addresses appearing on the Bond Register. Any notice given in such manner shall be conclusively presumed to have been duly given, whether or not the holders receive such notice. Such notice of mandatory tender shall (i) specify the Mandatory Tender Date and the reason for the mandatory purchase on such date, (ii) if such Mandatory Tender Date is a Proposed Conversion Date, state that such conversion to the Fixed Rate will not occur if the conditions described in Section 204(a)(2) hereof are not satisfied but that such mandatory tender will still occur on the Proposed Conversion Date, and (iii) state that all Bonds shall be tendered by the holders thereof for purchase at or before 10:00 a.m., New York City time, on the Mandatory Tender Date to the Trustee as tender agent at its designated payment trust office, together with an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on the Bonds or such other form acceptable to the Trustee as tender agent), and that such Bonds shall thereupon be purchased on the Mandatory Tender Date at a Purchase Price equal to the principal amount thereof plus accrued interest, if any, to the Mandatory Tender Date, and any such Bond which is not so tendered but for which there has been irrevocably deposited in the Bond Purchase Fund Eligible Funds in an amount sufficient to pay the Purchase Price thereof and of all other Bonds so tendered and deemed to be tendered for purchase on the Mandatory Tender Date shall be deemed to have been tendered for purchase by the holder thereof and purchased from such holder on the Mandatory Tender Date.

(c) All Bonds shall be tendered for purchase by the holders thereof to the Trustee as tender agent at or before 10:00 a.m., New York City time, on a Mandatory Tender Date, by delivering such Bonds to the Trustee as tender agent at its designated payment trust office, together with an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on the Bonds or such other form acceptable to the Trustee). If the Bonds are in a book-entry only system, a Beneficial Owner of Bonds shall effect delivery of Bonds in accordance with this Section 206 by causing its Participant in the Depository to transfer its interest in the Bonds (equal to such Beneficial Owner's interest) on the records of the Depository to the participant account of the Trustee with

the Depository and the requirement for physical delivery of Bonds hereunder shall be deemed satisfied when the ownership rights in the Bonds are transferred by Participants on the records of the Depository. On such Mandatory Tender Date the Trustee as tender agent shall purchase, or cause to be purchased, all Bonds at a Purchase Price equal to the principal amount thereof plus accrued interest, if any, to the purchase date. Funds for payment of the Purchase Price of such Bonds shall be withdrawn by the Trustee from the Bond Purchase Fund as provided in Section 404 of this Indenture.

(d) If there have been irrevocably deposited in the Bond Purchase Fund Eligible Funds in an amount sufficient to pay the Purchase Price of all Bonds tendered or deemed tendered for purchase on a Mandatory Tender Date, the holder of any Unsurrendered Bond shall not be entitled to receive interest on such Unsurrendered Bond on and after such Mandatory Tender Date, and all such Unsurrendered Bonds shall be deemed to have been tendered for purchase and purchased pursuant to this Section 206 on such Mandatory Tender Date. The Trustee shall issue a new Bond or Bonds in the same aggregate principal amount for any Unsurrendered Bonds which are not tendered for purchase on any Mandatory Tender Date and, upon receipt of any such Unsurrendered Bonds from the holders thereof, the Trustee shall pay the purchase price of such Unsurrendered Bonds plus accrued interest, if any, to the Mandatory Tender Date to the holders thereof and such Unsurrendered Bonds shall be canceled as provided in Section 215 of this Indenture. If the Bonds are in a book-entry only system and Bonds are purchased pursuant to this Section 206, the Beneficial Owner shall cause its Participant in the Depository to record the transfer of the Bonds in its books for the accounts of the Participants purchasing the same.

SECTION 207. Procedures for Remarketing of Bonds. Unless otherwise directed by the Borrower and the Bank in writing not to do so, the Remarketing Agent will use its best efforts to remarket all Bonds tendered or deemed to be tendered for purchase pursuant to Section 205 or 206 hereof and, subject to the next sentence hereof, to remarket all Bonds held by the Trustee as tender agent pursuant to Section 404 hereof at a purchase price equal to the principal amount thereof plus accrued interest, if any, thereon to the applicable purchase date; *provided, however*, that the Remarketing Agent shall first select for remarketing any Pledged Bonds. The Remarketing Agent may not remarket any Bonds (other than Pledged Bonds) to the Borrower, the Issuer or any Insider thereof known to it while the Letter of Credit is in effect. The Borrower may at any time, upon written direction to the Remarketing Agent, together with a written consent thereto from the Bank, direct the Remarketing Agent to cease or to resume the remarketing of some or all of the Bonds. Notwithstanding any provision herein to the contrary, the Remarketing Agent shall be under no obligation to remarket Bonds (or beneficial interests therein) (i) if there shall have occurred and be continuing an Event of Default hereunder or (ii) if the Bonds have been tendered pursuant to Section 206(a)(iii) hereof and no extension of the Letter of Credit or Alternate Letter of Credit has been delivered to the Trustee meeting the requirements of Section 308 of this Indenture. All Bonds tendered for purchase pursuant to Section 205 or 206 hereof may only be offered and sold by the Remarketing Agent at a price equal to the principal amount thereof plus accrued interest, if any, thereon to the applicable purchase date.

At or prior to 3:00 p.m., New York City time, on the Business Day immediately preceding the applicable purchase date, the Remarketing Agent shall give telephonic or telecopier notice, promptly confirmed in writing, to the Trustee and the Borrower (to be received by the Trustee by 4:00 p.m., New York City time on such day), specifying or confirming (if the Bonds are not in a book-entry only system) the names, addresses and taxpayer identification numbers of the new Registered Owners of, and the principal amount and denominations of, such Bonds, if any, remarketed by it pursuant to this Section 207. Such notice shall also specify the principal amount of Bonds to be purchased on such purchase date which it has failed to remarket (if any) and the amount of accrued interest, if any, on such Bonds. If the Bonds are in a book-entry only system, the Trustee shall notify the Depository of the transfer instructions (i.e., the names of the tendering Participants and the principal amount of Bonds tendered by each such Participant and the names of the purchasing Participants and the principal amount of Bonds purchased by each such purchasing Participant). The Remarketing Agent shall make appropriate settlement arrangements for the purchase of Bonds which have been remarketed pursuant to this Section 207 between the purchasers of such remarketed Bonds and the Trustee as tender agent, and shall direct such purchasers by appropriate instructions to pay all moneys for the Purchase Price of the Bonds which have been remarketed pursuant to this Section 207 to the Trustee for deposit in the Bond Purchase Fund pursuant to Section 403 hereof at or before 10:00 a.m., New York City time, on the purchase date. The Trustee as tender agent shall deposit the proceeds of any such remarketing in the Bond Purchase Fund pursuant to Section 403 hereof, and the Trustee as tender agent shall hold and disburse such moneys pursuant to this Section 207 and Section 404 hereof. If any purchaser of remarketed Bonds fails to pay the Purchase Price of such Bonds to the Trustee, as tender agent, at or before 10:00 a.m., New York City time, on such purchase date, the Trustee shall promptly give notice of such failure, and of the amount thereof, by telephone (to be subsequently confirmed in writing) or by confirmed facsimile transmission to the Borrower and the Remarketing Agent. If the Remarketing Agent fails to remarket any Bonds tendered or deemed tendered for purchase, or if any purchaser of remarketed Bonds fails to pay the Purchase Price thereof as required pursuant to the terms hereof, the Trustee is required by Section 404(c) hereof to take action under the Letter of Credit to realize moneys thereunder to enable the Trustee to make timely payment of the Purchase Price of such Bonds and the Borrower is required by Section 3.4 of the Loan Agreement to pay to the Trustee amounts sufficient and at such times as to enable the Trustee to make timely payment of the Purchase Price of such Bonds.

At or before 2:00 p.m., New York City time, on each purchase date, the Trustee, but only to the extent it shall have received money for such purpose, shall:

(i) If the Bonds are not in a book-entry only system, pay the Purchase Price to each holder of a Bond (or portion thereof in Authorized Denominations) tendered for purchase in federal or other immediately available funds, or by wire transfer to the Registered Owners thereof in the event that the Registered Owner of the aggregate principal amount of Bonds has given written notice to the Trustee directing the Trustee to make such payment of Purchase Price by wire transfer and identifying the location and the number of the account to which such payment should be wired. If the Bonds are in a book-entry only system, the Trustee shall transfer to the Depository the amount directed

by the Remarketing Agent as representing the Purchase Price of the Bonds tendered or deemed tendered in accordance with Sections 205 and 206 hereof. The Trustee shall pay each such Purchase Price from moneys on deposit in the Bond Purchase Fund in the manner set forth in Section 404 hereof; *provided*, that the Trustee shall not pay or wire transfer the Purchase Price of any Unsurrendered Bond unless and until the holder of such Unsurrendered Bond presents such Unsurrendered Bond, together with an instrument of assignment or transfer duly executed in blank, to the Trustee; and

(ii) if the Bonds are not in a book-entry only system, redeliver or cancel all such Bonds in accordance with this Section 207 and Section 404 hereof.

Notwithstanding any provision herein contained to the contrary, any Bond remarketed by the Remarketing Agent which has been called for prior redemption shall be redelivered with a copy of the redemption notice and any Bond as to which notice of mandatory tender has been given pursuant to Section 206 hereof shall be redelivered with a copy of the notice of mandatory tender.

SECTION 208. Execution; Limited Obligation.

(a) The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of its President or Executive Director and shall have impressed or imprinted thereon the official seal of the Issuer or a facsimile thereof and shall be attested by the manual or facsimile signature of its Secretary. All authorized facsimile signatures shall have the same force and effect as if manually signed. In case any official of the Issuer whose signature or facsimile signature shall appear on the Bonds shall cease to be such official before the delivery of such Bonds, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such official had remained in office until delivery. The Bonds may be signed on behalf of the Issuer by such persons who, at the time of the execution of such Bonds, are duly authorized or hold the appropriate office of the Issuer, although on the date of the Bonds such persons were not so authorized or did not hold such offices.

(b) THE BONDS, TOGETHER WITH INTEREST THEREON AND REDEMPTION PREMIUM WITH RESPECT THERETO, ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE LOAN AGREEMENT AND THE PROMISSORY NOTE AND PAYMENTS MADE UNDER THE LETTER OF CREDIT, ARE AND SHALL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT AND THE PROMISSORY NOTE AND PAYMENTS MADE UNDER THE LETTER OF CREDIT (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS, OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND SHALL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT AND THE PROMISSORY NOTE AND FROM OTHER INSTRUMENTS ASSIGNED TO OR HELD BY THE TRUSTEE, WHICH REVENUES AND INCOME SHALL BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION

PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND THE LOAN AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THE BONDS CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE STATE OF MISSISSIPPI WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR PROVISION, BUT SHALL BE SECURED BY THE SECURITY, AND SHALL BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT AND THE PROMISSORY NOTE AND PAYMENTS MADE UNDER THE LETTER OF CREDIT. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF MISSISSIPPI TO PAY ANY PRINCIPAL INSTALLMENT OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. THE ISSUER HAS NO POWER TO LEVY TAXES FOR ANY PURPOSE WHATSOEVER.

SECTION 209. Certificate of Authentication. No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the forms of Bond attached hereto as Exhibits A and B, executed by an authorized signatory of the Trustee; and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

SECTION 210. Form of Bonds.

(a) Prior to the Conversion Date, the Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth in Exhibit A attached hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistently herewith, be determined by the officers executing such Bonds, as evidenced by their execution of the Bonds.

(b) On and after the Conversion Date, the Bonds authenticated and delivered hereunder, and the Trustee's certificate of authentication and the form of assignment, shall be in substantially the form of the Bond set forth in Exhibit B attached hereto, with such changes as permitted in this Section 210.

(c) The Bonds shall be in either typewritten or printed form, as the Borrower with the consent of the Remarketing Agent shall direct, on behalf of the Issuer; *provided* that any expenses incurred in connection therewith shall be paid by the Borrower.

(d) The Bonds shall be issued in the form of the Bonds set forth in Exhibits A and B, as applicable, with changes as appropriate to reflect any differences in the terms of each such series of Bonds as set forth herein and in the Loan Agreement.

SECTION 211. Delivery of Bonds. Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the

Bonds and deliver them to such purchaser or purchasers as shall be directed by the Issuer as hereinafter in this Section 211 provided.

Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee:

(a) A copy, certified by an authorized officer of the Issuer, of all resolutions adopted and proceedings had by the Issuer authorizing the issuance of the Bonds, including the Bond Resolution;

(b) An original executed counterpart of this Indenture, the Loan Agreement, the Pledge Agreement, the Bond Purchase Agreement, the Remarketing Agreement and the original executed Promissory Note;

(c) The executed initial Letter of Credit;

(d) An original executed counterpart of the Tax Certificate of the Borrower dated the date of closing relating to the Bonds dated the Issue Date, in form and substance satisfactory to Special Tax Counsel;

(e) Closing certificates of the Borrower, the Issuer and the Bank in form and substance satisfactory to Bond Counsel;

(f) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code;

(g) An opinion of Bond Counsel addressed to the Issuer, the Trustee and the Bank to the effect that the Bonds have been duly issued pursuant to the Act and are valid, binding and enforceable obligations under the Act and that this Indenture and the Loan Agreement have been duly authorized, executed and delivered by the Issuer and are valid and binding agreements of the Issuer;

(h) An opinion of Special Tax Counsel addressed to the Issuer, the Trustee and the Bank to the effect that the interest on the Bonds is excludable from gross income of the holders thereof for federal income tax purposes (other than any holder who is a “substantial user” or “related person,” and other than any interest which may be includable as a preference item or adjustment item in computing any minimum tax);

(i) An opinion or opinions of Counsel for the Borrower addressed to the Issuer and the Trustee to the effect that the Loan Agreement, the Promissory Note, the Pledge Agreement and the Bond Purchase Agreement have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower, together with such additional matters as may be requested by Bond Counsel;

(j) An opinion of Counsel for the Bank addressed to the Issuer and the Trustee to the effect that the Letter of Credit is a legal, valid and binding obligation of the Bank, together with such additional matters as may be requested by Bond Counsel;

(k) A request and authorization to the Trustee on behalf of the Issuer and signed by a member or authorized officer of the Issuer directing the Trustee to authenticate and deliver the Bonds in such specified denominations as permitted herein to the Underwriter upon payment to the Trustee, but for the account of the Issuer, of the aggregate principal amount of the Bonds, plus accrued interest, if any; and

(l) Evidence satisfactory to the Trustee that the Issuer has delivered an executed Letter of Representations to the Depository.

Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided above.

SECTION 212. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; *provided* that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Issuer and the Trustee evidence satisfactory to each of them of the ownership of such Bond and of such loss, theft or destruction, together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable requirements as the Issuer and Trustee may prescribe. The replacement of any Bond under this Section 212 shall be in accordance with Mississippi law. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the holder of such Bond with their reasonable fees and expenses in this connection.

SECTION 213. Exchangeability and Transfer of Bonds; Persons Treated as Owners. The Issuer shall cause the Bond Register to be kept by the Trustee, which is hereby constituted and appointed the bond registrar for the Bonds.

Any holder of a Bond, in person or by his duly authorized attorney, may transfer title to his, her or its Bond on the Bond Register, upon surrender thereof at the designated corporate trust office of the Trustee, together with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the holder or his, her or its duly authorized attorney. Upon surrender for registration of transfer of any Bond, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered and of any Authorized Denomination.

Bonds may be exchanged upon surrender thereof at the designated corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the

Bondholder or his, her or its attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same aggregate principal amount and tenor as the Bonds being exchanged and of any Authorized Denomination. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such registrations of transfers or exchanges of Bonds shall be without charge to the holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration, transfer or exchange shall be paid by the Borrower.

The Trustee shall not register any transfer of any Bond (or portion thereof) during the fifteen (15) day period preceding the mailing of the notice of redemption of the Bonds or after notice calling such Bond (or portion thereof) for redemption or partial redemption has been given unless the holder delivers to the Trustee a written statement acknowledging that such Bond has been called for redemption and the date of such redemption.

The Person in whose name any Bond is registered on the Bond Register shall be deemed and regarded as the absolute owner thereof for all purposes, except that payment of or on account of either principal, premium, if any, or interest shall be made only to or upon the order of the holder of record as of the Record Date or the holder's duly authorized attorney, but such registration may be changed as hereinabove 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.

So long as the Bonds are held in book-entry form as described in Section 220 hereof, the Issuer shall execute and the Trustee shall authenticate a Bond to be held by the Trustee for the account of the Depository, which (i) shall be denominated in an amount equal to the aggregate principal amount of Bonds to be held by the Depository (*provided* that, unless the Bonds are being issued on the Issue Date, the Trustee has received a like aggregate principal amount such Bonds for transfer in accordance with this Section 213), (ii) shall be registered in the name of the Depository or Cede, in accordance with this Section 213, (iii) shall be held by the Trustee for the account of the Depository or pursuant to the Depository's instructions, and (iv) shall bear a legend substantially to the effect that unless such Bond is presented by an authorized representative of the Depository to the Issuer or its agent for registration of transfer, exchange or payment, any transfer, exchange, pledge or other use for value or otherwise is not permitted.

All Bonds issued upon any transfer or exchange of Bonds shall be valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such transfer or exchange.

In executing any Bond upon any exchange or transfer provided for in this Section 213, the Issuer may rely conclusively on a representation of the Trustee that such execution is required.

SECTION 214. Replacement Bonds. The Issuer shall execute and the Trustee shall authenticate and deliver Replacement Bonds to replace (i) Bonds outstanding upon conversion of the interest rate on the Bonds to the Fixed Rate pursuant to Section 204, in which case such Replacement Bonds shall be in substantially the form of Bond attached hereto as Exhibit B, and (ii) Bonds tendered for purchase pursuant to Section 205 or Section 206 hereof, in which case such Replacement Bonds shall be in substantially the form of Bond attached hereto as Exhibit A and containing such terms and provisions as are applicable to the Bonds following the purchase date and having eliminated therefrom the terms and provisions which are not so applicable. Any such Replacement Bond shall be executed and authenticated as provided in this Indenture. The Borrower shall bear all expenses in connection with the preparation and delivery of the Replacement Bonds.

SECTION 215. Cancellation. All Bonds which have been surrendered pursuant to Section 212, 213 or 214 of this Indenture or for the purpose of purchase upon tender as provided herein, payment upon maturity or redemption prior to maturity shall be canceled by the Trustee. All Unsurrendered Bonds shall be deemed canceled. Upon final maturity and payment in full of the Bonds, the Trustee shall cancel all Bonds held as inventory by cremation or by otherwise destroying such Bonds.

SECTION 216. Ratably Secured. All Bonds, except for Unsurrendered Bonds, issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication or delivery or maturity of the Bonds so that, subject as aforesaid, all Bonds at any time outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or some future date. Notwithstanding the foregoing, Pledged Bonds shall not be entitled to any benefit of the Letter of Credit.

SECTION 217. Redemption of Bonds. The Bonds shall be subject to redemption prior to maturity as follows:

(a) Optional Redemption. On or prior to the Conversion Date, the Bonds are subject to redemption at any time prior to maturity, at the option of the Borrower, as a whole or in part in Authorized Denominations, at the redemption price of one hundred percent (100%) of the principal amount thereof to be redeemed plus accrued interest to the date fixed for redemption, upon receipt by the Trustee not less than forty-five (45) days (or such lesser period acceptable to the Trustee) prior to such redemption date of a written direction from the Borrower stating that it intends to exercise its option to prepay the Loan Repayments due under the Loan Agreement and thereby effect redemption of all or a portion of the Bonds.

After the Conversion Date, the Bonds are subject to redemption prior to maturity, at the option of the Borrower, on or after the dates specified below, in whole at any time or in part in Authorized Denominations on any Interest Payment Date, at the redemption prices (expressed as

percentages of principal amount) set forth in the following table plus accrued interest to the redemption date upon receipt by the Trustee not less than forty-five (45) days (or such lesser period acceptable to the Trustee) prior to such redemption date of a written direction from the Borrower stating that it intends to exercise its option to prepay the Loan Repayments due under the Loan Agreement and thereby effect redemption of all or a portion of the Bonds as follows:

| Length of Period from the Interest Payment Date immediately succeeding the Conversion Date to the Maturity Date | Redemption Price as a Percentage of Principal Amount (measured from and including the Interest Payment Date immediately succeeding the Conversion Date) |
|---|---|
| greater than 10 years   | After 8 years at 102%, declining 1% annually to 100%  |
| less than or equal to 10 and greater than 7 years   | After 5 years at 102%, declining by 1% annually to 100%   |
| less than or equal to 7 and greater than 4 years  | After 3 years at 102%, declining by 1% annually to 100%   |
| less than or equal to 4 years   | not subject to optional redemption  |

At the election of the Borrower, contained in the notice of election to convert to the Fixed Rate Period from the Borrower to the Issuer, the Trustee, the Bank and the Remarketing Agent, the Bonds bearing interest at the Fixed Rate may be subject to optional redemption on terms different from those set forth above, if approved by the Issuer in a supplemental indenture delivered prior to the Conversion Date, and as shall be specified in such notice, but only if such notice is accompanied by a Favorable Opinion of Bond Counsel.

During the Variable Rate Period, the Borrower shall have the option to cause the Bonds to be subject to mandatory tender and purchase pursuant to Section 206(a)(iv) hereof in lieu of an optional redemption of Bonds pursuant to this Section 217(a). Such option may be exercised by delivery by the Borrower to the Trustee and the Remarketing Agent on or prior to the Business Day preceding the optional redemption date of a written notice specifying that the Bonds shall not be redeemed, but instead shall be subject to mandatory tender and purchase pursuant to Section 206 hereof. Upon delivery of such notice, the Bonds shall not be redeemed but will instead be subject to mandatory tender and purchase pursuant to Section 206 hereof at a Purchase Price equal to the price at which the Bonds would have been redeemed on the date which would have been the optional redemption date.

(b) Mandatory Redemption Upon Determination of Taxability. The Bonds shall be subject to mandatory redemption prior to maturity, as a whole and not in part, on the earliest practicable date for which notice can be given following the occurrence of a Determination of Taxability, at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date.

(c) Mandatory Redemption Upon Expiration of Letter of Credit During Fixed Rate Period Only. If the Bonds are secured by a Letter of Credit during the Fixed Rate Period and at least forty-five (45) days prior to the Interest Payment Date next preceding the Stated Expiration Date of the Letter of Credit then in effect the Trustee has not been provided with an extension of such Letter of Credit or an Alternate Letter of Credit for the applicable period required by Section 308 hereof, then the Bonds will be subject to mandatory redemption on the Interest Payment Date next preceding such Stated Expiration Date at a redemption price determined as the lesser of (i) one hundred and two percent (102%) of the principal amount thereof plus accrued interest to the redemption date, or (ii) the redemption price which would apply as of the redemption date if the Bonds were optionally redeemed pursuant to Section 217(a) hereof.

(d) Mandatory Redemption from Insurance and Condemnation Proceeds. The Bonds are subject to mandatory redemption in whole at any time or in part (and if in part in Authorized Denominations; *provided* that no Bond may be redeemed in part if the principal amount to be Outstanding following such partial redemption is not an Authorized Denomination) on any Interest Payment Date, at a redemption price equal to one hundred percent (100%) of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, in an amount equal to any insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to Article VII of the Loan Agreement. During any period in which a Letter of Credit secures the Bonds, such redemption shall be effected by a drawing under the Letter of Credit and the Trustee shall use such insurance or condemnation proceeds to reimburse the Bank for such drawing.

(e) Letter of Credit Draws for Redemption. So long as a Letter of Credit secures the Bonds, any redemption pursuant to the provisions of this Section 217 shall be effected by a drawing under the Letter of Credit or other Eligible Funds.

SECTION 218. Partial Redemption of Bonds. If less than all the Outstanding Bonds are called for redemption, the Trustee shall select, or arrange for the selection of, the Bonds to be redeemed by lot, in such manner as it shall in its discretion determine; *provided* that any such Bonds selected for redemption shall be in multiples of \$5,000 and that unredeemed portions of Bonds shall be in Authorized Denominations. Notwithstanding the foregoing, Pledged Bonds and Borrower Bonds, in that order, shall be first selected by the Trustee for redemption before any others are selected for redemption. If less than the principal amount of a Bond is called for redemption, the Issuer shall execute and the Trustee shall authenticate and deliver, upon surrender of such Bond, without charge to the holder thereof, in exchange for the unredeemed principal amount of such Bond, at the option of such holder, Bonds in Authorized Denominations.

SECTION 219. Notice of Redemption. Notice of redemption shall be mailed, at the expense of the Borrower, by the Trustee by first class mail at least thirty (30) days but not more than forty-five (45) days before any redemption date to the Registered Owner of each Bond to be redeemed in whole or in part at its last address appearing on the Bond Register; *provided, however*, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond, or portion thereof with

respect to which no such failure or defect has occurred; and *provided*, further, that so long as the Letter of Credit is in effect, the Trustee shall not give notice of any redemption pursuant to Section 217(a) hereof unless the Bank has consented in writing to such redemption. In addition, the Trustee may give such other notice or notices as may be recommended in releases, letters, pronouncements or other writings of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. No defect in or delay or failure in giving any recommended notice described in the preceding sentence shall in any manner affect the notice of redemption described in the first sentence of this Section 219. Any notice mailed as provided in this Section 219 shall be conclusively presumed to have been duly given, whether or not the Bondholder receives the notice.

All notices of redemption shall state:

- (1) The redemption date,
- (2) The redemption price,
- (3) The identification, including complete designation and issue date of the series of Bonds of which such Bonds are a part and the CUSIP number (and in the case of partial redemption, the respective principal amounts), interest rate and maturity date of the Bonds to be redeemed,
- (4) That on the redemption date the redemption price will become due and payable upon each such Bond, and that interest thereon shall cease to accrue from and after such date; and
- (5) The name and address of the Trustee for such Bonds, including the name and telephone number of a contact person and the place where such Bonds are to be surrendered for payment of the redemption price.

Any notice of optional redemption during the Variable Rate Period shall also state that the Borrower may elect that the Bonds be subject to mandatory tender and purchase in lieu of optional redemption at a Purchase Price equal to the redemption price.

Any notice of optional redemption may state that such redemption is conditioned upon the deposit of Eligible Funds with the Trustee on or prior to the date set for redemption and if such Eligible Funds are not so deposited, then such redemption shall not take place. All Bonds so called for redemption will cease to bear interest on the specified date set for redemption, provided Eligible Funds for their redemption have been duly deposited with the Trustee. Thereafter, the holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price plus accrued interest, if any, thereon to the redemption date from the Trustee and a new Bond in an Authorized Denomination for any portion not redeemed.

SECTION 220. Book-Entry Only Registration of the Bonds.

(a) Except as provided in subparagraph (c) of this Section 220, the Registered Owner of all of the Bonds shall be, and the Bonds shall be registered in the name of Cede. Payment of interest on any Bond, as applicable, shall be made in accordance herewith for the account of Cede on each Interest Payment Date at the address indicated for Cede in the Bond Register.

(b) Each series of Bonds shall be initially issued in the form of a single fully registered Bond in the aggregate principal amount of such series of Bonds. Upon initial issuance, the ownership of each such Bond shall be registered on the Bond Register in the name of Cede, as nominee of the Depository. With respect to the Bonds so registered in the name of Cede, the Issuer, the Borrower, the Bank and the Trustee, shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, Cede or any Participant or any nominee of a Beneficial Owner with respect to any beneficial ownership interest in the Bonds, (ii) the delivery to any Participant, Beneficial Owner or other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant, Beneficial Owner or other person, other than Cede, as nominee of the Depository, of any amount with respect to the principal, Purchase Price or redemption price of, or interest on, the Bonds. The Issuer, the Borrower, the Bank and the Trustee may treat and deem Cede, as nominee of the Depository, as the absolute owner of each Bond for all purposes whatsoever, including (but not limited to) (i) payment of the principal, Purchase Price or redemption price of, and interest on, each such Bond, (ii) giving notices of redemption and other matters with respect to such Bonds and (iii) registering transfers with respect to such Bonds. The Trustee shall pay the principal, Purchase Price or redemption price of, and interest on, all Bonds only to or upon the order of Cede, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to such principal, Purchase Price, redemption price and interest, to the extent of the sum or sums so paid. So long as the Bonds are book-entry-only, no person other than the Depository shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to the Indenture. Upon delivery by the Depository to the Trustee of written notice to the effect that the Depository has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions of this Indenture, the word "Cede" herein shall refer to such new nominee of the Depository; *provided that*, notwithstanding any provision of this Indenture to the contrary, until the termination of the book-entry-only system, the Bonds may be transferred in whole, but not in part, only to a nominee of the Depository, or by a nominee of the Depository to the Depository or any nominee thereof.

(c) (1) The Depository may determine to discontinue providing its services with respect to the Bonds at any time by giving thirty (30) days written notice to the Issuer or the Trustee and discharging its responsibilities with respect thereto under applicable law.

(2) The Issuer, at the sole discretion and written direction of the Borrower and without the consent of any other person, may terminate the services of the Depository if the Borrower determines that the continuation of the system of book-entry-only transfer through the Depository is not in the best interests of the Beneficial Owners of the Bonds

or is burdensome to the Issuer or the Borrower; provided, such termination shall not occur except in accordance with applicable rules promulgated by the Depository.

(3) Upon the termination of the services of the Depository with respect to the Bonds pursuant to subsection (c)(1) hereof, the Bonds shall no longer be restricted to being registered on the Bond Register in the name of Cede as nominee of the Depository. In such event, the Issuer shall, at the expense of the Borrower, issue and the Trustee shall transfer and exchange Bond certificates of like principal amount, in Authorized Denominations to the Participants or the identifiable Beneficial Owners (as identified by the Depository or the Participants) in replacement of such Beneficial Owners' beneficial interests in the Bonds. In such event, the Trustee shall receive the names, addresses of record and taxpayer identification numbers for the Beneficial Owners. The Trustee may rely upon the accuracy of any such information provided by such Beneficial Owners. If the Trustee registers the Bonds, the Trustee shall be provided with the names, addresses of record and taxpayer identification numbers for such Bondholders. Notwithstanding the preceding sentence, if the Borrower designates a successor Depository, the Issuer shall issue and the Trustee shall transfer and exchange a Bond certificate, in such name as is directed by the successor Depository, in the amount of Bonds then Outstanding and the Trustee shall take such other action as is necessary so that the beneficial ownership interests of the Beneficial Owners are properly reflected on the records of the successor Depository and its Participants. In such event, references herein to "Cede" shall be deemed to refer to the successor Depository, or its nominee, as the context requires.

(d) The Issuer, the Trustee and the Remarketing Agent may conclusively rely on (i) a certificate of the Depository as to the identity of the Participants in the book-entry only system, and (ii) a certificate of such Participants as to the identity of, and the respective principal amounts of Bonds beneficially owned by, the Beneficial Owners.

(e) Whenever, during the term of the Bonds, Beneficial Ownership thereof is determined by a book-entry at the Depository, the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Depository as to registering or transferring the book-entry to produce the same effect.

(f) Notwithstanding anything in this Indenture to the contrary, the Issuer and the Trustee hereby agree as follows with respect to the Bonds, if and to the extent any Bond is registered in the name of Cede as nominee of the Depository: (i) the Trustee shall give the Depository all special notices required by the Letter of Representations at the times, in the forms and by the means required by the Letter of Representations; (ii) the Trustee shall make payments to Cede at the times and by the means specified in the Letter of Representations; (iii) Cede shall not be required to surrender Bonds which have been partially paid or prepaid to the extent permitted by the Letter of Representations; and (iv) the Trustee shall set a special record date (and shall notify the registered owners of the Bonds thereof in writing) prior to soliciting any Bondholder consent or vote, such notice to be given not less than fifteen (15) calendar days prior to such record date (any Bond transferred by a registered owner subsequent to the establishment

of the special record date and prior to obtaining such consent or vote shall have attached to it a copy of the notice to Bondholders by the Trustee).

(g) NEITHER THE ISSUER, THE BORROWER, THE TRUSTEE, NOR THE REMARKETING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO PARTICIPANTS OR THE BENEFICIAL OWNERS OF THE BONDS WITH RESPECT TO (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY THE DEPOSITORY OR ANY PARTICIPANT; (ii) THE PAYMENT BY THE DEPOSITORY TO ANY PARTICIPANT OR BY ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT, PURCHASE PRICE, REDEMPTION PRICE OF OR INTEREST ON THE BONDS; (iii) THE DELIVERY OF ANY NOTICE BY THE DEPOSITORY TO ANY PARTICIPANT OR BY ANY PARTICIPANT TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED TO BE GIVEN TO BONDHOLDERS UNDER THE TERMS OF THIS INDENTURE; (iv) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (v) ANY OTHER ACTION TAKEN BY THE DEPOSITORY OR ANY PARTICIPANT AS OWNER OF THE BONDS.

SECTION 221. CUSIP Numbers. All payments of principal, premium and interest, whether by check or draft or wire transfer, shall be accompanied by the appropriate CUSIP number identification with appropriate dollar amounts for each CUSIP number.

### ARTICLE III SECURITY

SECTION 301. Security. The Bonds and the interest and any premium thereon shall be a special, limited obligation of the Issuer as provided in Section 208 hereof, and shall be secured by and payable only from the following:

- (i) All Loan Repayments received by the Issuer under the Loan Agreement (including all Loan Repayments made through drawings under the Letter of Credit), which Loan Repayments are to be paid directly by the Borrower to the Trustee and deposited in the Bond Fund;
- (ii) All moneys in the Bond Fund and the Project Fund, including the proceeds of the Bonds pending disbursement thereof;
- (iii) All of the Issuer's rights and interest in the Promissory Note;
- (iv) All of the Issuer's rights and interest in the Loan Agreement, except the Unassigned Rights, as defined in the Loan Agreement; and
- (v) All of the proceeds of the foregoing, including, without limitation, investments thereof.

The foregoing are collectively the "Security." In consideration of the purchase of the Bonds and to secure payment of the principal of, premium, if any, and interest on the Bonds and any other cost or pecuniary liability of the Issuer relating to the Bonds or any proceeding, document or certification incidental to the issuance of the Bonds, and to secure performance and observance of all covenants, terms and conditions upon which the Bonds are to be issued, including without limitation this Indenture, the Issuer, without warranty, pursuant to law hereby conveys, assigns and pledges all of its right, title and interest in, and grants a security interest in, the Security to the Trustee, and its successors and assigns, in trust for the benefit of the Bondholders and, to the extent the Bank is subrogated to the rights of the Registered Owners pursuant to the terms of this Indenture, for the benefit of the Bank in satisfaction of the reimbursement obligations of the Borrower pursuant to the Reimbursement Agreement, and their successors and assigns. The Security shall not include any moneys held in the Bond Purchase Fund or the Rebate Fund.

SECTION 302. Payment of Bonds and Performance of Covenants. The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer covenants that it will faithfully perform on its part 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 of its proceedings pertaining thereto; provided, however, that except for the matters set forth in any documents hereof relating to payment of the Bonds, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or by the Trustee, or shall have received the instrument to be executed and at the option of the Issuer shall have received from the Borrower, assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses, including legal counsel fees, incurred or to be incurred in connection with taking such action or executing such instrument.

SECTION 303. Authority. The Issuer covenants that it is duly authorized under the Constitution and the laws of the State, including particularly the Act and the Bond Resolution to issue the Bonds authorized hereby and to execute this Indenture, to grant the security interest herein provided, to assign and pledge the Agreement and the Note (except as otherwise provided herein) and to assign and pledge the amounts hereby assigned and pledged in the manner and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof and hereof. Anything contained in this Indenture to the contrary notwithstanding, it is hereby understood that none of the covenants of the Issuer contained in this Indenture are intended to create a general or primary obligation of the Issuer. Subject to the limitations on its liability as stated herein, the Issuer covenants and agrees that it has not knowingly engaged and will not knowingly engage in any activities and that it has not knowingly taken and will not knowingly take any action which might result in any interest on the Bonds becoming includable in the gross income of the owners thereof for purposes of federal income taxation.

SECTION 304. No Litigation. The Issuer represents and warrants that, as of the date hereof and as of the Issue Date (i) no litigation or administrative action of any nature has been served upon the Issuer for the purpose of restraining or enjoining the issuance or delivery of the Bonds or the execution and delivery of this Indenture or the Loan Agreement or in any manner questioning the proceedings or authority under which they have occurred, or affecting their validity or its existence or authority of its present officers; (ii) no authority or proceeding for the issuance of the Bonds or for the payment or security thereof has been repealed, revoked or rescinded; and (iii) to the best of the knowledge of the officers of the Issuer executing this Indenture, none of the foregoing actions is threatened.

SECTION 305. Further Assurances. The Issuer covenants that it will cooperate to the extent necessary with the Borrower, the Trustee and the Bank in their defenses of the Security against the claims and demands of all Persons, and will do, execute, acknowledge and deliver or cause to be done, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee or the Bank may reasonably require for the better pledging of the Security, subject to Section 908 hereof. The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Promissory Note without the prior written consent of the Trustee and the Bank, which consent shall be governed by Article VIII of this Indenture.

SECTION 306. No Other Encumbrances. The Issuer covenants that except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security.

SECTION 307. No Recourse. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in this Indenture or the Loan Agreement or the Bond Purchase Agreement, against any past, present or future member, official, officer, director or employee of the Issuer, or any incorporator, member, officer, employee, director, trustee or successor organization, as such, either directly or through the Issuer or any successor organization, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member, official, officer, director, agent or employee as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the Loan Agreement and the issuance of the Bonds.

SECTION 308. Letter of Credit.

(a) *Requirements for Letter of Credit*. The initial Letter of Credit will be an irrevocable letter of credit of a commercial bank providing for direct payments to or upon the order of the Trustee of amounts up to (1) the principal of the Bonds when due, at maturity or upon acceleration, redemption, purchase pursuant to a tender or otherwise; and (2) interest on the Bonds for a period of forty-five (45) days at the maximum rate of ten percent (10%) per annum; *provided, however* that if the Letter of Credit will be in effect during the Fixed Rate Period, (A) the stated coverage amount of the Letter of Credit will include interest on the Bonds for a period

of one hundred ninety-five (195) days (or such other number of days as may be required by any Rating Agency then rating the Bonds) at the applicable Fixed Rate and (B) the Letter of Credit will not cover any Liquidity Drawing. The Letter of Credit shall terminate no earlier than the earliest of: (i) the payment in full by the Bank of funds authorized to be drawn thereunder; (ii) the surrender of the Letter of Credit by the Trustee to the Bank for cancellation as a result of (A) the payment in full of the Bonds pursuant to the provisions of the Indenture, or (B) the acceptance by the Trustee of an Alternate Letter of Credit, as certified by the Trustee to the Bank; (iii) its Stated Expiration Date, which will be no earlier than fifteen (15) days after an Interest Payment Date and that is one (1) year from its date of issuance; (iv) the Business Day following the Conversion Date (except for any Letter of Credit issued to secure Bonds during the Fixed Rate Period); or (v) the close of business on the date which is fifteen (15) days after receipt by the Trustee of a written notice from the Bank (A) specifying the occurrence of an “event of default” under the Reimbursement Agreement and (B) directing the Trustee to accelerate the Bonds.

At least forty-five (45) days (or such shorter period as shall be acceptable to the Trustee, but not less than thirty (30) days) prior to the Interest Payment Date next preceding the Stated Expiration Date of the current Letter of Credit, the Borrower may provide for the delivery to the Trustee of an amendment to the Letter of Credit which extends the Stated Expiration Date to a date that is not earlier than one year from its then current Stated Expiration Date. If the Letter of Credit is so extended, the mandatory tender described in Section 206(a)(iii) hereof (or if the Fixed Rate Period is then in effect, the mandatory redemption described in Section 217(c) hereof) shall not occur. Unless all of the conditions of this paragraph which are required to be met forty-five (45) days (or such shorter period as shall be acceptable to the Trustee, but not less than thirty (30) days) preceding the Interest Payment Date next preceding the Stated Expiration Date of the Letter of Credit have been satisfied, the Trustee, at the expense of the Borrower, shall take all action necessary to subject the Bonds to the mandatory tender described in Section 206(a)(iii) hereof (or if the Fixed Rate Period is then in effect, to the mandatory redemption described in Section 217(c) hereof) on the Interest Payment Date next preceding such Stated Expiration Date; *provided* that if the Borrower shall have notified the Trustee in writing that it expects to meet all the conditions for the delivery of an amendment extending the existing Letter of Credit on or before the Interest Payment Date next preceding the Stated Expiration Date of the existing Letter of Credit, then the notice of such mandatory tender (or mandatory redemption if then in the Fixed Rate Period) shall state that it is subject to rescission, and the Trustee shall rescind such notice, if such conditions are so met (in which case such mandatory tender (or mandatory redemption if then in the Fixed Rate Period) shall not occur).

(b) *Alternate Letter of Credit.* The Borrower may elect to replace any Letter of Credit with a Letter of Credit conforming to the requirements of Section 308(a) hereof.

Notwithstanding anything to the contrary contained herein, (1) while the Bonds bear interest at the Variable Rate, they shall be secured by a Letter of Credit, and (2) if the Bonds are converted to bear interest at the Fixed Rate, they shall not be secured by a Letter of Credit unless, immediately prior to the Conversion Date, the Remarketing Agent makes an objective determination in a certificate delivered to the Trustee that the present value of the cost of

securing the Bonds with the Letter of Credit (including the cost of paying interest on the Bonds at the expected interest rate and all fees associated with the Letter of Credit) would be less than the cost of paying interest on the Bonds if it is not so secured (using as a discount rate the yield to maturity on the Bonds being converted to a Fixed Rate and treating the fees paid and to be paid for the credit enhancement as interest on the Bonds). In addition, if the Fixed Rate Period is then in effect the Borrower may not furnish an Alternate Letter of Credit with a stated expiration date earlier than the Stated Expiration Date of the Letter of Credit then in effect.

Upon delivery to the Trustee of an Alternate Letter of Credit conforming to the requirement of this Section 308 and delivery of the opinions described in Section 308(c), then the Trustee shall accept such Alternate Letter of Credit and promptly surrender for cancellation the previously held Letter of Credit to the issuer thereof in accordance with the terms of such Letter of Credit; *provided* (i) that any draw on the Letter of Credit resulting from a mandatory tender pursuant to Section 206(a)(ii) hereof shall be a draw on the previously held Letter of Credit, and not a draw on the Alternate Letter of Credit, and such draw is satisfied, and (ii) that no delivery of such Alternate Letter of Credit shall be effective unless the Borrower has given written notice to the Trustee (a copy of which shall be delivered to the Bank providing the current Letter of Credit) not less than forty-five (45) days prior to such delivery (or such shorter period as shall be acceptable to the Trustee but not less than thirty (30) days) of the Borrower's intention to provide for delivery of such Alternate Letter of Credit and the anticipated date of such delivery. During the Variable Rate Period, upon receipt of such notice, the Trustee shall take all actions necessary to subject the Bonds to mandatory tender as described in Section 206(a)(ii) hereof on the proposed effective date of such Alternate Letter of Credit; *provided* (i) that any draw on the Letter of Credit resulting from a mandatory tender pursuant to Section 206(a)(ii) hereof shall be a draw on the previously held Letter of Credit, and not a draw on the Alternate Letter of Credit and (ii) that the notice of such mandatory tender shall state that it is subject to rescission, and the Trustee shall rescind such notice (unless the Bonds are then subject to mandatory tender as described under the Section 206(a)(iii) hereof) if all of the requirements of this Section 308 are not met on or before the date on which the Bonds are subject to mandatory tender (in which case such mandatory tender shall not occur). During the Fixed Rate Period, the Trustee shall give at least twenty (20) days prior written notice of the proposed substitution to the Bondholders and the Issuer.

(c) *Opinion of Counsel.* Any Alternate Letter of Credit delivered to the Trustee must be accompanied by (1) a Favorable Opinion of Bond Counsel as to the delivery of the Alternate Letter of Credit; (2) an opinion of Counsel stating that delivery of the Alternate Letter of Credit is authorized under this Indenture and complies with its terms; (3) an opinion of Counsel to the issuer of such Alternate Letter of Credit stating that such Alternate Letter of Credit is a legal, valid, binding and enforceable obligation of such issuer in accordance with its terms; and (4) evidence satisfactory to the Trustee that the unsecured indebtedness of the new Bank (or parent company of the new Bank) is rated by a Rating Agency at least "A1/P1" unless a Favorable Opinion of Bond Counsel is delivered with respect to a different rating. In addition, if the Borrower or any natural person, firm, association or public body related to the Borrower within the meaning of Section 147(a) of the Code grants a security interest in any cash, securities or

investment type property to the issuer of such Alternate Letter of Credit, the Borrower must furnish the Trustee a Favorable Opinion of Bond Counsel with respect to such grant.

(d) *Rating Maintenance for Letter of Credit Substitution During Fixed Rate Period.* On or before the date of delivery of any Alternate Letter of Credit to the Trustee during the Fixed Rate Period, as a condition of acceptance of any Alternate Letter of Credit by the Trustee, the Borrower shall furnish to the Trustee (in addition to the other requirements set forth in this Section 308): (1) written evidence from each Rating Agency then rating the Bonds (if the Bonds are then rated), to the effect that such Rating Agency has reviewed the proposed Alternate Letter of Credit and determined that the substitution of the proposed Alternate Letter of Credit for the Letter of Credit then in effect will not, by itself, result in a reduction or withdrawal of such Rating Agency's then current rating on the Bonds, or (2) if the Bonds are not then rated, written evidence satisfactory to the Trustee that the unsecured long-term debt of the issuer of the Alternate Letter of Credit is not less than the rating of the unsecured long-term debt of the issuer of the then existing Letter of Credit.

(e) *Draws.* Except with respect to Pledged Bonds (which Bonds shall not be entitled to any benefit of the Letter of Credit): (i) the Trustee shall draw moneys under the Letter of Credit to the extent available in accordance with the terms thereof to the extent necessary to make timely payments of principal, premium (but only if such is permitted by the terms of the Letter of Credit) and interest coming due and payable on the Bonds (whether upon any Interest Payment Date, at maturity, upon the date fixed for redemption or upon acceleration of the Bonds), all as contemplated by Section 401 hereof; (ii) the Trustee shall draw moneys under the Letter of Credit to the extent available in accordance with the terms thereof on each purchase date to effect the purchase of Bonds required on such dates, except, in the case of each such date, to the extent of remarketing proceeds which are available as contemplated by clause (i) of Section 404(b) hereof; and (iii) upon the occurrence of an Event of Default specified in Section 601(f) hereof or upon declaration of acceleration of the Bonds pursuant to any other Event of Default, the Trustee shall immediately draw on the Letter of Credit to the extent available in an amount equal to the full unpaid principal and accrued interest on the Bonds. Notwithstanding any provision to the contrary in this Indenture, (A) in computing the amount to be drawn under the Letter of Credit on account of the payment of the principal or Purchase Price of, or interest on the Bonds, the Trustee shall exclude any such amounts in respect of any Bonds which are Pledged Bonds or Borrower Bonds on the date such payment is due, and (B) amounts drawn by the Trustee under the Letter of Credit shall not be applied to the payment of the principal or Purchase Price of, or interest on, any Bonds which are Pledged Bonds or Borrower Bonds on the date such payment is due.

#### ARTICLE IV

##### FUNDS

SECTION 401. Establishment and Use of Bond Fund. There is hereby created and established with the Trustee a special fund to be designated "Mississippi Business Finance Corporation — Trex Company, Inc. Project 2004 Bond Fund" and within such Fund special accounts designated the "Non-Eligible Funds Account," the "Letter of Credit Account" and the

“Eligible Funds Account.” All moneys in the Bond Fund (other than amounts deposited in the Letter of Credit Account and the Issuer’s administrative fees referenced in Section 3.5 of the Loan Agreement) shall be deposited and held in the Non-Eligible Funds Account until such moneys become Eligible Funds. All amounts drawn by the Trustee under the Letter of Credit (other than amounts drawn to pay the Purchase Price of a tendered Bond) shall be deposited in the Letter of Credit Account. Once the Trustee shall have been notified that moneys on deposit in the Non-Eligible Funds Account shall have become Eligible Funds, they shall be withdrawn from the Non-Eligible Funds Account and deposited in the Eligible Funds Account until used pursuant to the terms hereof.

There shall be deposited in the applicable account in the Bond Fund (a) any accrued interest received on the sale of the Bonds; (b) all Loan Repayments under the Loan Agreement, including all proceeds resulting from the enforcement of the Security or its realization as collateral; (c) all moneys received by the Trustee under the Loan Agreement for deposit in the Bond Fund; (d) all moneys drawn under the Letter of Credit (other than amounts drawn to pay the Purchase Price of a tendered Bond) to pay principal of, premium (but only if the payment of premium is permitted by the terms of the Letter of Credit), if any, or interest on the Bonds; and (e) any other moneys received by the Trustee with directions for deposit in the Bond Fund.

At all times the Trustee shall maintain adequate books and records relating to the Bond Fund (including any investment income thereon) so that the Trustee may at all times ascertain the date of deposit of the moneys in the Non-Eligible Funds Account. The Trustee shall create separate and segregated sub-accounts in the Non-Eligible Funds Account as directed by the Borrower. Moneys received by the Trustee and deposited in the Letter of Credit Account shall not be commingled with other moneys in the Bond Fund.

Moneys in the Bond Fund shall be held in trust first for the Bondholders and then for the Bank subject to the provisions of Section 501 hereof. Except as otherwise expressly provided herein (including without limitation Section 607 hereof), such moneys shall be used first solely for the payment of the interest on the Bonds and for the payment of principal of and premium, if any, on the Bonds upon maturity, whether stated or accelerated, or mandatory or optional redemption, and then, to the extent of any moneys remaining on deposit therein, for the payment of any amounts owed by the Borrower first to the Trustee, then to the Issuer, and then to the Bank pursuant to the Borrower’s reimbursement obligation under the Reimbursement Agreement; *provided, however*, that any Surplus Bond Proceeds transferred from the Project Fund to the Bond Fund as provided in Section 5.4 of the Loan Agreement may only be used by the Trustee as provided in Section 11.1 of the Loan Agreement.

The Issuer hereby authorizes and directs the Trustee, and the Trustee hereby agrees, 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, from funds derived from the following sources in the order of priority indicated below:

(a) From the Letter of Credit Account, amounts realized by the Trustee under the Letter of Credit for principal, premium, if provided for in the Letter of Credit, and interest on the

Bonds, provided in no event shall such moneys be used to pay for Pledged Bonds or Borrower Bonds;

(b) Eligible Funds on deposit in the Eligible Funds Account; and

(c) Any other amounts (whether or not Eligible Funds) in the Bond Fund, including amounts received by the Trustee pursuant to the Loan Agreement.

If the Bonds are in a book-entry only system, the Trustee is hereby directed to give notice to the Depository on every Interest Payment Date occurring during a period in which Pledged Bonds are in existence that the Depository is not to pay, and will not be receiving from the Trustee, interest on the Pledged Bonds recorded in the books of the Depository for the account of the Borrower (and identifying the principal amount of such Bonds). Interest on such Pledged Bonds will be paid by the Borrower to the Bank pursuant to the Pledge Agreement.

On the Business Day immediately preceding the date on which any principal and/or interest shall become due on the Bonds (whether upon any Interest Payment Date, at maturity, upon the date fixed for redemption or upon acceleration of the Bonds), the Trustee shall, without making any prior claim or demand upon the Borrower, take actions under and in accordance with the Letter of Credit so as to receive moneys on such date thereunder in an amount which, together with moneys described in clause (a) above and available therefor, shall be equal to the amount of principal and interest (and premium, if provided for in the Letter of Credit) coming due on the Bonds on the date such payment is due; *provided*, that the Trustee shall not take any action under the Letter of Credit to pay the principal of and/or interest (and premium, if provided for in the Letter of Credit) on Pledged Bonds or Borrower Bonds. If for any reason funds are not available under the Letter of Credit for payment of principal and/or interest (and premium, if provided for in the Letter of Credit) due on the Bonds on any such date, the Trustee shall immediately request from the Borrower immediately available funds sufficient to make all such payments of principal and/or interest and premium, if any, on the Bonds pursuant to Section 3.2 of the Loan Agreement by directing that the Borrower deposit such funds with the Trustee at its designated corporate trust office into the Bond Fund. If the Borrower has deposited moneys with the Trustee in accordance with clause (c) above and moneys have been realized by the Trustee under the Letter of Credit for the payment of principal and/or interest (and premium, if provided for in the Letter of Credit) on the Bonds, then the Trustee shall request a written statement from the Bank as to whether or not the Bank has been reimbursed by the Borrower for any and all such moneys. Upon written notice from the Bank that the Borrower has not reimbursed the Bank in a certain amount, any such moneys deposited in accordance with clause (c) above to such amount shall be immediately paid to the Bank.

Any amounts remaining in the Bond Fund after payment in full of the Bonds and all other amounts required to be paid under this Indenture or the Loan Agreement, shall be paid (i) to the Bank, to the extent of any amounts owing under the Reimbursement Agreement, or, (ii) if there are no such amounts or obligations of the Borrower existing under the Reimbursement Agreement as certified in writing by the Bank to the Trustee, to the Borrower in accordance with

its written direction upon the expiration or sooner cancellation or termination of the term of the Loan Agreement as provided therein.

Notwithstanding anything herein to the contrary, the Issuer's administrative fee referenced in Section 3.5 of the Loan Agreement shall be paid by the Borrower to the Trustee and shall be deposited into the Non-Eligible Funds Account and promptly be paid by the Trustee to the Issuer.

SECTION 402. Establishment and Use of Project Fund. There is hereby created and established with the Trustee a special fund to be designated "Mississippi Business Finance Corporation — Trex Company, Inc. Project 2004 Project Fund." The proceeds of the Bonds, as described in Section 405 hereof, shall be delivered to the Trustee for deposit into the Project Fund. Funds in the Project Fund shall be expended and disbursed in accordance with the provisions of the Loan Agreement.

SECTION 403. Creation and Sources of Bond Purchase Fund.

(a) There is hereby established and created with the Trustee a special fund to be designated "Mississippi Business Finance Corporation — Trex Company, Inc. Project 2004 Bond Purchase Fund," which shall be used to pay the Purchase Price of Bonds tendered or deemed to be tendered for purchase pursuant to Section 205 or 206 of this Indenture. The Trustee shall hold all moneys on deposit in the Bond Purchase Fund in trust for the benefit of the Bondholders who have tendered their Bonds or who are deemed to have tendered their Bonds for purchase. The Bondholders who have tendered or who are deemed to have tendered their Bonds for purchase pursuant to Section 205 or 206 of this Indenture and for whose benefit Eligible Funds have been deposited in the Bond Purchase Fund shall have a first lien on, with right of payment to, such Eligible Funds.

(b) There shall be paid into the Bond Purchase Fund, as and when received,

(i) The proceeds of the remarketing of Bonds by the Remarketing Agent pursuant to Section 207 of this Indenture (which proceeds shall at all times prior to their transfer from the Bond Purchase Fund be held by the Trustee in a segregated account in the Bond Purchase Fund separate from all other moneys in the Bond Purchase Fund);

(ii) All payments made by the Borrower pursuant to Section 3.4 of the Loan Agreement (each of which payments shall at all times prior to their transfer from the Bond Purchase Fund be held by the Trustee in a segregated account in the Bond Purchase Fund separate from all other moneys in the Bond Purchase Fund);

(iii) All moneys realized by the Trustee under the Letter of Credit for the purpose of paying such Purchase Price (all of which moneys shall at all times prior to their transfer from the Bond Purchase Fund be held by the Trustee in a segregated account in the Bond Purchase Fund separate from all other moneys in the Bond Purchase Fund); and

(iv) All other moneys received by the Trustee pursuant to this Indenture, the Loan Agreement, or otherwise which are required or which are accompanied by directions that such moneys are to be paid into the Bond Purchase Fund (each of which payments shall at all times prior to their transfer from the Bond Purchase Fund be held by the Trustee in a segregated account in the Bond Purchase Fund separate from all other moneys in the Bond Purchase Fund).

**SECTION 404. Use of Moneys in the Bond Purchase Fund.**

(a) Except as provided in this Section 404, moneys in the Bond Purchase Fund shall be used solely for the payment of the Purchase Price of Bonds tendered or deemed to be tendered for purchase on any purchase date pursuant to Section 205 or Section 206 of this Indenture.

(b) On each purchase date, the Trustee shall pay the Purchase Price of Bonds tendered for purchase from moneys on deposit in the Bond Purchase Fund from funds derived from the following sources in the order of priority indicated:

(i) Proceeds of the remarketing of such Bonds pursuant to Section 207 hereof which constitute Eligible Funds within the meaning of clause (a) of the definition of Eligible Funds in this Indenture;

(ii) Moneys realized under the Letter of Credit to pay the Purchase Price of Bonds tendered or deemed to be tendered for purchase (other than Pledged Bonds or Borrower Bonds); and

(iii) Payments made by the Borrower pursuant to Section 3.4 of the Loan Agreement and all other moneys deposited in the Bond Purchase Fund in accordance with Section 403(b)(iv) hereof.

Unless notified to the contrary by the Remarketing Agent, the Issuer, the Company or the Bank, the Trustee shall be entitled to assume that remarketing proceeds delivered to it were remarketed to persons other than the Borrower, the Issuer, any Insider of the Borrower or the Issuer or any other person obligated (as guarantor or otherwise) to make payments on the Bonds or under the Loan Agreement or the Reimbursement Agreement. Bonds (or portions thereof in Authorized Denominations) purchased with moneys described in clause (i) above shall be delivered to the purchasers thereof as provided in Section 207 hereof. Bonds (or portions thereof in Authorized Denominations) purchased with moneys described in clause (ii) above shall, if the Bonds are not in a book-entry only system, be registered in the name of the Borrower (or as otherwise provided in the Pledge Agreement), shall be referred to as Pledged Bonds, shall be held by the Trustee under the Pledge Agreement in trust for the account of the Borrower, shall be pledged to the Bank pursuant to the Pledge Agreement securing the Borrower's obligations thereunder and shall not be transferred or exchanged by the Trustee until the Letter of Credit has been reinstated in accordance with its terms (pursuant to the confirmation by the Trustee to the Bank by telephonic notice that the Trustee holds in trust for the benefit of the Bank the proceeds of the remarketing of such Pledged Bonds) in the amount of the aggregate principal amount of such Bonds and the amount originally realized under the Letter of Credit to pay the portion of the

Purchase Price equal to the accrued interest, if any, on such Bonds; and the Trustee may then release such Bonds, and register the transfer of such Bonds in the names of the new registered owners thereof as shall be provided by the Remarketing Agent by telephone or telecopy promptly confirmed in writing, in the manner set forth in Section 207 hereof; *provided, however*, that Pledged Bonds which have been held by the Trustee for a period of six (6) months and have not been remarketed shall, at the written direction of the Bank given to the Trustee, be canceled. Bonds (or portions thereof in Authorized Denominations) purchased with moneys described in clause (iii) above shall, at the direction of the Borrower if the Bonds are not in a book-entry only system, be registered in the name of the Borrower or be canceled.

If the Bonds are in a book-entry only system, the Trustee shall instruct the Depository to record in the books of the Depository for the account of the Borrower any Bonds (or portions thereof in Authorized Denominations) purchased with moneys described in clause (ii) above and the Trustee shall record such beneficial ownership interest of the Borrower on its books, and such Bonds shall be referred to as Pledged Bonds, shall be deemed to be held by the Trustee in trust for account of the Bank and to the fullest extent permitted by law shall be subject to a security interest in favor of the Bank as security for the Borrower's obligations under the Pledge Agreement and the Reimbursement Agreement, which security interest shall be released only after the Letter of Credit has been reinstated in accordance with its terms (pursuant to the confirmation by the Trustee to the Bank by telephonic notice that the Trustee holds in trust for the benefit of the Bank the proceeds of the remarketing of such Pledged Bonds) in the amount of the aggregate principal amount of such Bonds and the amount realized under the Letter of Credit to pay the portion of the Purchase Price equal to the accrued interest, if any, on such Bonds; *provided, however*, that any such Pledged Bonds which have been recorded in the books of the Depository for the account of the Borrower for a period of six (6) months and have not been remarketed shall, at the written direction of the Bank given to the Trustee, be canceled. In addition, during any period in which there are Pledged Bonds the Trustee shall make appropriate arrangements with the Depository to segregate the Pledged Bonds on the books of the Depository so that payments on the Bonds resulting from drawings under the Letter of Credit are not applied to the Pledged Bonds. If the Bonds are in a book-entry only system, the Trustee shall, with respect to any Bonds (or portions thereof in Authorized Denominations) purchased with moneys described in clause (iii) above which the Borrower does not instruct the Trustee to cancel, instruct the Depository to record such Bonds in the books of the Depository for the account of the Trustee, and such Bonds shall be Borrower Bonds.

(c) If the funds available under clause (i) of subsection (b) above for the payment of the Purchase Price of the Bonds to be purchased pursuant to Section 205 or Section 206 of this Indenture are not sufficient to pay the Purchase Price of such Bonds in full at or before 10:00 a.m., New York City time, on such purchase date, the Trustee shall, without making any prior demand or claim upon the Borrower, take action under the Letter of Credit prior to 11:00 a.m., New York City time, and the Bank shall make payment under the Letter of Credit to the Trustee at or before 1:30 p.m., New York City time, in immediately available funds in an amount which will be sufficient, together with the funds available under such clause (i) of subsection (b) above, to pay the Purchase Price of such Bonds on such purchase date. If for any reason funds are not available under the Letter of Credit for payment of the Purchase Price of such Bonds on such

purchase date, the Trustee shall immediately request from the Borrower immediately available funds sufficient to pay the Purchase Price of such Bonds by 2:00 p.m., New York City time on that date pursuant to Section 3.4 of the Loan Agreement.

(d) Notwithstanding any other provision of this Indenture to the contrary, in the event that (i) the Remarketing Agent remarkets any Bonds tendered for purchase pursuant to Section 205 or Section 206 hereof and the proceeds of such remarketing are received by the Trustee after the Trustee has taken action under the Letter of Credit to realize moneys to pay the Purchase Price of such Bonds, pursuant to subsection (c) above, or (ii) the Remarketing Agent shall subsequently remarket any Pledged Bonds, the Purchase Price of which Bonds were paid by the Trustee as a result of action taken under the Letter of Credit pursuant to subsection (c) above, then all proceeds of any such remarketing which necessitated such action under the Letter of Credit (or which would otherwise be payable to the Borrower as the Registered Owner or Beneficial Owner of the Bonds) shall be paid by the Trustee to the Bank in respect of the obligations of the Borrower under the Reimbursement Agreement. The Trustee shall immediately notify the Bank by telecopy or telephone, promptly confirmed in writing, that such proceeds are on deposit in the Bond Purchase Fund, and the Bank shall certify to the Trustee the amount of the obligations of the Borrower under the Reimbursement Agreement. When all obligations of the Borrower to the Bank under the Reimbursement Agreement have been satisfied, then all such moneys remaining in the Bond Purchase Fund shall be paid to the Borrower.

(e) If at any time moneys are on deposit in the Bond Purchase Fund in excess of the amounts required to be on deposit therein because the Borrower has made payment pursuant to Section 3.4 of the Loan Agreement for the purchase of Bonds tendered or deemed tendered for purchase pursuant to Section 205 or Section 206 hereof and the proceeds of the remarketing of such Bonds pursuant to Section 207 hereof are received by the Trustee prior to the purchase of such Bonds, with the result that such Bonds are or will be purchased with moneys described in Section 404(b)(i) hereof, such moneys so paid by the Borrower pursuant to Section 3.4 of the Loan Agreement shall be promptly returned to the Borrower by the Trustee to such extent.

SECTION 405. Deposit of Bond Proceeds. The net proceeds from the sale of the Bonds shall be deposited into the Project Fund.

SECTION 406. Account Statements. The Trustee shall keep and maintain adequate account statements, including receipts and statements of disbursements, deposits and investments, pertaining to the Project Fund, Bond Fund and Bond Purchase Fund. The Trustee shall provide monthly transaction and asset statements pertaining to such Funds to the Borrower and, upon request, to the Issuer and the Bank. The Borrower shall retain the transaction and asset statements described in the preceding sentence and shall provide them to any Person preparing the calculations or reports required pursuant to Section 409 hereof. If the Trustee is required to provide such transaction and asset statements to any Person preparing calculation or reports pursuant to Section 409 hereof, the Trustee may charge the Borrower its expenses in retrieving such transaction and asset statements.

SECTION 407. Investment of Project Fund and Bond Fund Moneys. Moneys held as part of the Project Fund and Bond Fund shall be invested and reinvested at the written direction of the Borrower in Permitted Investments in accordance with the provisions of Section 5.3 of the Loan Agreement, *provided, however*, that (i) any moneys from a drawing under the Letter of Credit shall remain uninvested, (ii) any moneys held by the Trustee in the Bond Purchase Fund shall remain uninvested, and (iii) any other moneys held by the Trustee in the Bond Fund may only be invested and reinvested in Government Obligations or Government Obligations Funds. The Trustee may conclusively rely upon such instructions as to both the suitability and legality of the directed investments. In the event no such instructions are received by the Trustee, such amounts shall be invested in Permitted Investments described in clause (viii) of the definition thereof, pending receipt of such investment instructions. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries. Any Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund and account which was used to purchase the same. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. At the written direction of the Borrower, the Trustee shall cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance is or will be insufficient to make a requested or required disbursement from the Project Fund. The Trustee shall not be accountable for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale. Funds in the Bond Purchase Fund shall remain uninvested. Although the Issuer and the Borrower each recognize that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Borrower hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

The purchase or sale of any securities may be made through the bond or investment department of the Trustee or the bond or investment department of any affiliated entity. The Trustee, when authorized by the Borrower, may trade with itself in the purchase or sale of securities for any investment. The Issuer requires monthly confirmations of Permitted Investments. Notwithstanding any provision of this Section 407 to the contrary, no statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

SECTION 408. Arbitrage. The Issuer recognizes that investment of the Bond proceeds will be at the written direction of the Borrower, but agrees that it will commit no act that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. The Trustee covenants that, while recognizing that investment of Bond proceeds will be at the written direction of the Borrower, should the Issuer file with the Trustee, or should the Trustee otherwise receive, an opinion of Bond Counsel or Special Tax Counsel, to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become “arbitrage bonds,” then the Trustee will comply with any instructions of the

Issuer or such Bond Counsel regarding such investment or use so as to prevent the Bonds from becoming “arbitrage bonds.” The Trustee shall file a copy of any such opinion of Bond Counsel with the Issuer, the Borrower and the Bank. The Trustee shall not be required to determine whether or not any opinion is required to be submitted.

SECTION 409. Rebate of Certain Arbitrage Earnings.

(a) Definitions. For purposes of this Section 409:

“Bond Year” means the annual period relevant to the application of Section 148(f) of the Code to the Bonds, except that the first and last Bond Years may be less than twelve (12) months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issue Date of the Bonds unless the Borrower selects another date on which to end a Bond Year in the manner permitted by the Code.

“Computation Date” means each date on which the Rebate Amount for an issue is required to be computed under Treasury Regulations §1.148-3(e). In the case of the Bonds, the first Computation Date shall not be later than five (5) years after the Issue Date of the Bonds. Subsequent Computation Dates shall be not later than five (5) years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. The final Computation Date is the date the Bonds are retired.

“Rebate Amount” means the excess of the future value, as of any date, of all receipts on nonpurpose investments acquired with gross proceeds of the Bonds over the future value, as of that date, of all payments on nonpurpose investments acquired with gross proceeds of the Bonds, computed in accordance with Section 148(f) of the Code and Treasury Regulations. Gross proceeds that are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of computing the Rebate Amount.

All determinations made pursuant to this Section 409 shall be made in accordance with the applicable portion of Section 148(f) of the Code.

The terms “bona fide debt service fund,” “gross proceeds,” and “nonpurpose investments” have the meanings assigned to them for the applicable purposes of Section 148(f) of the Code.

(b) Rebate Amount. The Trustee shall furnish information to and the Borrower shall engage (at the expense of the Borrower) an independent certified public accounting firm or law firm or a consultant experienced in arbitrage rebate matters, to calculate, within thirty (30) days after the end of the fifth (5<sup>th</sup>) Bond Year and every fifth (5<sup>th</sup>) Bond Year thereafter and within thirty (30) days after the retirement of all outstanding Bonds, the Rebate Amount, if any, as of the end of that Bond Year or the date of such retirement. The Borrower shall immediately notify the Trustee of the Rebate Amount, if any, and shall deliver copies of the calculation thereof to the Trustee. Within sixty (60) days after the end of each Computation Date, the Borrower, acting on behalf of the Issuer, shall pay to the United States in accordance with Section 148(f) of the Code, the Rebate Amount as of such Computation Date.

On or about each Computation Date, the Trustee shall request in writing that the Borrower furnish it with copies of the calculations made pursuant to this Section 409 and evidence of payment of the Rebate Amount to the United States, if applicable. The Trustee shall keep copies of the calculations made pursuant to this Section 409 and provided to the Trustee. The Trustee shall be entitled to rely on the calculations made pursuant to this Section 409 and shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in reliance upon those calculations.

Notwithstanding anything herein to the contrary, the Borrower may cause the amount to be rebated to the United States in accordance with Section 148(f) of the Code to be calculated under a different method or at different times and may make such rebate payments at different times; *provided* that the Borrower, the Issuer, and the Trustee shall have received a written opinion of Bond Counsel that using such method or timing of those calculations and making payments at such times will not adversely affect the exclusion of interest on the Bonds from gross income of the holders or Beneficial Owners thereof for federal income tax purposes. The Borrower shall promptly notify the Issuer and the Trustee of its use of such other method of calculation or making payment at such other time.

## ARTICLE V DISCHARGE OF LIEN

SECTION 501. Discharge of Lien and Security Interest. Subject to the next paragraph, upon payment in full of the Bonds, the lien of this Indenture upon the Security shall cease, terminate and be void, and thereupon the Trustee, upon determining that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, and upon payment of the Trustee's fees, costs and expenses hereunder, shall (i) cancel and discharge this Indenture and the lien of this Indenture upon the Security, (ii) execute and deliver to the Issuer and the Borrower such instruments in writing which have been provided to it as shall be required to cancel and discharge the lien of this Indenture and the Security, (iii) reconvey, as applicable, the Security to the Issuer and the Borrower, and (iv) assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds and except for moneys held in the Bond Purchase Fund for the purpose of paying the Purchase Price of the Bonds which have been purchased by the Trustee; *provided, however*, such cancellation and discharge of this Indenture shall not terminate the powers and rights granted to the Trustee with respect to the payment, transfer and exchange of the Bonds; and *provided*, further, that the rights of the Issuer, the Trustee and the Remarketing Agent to indemnity and payment of all reasonable fees and expenses shall survive such cancellation and discharge.

Notwithstanding any other provision to the contrary in this Indenture and unless otherwise agreed to by the Bank, to the extent that (i) moneys are drawn by the Trustee under the Letter of Credit which have not been reimbursed by the Borrower or the Borrower is otherwise indebted to the Bank under the Reimbursement Agreement and (ii) the fees, costs and expenses of the Issuer and the Trustee hereunder have been paid, then: (A) the lien of this Indenture shall

not be discharged; (B) the Bank shall be subrogated to the extent of such draws on the Letter of Credit or the Borrower's indebtedness to the Bank to all rights of the Bondholders to enforce the payment of the Bonds from the Security and all other rights of the Bondholders under the Bonds, this Indenture and the Loan Agreement; (C) the Bank shall be entitled in its own right upon payment in full of the principal of and interest on the Bonds to exercise all rights of enforcement and remedies set forth in Article VI hereof; (D) the Bondholders will be deemed paid to the extent of moneys drawn by the Trustee under the Letter of Credit; and (E) the Issuer and the Trustee shall sign, execute and deliver all documents or instruments (provided the Trustee shall not be required to prepare any such documents or instruments) and do all things which may be reasonably required by the Bank to effect the Bank's subrogation of rights of enforcement and remedies set forth in Article VI hereof in accordance with the intent of this Article V, including without limitation a conveyance and assignment of the Security and the Promissory Note to the Bank.

If payment or provision therefor has been made with respect to all the Bonds, the interest of the Trustee in the Promissory Note shall cease and the Trustee shall, subject to the rights of the Bank set forth in the preceding paragraph (including, without limitation, the right to have an assignment of such Promissory Note), cancel the Promissory Note and return the same to the Borrower. Neither the obligations nor moneys deposited with the Trustee pursuant to this Article V shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust, for the payment of the principal, premium, if any, and interest on the Bonds or for payment to the Bank in accordance with the terms of this Indenture.

SECTION 502. Provision for Payment of Bonds During Fixed Rate Period. During the Fixed Rate Period, Bonds shall be deemed to have been paid within the meaning of Section 501 if (but subject to the provisions of the second paragraph thereof to the extent that the Bonds during the Fixed Rate Period remain secured by a Letter of Credit):

(a) There have been irrevocably deposited in the Bond Fund:

(i) Moneys constituting Eligible Funds, and/or

(ii) Noncallable Government Obligations purchased with Eligible Funds, of such maturities and interest payment dates and bearing such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (such earnings to be held in trust also), be sufficient together with any moneys referred to in subsection (i) above,

for the payment at their respective maturities or redemption dates prior to maturity, of the principal thereof and the redemption premium (if any) and interest to accrue thereon to such maturity or redemption dates, as the case may be;

(b) There have been paid all fees, costs and expenses, including without limitation, reasonable Counsel fees, of the Issuer, the Trustee and the Remarketing Agent due or to become due or there are sufficient moneys in the Bond Fund to make such payments;

(c) If any Bonds are to be redeemed on any date prior to their maturity, the Trustee has received in form satisfactory to it irrevocable instructions to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been given; and

(d) The Trustee shall have received a written opinion of Bond Counsel to the effect that such deposit (and the payment of the Bonds therefrom) will not adversely affect the exclusion from gross income of interest on the Bonds by the holders or Beneficial Owners thereof for federal income tax purposes.

In determining the sufficiency of the moneys and/or Government Obligations deposited pursuant to subsection (a) of this Section 502, the Trustee shall be entitled to receive, at the expense of the Borrower, and may rely on a verification report of a firm of nationally recognized independent certified public accountants.

Limitations elsewhere specified herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the obligations described in the preceding subparagraph (a)(ii) for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. In addition, all moneys so deposited with the Trustee as provided in this Section 502 may also be invested and reinvested, at the written direction of the Borrower, in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of the Trustee pursuant to this Section 502 which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited under this Section 502 shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

SECTION 503. Discharge of this Indenture. Notwithstanding the discharge and cancellation of the lien of this Indenture upon the Security under Section 501 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with such discharge and cancellation of the lien upon the Security, shall nevertheless continue and subsist after payment in full of the Bonds and all of the Borrower's obligations to the Bank under the Reimbursement Agreement until the Trustee shall have returned to the Borrower all funds held by the Trustee in the Bond Fund, Project Fund and the Bond Purchase Fund pursuant to Sections 401, 402 and 404 of this Indenture.

SECTION 504. Unclaimed Moneys. Any moneys deposited with the Trustee in accordance with the terms and provisions of this Indenture, or any moneys held by any paying agent, in trust for the payment of the principal of and redemption premium, if any, or interest on the Bonds or the Purchase Price of any Unsurrendered Bonds and remaining unclaimed by the Registered Owners of the Bonds for four (4) years after the final maturity of all Bonds issued hereunder or the redemption date of all the Bonds, as the case may be, shall, at the request of the Borrower (and if the Borrower is not at the time to the knowledge of the Trustee

in default with respect to any covenant contained in the Loan Agreement and if the Issuer is not in default hereunder or under the Bonds) and upon provision of adequate indemnification from the Borrower, the Trustee shall pay such amounts to the Borrower, and the Holders of the Bonds for which the deposit was made shall thereafter be limited to a claim against the Borrower. Upon any such disposition to the Borrower, all liability of the Trustee with respect to the such funds shall cease. All moneys held by the Trustee and subject to this Section shall be held uninvested and without liability for interest thereon. However, if the escheatment laws of the State direct a different disposition of such funds, the Trustee shall comply with such laws. The Issuer, the Bank, the Remarketing Agent and the Trustee shall have no responsibility with respect to such moneys.

ARTICLE VI  
DEFAULT PROVISIONS AND REMEDIES

SECTION 601. Events of Default. Any one (1) of the following shall constitute an Event of Default hereunder:

(a) Default in the payment of any interest on any Bond when and as the same is due;

(b) Default in the payment of the principal of or any premium on any Bond when and as the same is due, whether at the stated maturity or redemption date thereof or by acceleration;

(c) Default in the payment of the Purchase Price of any Bond required to be purchased hereunder when and as the same is due;

(d) Default in the observance or performance of any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after the Trustee gives written notice to the Issuer, the Bank and the Borrower;

(e) The occurrence of an “Event of Default” as defined in the Loan Agreement;

(f) The Trustee receives a written notice from the Bank specifying the occurrence of an “event of default” under the Reimbursement Agreement and directing the Trustee to accelerate the Bonds; or

(g) The Bank shall wrongfully dishonor any draft or other request for payment under the Letter of Credit presented in strict accordance with its terms, the Letter of Credit shall, for any reason, become unavailable to or unenforceable by the Trustee, or the Bank (i) shall generally not pay its debts as they become due, (ii) shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, (iv) shall institute any proceeding or voluntary case (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any

substantial part of its property, (v) shall take any action to authorize any of the actions described above in this subsection (g), or (vi) shall have instituted against it any proceeding (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, and, if each such proceeding is being contested by the Bank in good faith, each such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, and the Borrower shall not have obtained an Alternate Letter of Credit within sixty (60) days after receipt of notice of each such occurrence.

Any default described in Section 601(d) hereof may be waived by the Trustee with the written consent of the Bank from time to time if the Issuer (or the Borrower, on behalf of the Issuer) is proceeding with all due diligence to cure such default and the Issuer is not otherwise in default hereunder.

SECTION 602. Acceleration. Subject to the requirement that the Bank's consent to any acceleration must be obtained in the case of an Event of Default described in subsection (d) or (e) of Section 601 hereof, upon the occurrence of any Event of Default hereunder, the Trustee may and upon (i) the written request of the holders of not less than a majority in aggregate principal amount of Bonds then Outstanding or (ii) the occurrence of an Event of Default under subsection (f) of Section 601 hereof, the Trustee shall immediately, by notice in writing sent to the Issuer and Borrower, declare the principal of and any premium on all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon such declaration, such principal and premium, if any, and interest shall become and be immediately due and payable. Interest on the Bonds shall cease to accrue on the date of such declaration. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement to declare all payments thereunder to be immediately due and payable and, to the extent it has not already done so and to the extent necessary, shall immediately draw upon the Letter of Credit as provided in clause (iii) of Section 308(e) hereof.

Immediately following any such declaration of acceleration, the Trustee shall, at the expense of the Borrower, mail notice of such declaration by first class mail to each holder of Bonds at his, her or its last address appearing on the Bond Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

SECTION 603. Other Remedies; Rights of Bondholders. Upon the happening and continuance of an Event of Default hereunder the Trustee may, but only with the prior written consent of the Bank (subject to the limitations described in Section 902 hereof), with or without taking action under Section 602 hereof, pursue any available remedy to enforce the performance of or compliance with any other obligation or requirement of this Indenture, the Loan Agreement or the Promissory Note.

Subject to Section 602 hereof and the requirement that the Bank's consent to the exercise by the Trustee of any such available remedy must be obtained (subject to the limitations described in Section 902 hereof), upon the happening and continuance of an Event of Default, and if requested to do so by the holders of at least a majority in aggregate principal amount of Bonds then Outstanding and the Trustee is indemnified as provided in Section 701 hereof, the Trustee shall exercise such of the rights and powers conferred by this Section 603 and by Section 602 hereof as the Trustee, being advised by Counsel, shall deem most effective to enforce and protect the interests of the Bondholders, except to the extent inconsistent with the interests of the Bondholders and the Bank.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient by the Trustee.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

The Trustee, as the assignee of all right, title and interest, but not the obligations, of the Issuer in and to the Loan Agreement (with the exception of the Unassigned Rights), shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement (with the exception of the Unassigned Rights).

SECTION 604. Right of Bondholders and Bank to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, and subject to the rights of the Bank to direct proceedings as provided in Sections 602 and 603 hereof, the holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; *provided*, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture; and *provided* that the Trustee shall be indemnified to its satisfaction (except for actions required under Section 308(e)(iii) or Section 602 hereof). No Bondholder shall individually, or collectively except through the Trustee, have the right to present a draft to the Bank to collect amounts available under the Letter of Credit.

No Bondholder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Bondholder has given the Trustee and the Borrower written notice of an Event of Default, the holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have requested the Trustee in writing to institute such proceeding, the Trustee

shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, and there shall have been offered to the Trustee indemnity and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within a reasonable time. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Bondholder hereof by the Act to enforce (i) the payment of the principal of and premium (if any) and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of and premium (if any) and interest on Bonds to such Bondholder at the time, place, from the source and in the manner as provided in this Indenture.

SECTION 605. Discontinuance of Default Proceedings. Prior to the drawing on the Letter of Credit pursuant to clause (iii) of Section 308(e) hereof, in case the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the Issuer, the Bank and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Trustee and the Bank shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

SECTION 606. Waiver. To the extent not precluded by the Act and Section 10.5 of the Loan Agreement, the Trustee, with the consent of the owners of a majority in aggregate principal amount of the Outstanding Bonds and with the consent of the Bank (subject to the limitations described in Section 902 hereof), may waive any default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal, and shall do so upon the written request of the Bank; *provided, however*, that there shall be no such waiver or rescission unless the Purchase Price and all principal, premium, if any, and interest on the Bonds in arrears together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for. The Trustee may not waive any default or Event of Default hereunder unless the amount available to be drawn under the Letter of Credit in respect of the Purchase Price of the Outstanding Bonds (including both principal and interest, if any) and principal, premium (if covered thereby), and interest on the Outstanding Bonds has been reinstated in full and the Trustee has received the written consent of the Bank to such waiver, the written acknowledgment of the Bank of such reinstatement, and in the case of an Event of Default under Section 601(f) hereof, the written notice of rescission by the Bank of the prior written notice and direction of the Bank provided pursuant to such Section 601(f).

SECTION 607. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article VI shall be deposited in the Bond Fund. After payment (out of moneys derived from a source other than the Letter of Credit) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or anticipated to be incurred or made by the Trustee, including reasonable attorneys' fees, and all other current outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan

Agreement (other than Loan Repayments), such moneys shall be applied in the order set forth below:

(a) To the Bondholders for the payment of the principal, premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium or interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the Persons entitled thereto;

(b) To the Bank to the extent the Bank certifies to the Trustee that the Borrower is indebted to the Bank under the Reimbursement Agreement; and

(c) To the Borrower.

Notwithstanding the foregoing, the Trustee shall apply moneys received under the Letter of Credit only to principal, premium (if covered by the Letter of Credit) and interest on the Bonds (except Pledged Bonds and Borrower Bonds). Subject to Section 602 hereof, whenever moneys are to be applied pursuant to this Section 607, the Trustee shall fix the date of declaration of acceleration (which shall be the earliest practical date, in the sole discretion of the Trustee, for which the requisite notice to the Issuer can be given) upon which such application is to be made and upon such date of declaration interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

## ARTICLE VII

### THE TRUSTEE AND THE REMARKETING AGENT

SECTION 701. Appointment. The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the express duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers and perform any of its duties herein by or through attorneys, agents, receivers or employees, and shall be entitled to rely on advice of Counsel and other professionals concerning all matters of such trusts, powers and duties. The Trustee shall not be answerable for the default or misconduct of any attorney, agent, receiver or employee selected by it with reasonable care, and may in all cases pay such Persons reasonable compensation. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatsoever in connection with its trusts, powers and duties herein, except only for its gross negligence or willful misconduct.

(b) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the certificate of authentication of the Trustee endorsed on the Bonds), or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the Security for the Bonds. Except as otherwise provided in Sections 308(e) and 602 hereof, the Trustee shall have no obligation to perform any of the duties of the Issuer under the Loan Agreement, and the Trustee shall not be

liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 407 hereof. The Trustee shall not be responsible for (i) the validity, priority, recording, rerecording, filing or refiling of this Indenture or any supplemental Indenture, (ii) any instrument or document of further assurance or collateral assignment, (iii) any financing statements, amendments hereto or continuation statements, (iv) the validity of the execution by the Issuer of this Indenture, any supplemental Indenture or instruments or documents of further assurance, (v) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, (vi) the value of or title to the Project, or insurance of the Project or collection of insurance moneys, or (vii) the maintenance of the Security hereof. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Bondholder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Loan (as defined in the Loan Agreement). The Trustee may become the owner of Bonds with the same rights as any other Bondholder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, or other paper or document believed in good faith to be genuine and correct and to have been signed or sent by an authorized representative of such Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or consent of any Person who at the time of making such request or giving such consent is the owner of any Bond (such ownership to be established as provided in Section 213 hereof), shall be conclusive and binding upon all future owners or holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee may conclusively rely upon a certificate furnished by the Bank as to amounts owing under the Reimbursement Agreement.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to Persons or to property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project.

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

(h) Before taking any action hereunder (except for (i) acceleration of the Bonds as required by Section 602 hereof, (ii) for drawing on the Letter of Credit as required by Section 308(e) hereof, (iii) any payments to Bondholders as set forth herein from moneys in the possession of the Trustee, and (iv) any Mandatory Tender of Bonds as set forth in Section 206

hereof), the Trustee may require that satisfactory security or indemnity be furnished to it for the reimbursement of all fees and expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its own gross negligence or willful misconduct by reason of any action so taken.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the holders of the Bonds and the Bank as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower under the Loan Agreement or the Issuer under this Indenture, and shall not be deemed to have, or required to take, notice of a Determination of Taxability or an Event of Default under this Indenture, except (i) in the event the Borrower fails to pay any Loan Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) upon written notification actually received by the Trustee of the occurrence of a Determination of Taxability from the Borrower, the Issuer or the holder of any Bonds, (iv) upon written notification of a default actually received by the Trustee from the Issuer or the holders of not less than a majority of the principal amount of Outstanding Bonds, or (v) upon written notification actually received by the Trustee from the Bank pursuant to Section 601(f) hereof. In the absence of such notice, the Trustee may conclusively presume there is no Determination of Taxability and no Event of Default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee may request a certificate from the Borrower that no Act of Bankruptcy has occurred, and the Trustee may conclusively rely upon such certificate as to the matters set forth therein.

(l) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture and the Loan Agreement. The Trustee shall, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by this Indenture and the Loan Agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The foregoing shall not limit the Trustee's obligations under Section 308(e)(iii) or Section 602 hereof.

(m) In the event that the Trustee receives direction from Bondholders under any Section of this Indenture which permits Bondholders to direct the actions of the Trustee, the Trustee shall only be required to act pursuant to the direction of the Bondholders which represent the largest percentage in aggregate principal amount of the Outstanding Bonds at the time such

direction is issued to the Trustee (the “Majority Direction”). The Trustee may act pursuant to other directions of Bondholders to the extent that such direction is not inconsistent with the Majority Direction. The Trustee shall not be liable for a failure to act upon any direction except the Majority Direction when acting pursuant to this Section 701(m). Nothing in this Section 701(m) shall be construed to modify or amend any Section hereof which requires a minimum number of Bondholders to direct the Trustee to take certain action or requires that indemnity satisfactory to the Trustee be provided before the taking of such action by the Trustee becomes mandatory.

(n) 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 Bank or the Bondholders relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or exercising any trust or power conferred upon the Trustee, under this Indenture. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; provided that the foregoing shall not relieve the Trustee of its duties to take actions required to be taken under Section 602 and with respect to payments to be made under the Letter of Credit and making payments on the Bonds when due.

(o) Notwithstanding any provision of this Indenture to the contrary, the Trustee shall not be liable or responsible for the accuracy of any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code, including, without limitation, the calculation of amounts required to be paid to the United States under the provisions of Section 148 of the Code, the maximum amount which may be invested in “nonpurpose obligations” as defined in the Code and the fair market value of any investments made hereunder, and the sole obligation of the Trustee with respect to the investments of funds hereunder shall be to invest the moneys received by the Trustee as provided herein pursuant to the written instructions of the Borrower.

(p) Affiliates of the Trustee may serve as the Remarketing Agent or as the Bank.

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

SECTION 702. Fees, Expenses. 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 made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary that the Trustee perform extraordinary services (including services performed in connection with the occurrence of a default or an Event of Default hereunder or under the Loan Agreement), it shall be entitled to reasonable extra compensation therefor, and to reimbursement for reasonable extraordinary expenses in connection therewith; *provided*, that if such

extraordinary services or extraordinary expenses are occasioned by the gross negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor.

The Trustee shall also be indemnified by the Borrower as provided in the Loan Agreement. The Trustee recognizes that all fees, charges and other compensations to which it may be entitled under this Indenture are required to be paid by the Borrower under the terms of the Loan Agreement or from funds derived from the Project or from the proceeds of the Bonds. Accordingly, the Trustee agrees that except for moneys that the Issuer may derive from the foregoing (excluding, however, the moneys for the issuance fee, administrative costs, taxes and other public service charges and indemnity under Sections 3.5, 8.6 and 10.4 of the Loan Agreement) the Issuer shall not be liable for any such fees, charges and other compensation to which the Trustee and the Remarketing Agent may be entitled. Payment of all such amounts shall however, be secured by the Security (except the Letter of Credit and any moneys on deposit with the Trustee which are being held in the Bond Fund for the purpose of paying to Bondholders principal, Purchase Price, premium, if any, or interest which has previously become payable with respect to the Bonds) as set forth herein.

As security for the payment of the Trustee's fees, costs and expenses and for the indemnity provided in this Section 702, the Trustee shall have a first lien on all moneys and property coming into its possession (except for any moneys on deposit with the Trustee which are being held in the Bond Fund for the purpose of paying to the Bondholders principal, Purchase Price, premiums, if any, or interest which has previously become payable with respect to the Bonds).

When the Trustee incurs expenses or renders services after the occurrence of an Act of Bankruptcy with respect to the Issuer or the Borrower, the expenses and the compensation for the services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

The Borrower's payment obligations under this Section 702 and the Loan Agreement shall survive the discharge of this Indenture and the resignation or removal of the Trustee, and shall not be limited by any law affecting the compensation of a trustee of an express trust.

SECTION 703. Intervention in Litigation. In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Bondholders, and shall intervene if requested in writing by the holders of at a majority of the aggregate principal amount of Bonds then Outstanding and indemnified as provided in Section 701(h) hereof.

SECTION 704. Resignation; Appointment of Successor Trustee; Successor Trustee Upon Merger, Consolidation or Sale. (a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days' prior written notice to the Issuer, the Bank, the Borrower and the Bondholders. Such resignation shall take effect only upon the appointment of a successor Trustee as described in Section 704(b) below and the acceptance of such appointment by the successor Trustee. If a successor Trustee is not appointed within 120 days after the Trustee has given notice of its resignation, the Trustee, at the expense of the Borrower, shall have the right

to petition a court of competent jurisdiction to appoint a successor Trustee hereunder. Upon appointment of a successor Trustee, the resigning Trustee shall, after payment of its fees, costs and expenses, assign all of its right, title and interest in the Security, and transfer and assign its right, title and interest in the Indenture and the Letter of Credit, pursuant to the terms of the Letter of Credit, to the successor Trustee. The successor Trustee shall meet the requirements of Section 704(b) below and shall accept in writing its duties and responsibilities hereunder and file such acceptance with the Issuer, the Bank and the Borrower.

(b) In case the Trustee shall give notice of resignation or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public office or offices, or of a receiver appointed by a court, a successor may with the prior written consent of the Borrower (to the extent that no "Event of Default" shall have occurred and be continuing under the Loan Agreement) and the Bank, be appointed by the owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their duly authorized attorneys in fact, a copy of which shall be delivered personally or sent by first class mail, postage prepaid, to the Issuer, the retiring Trustee, the successor Trustee, the Borrower, the Bank and the Remarketing Agent. Pending such appointment by the Bondholders, the Issuer may, with the consent of the Borrower (to the extent that no "Event of Default" shall have occurred and be continuing under the Loan Agreement) and the Bank, appoint a successor Trustee, by an instrument in writing signed by an authorized officer of the Issuer, a copy of which shall be delivered personally or sent by first class mail, postage prepaid, to the retiring Trustee, the successor Trustee, the Borrower, the Bank and the Remarketing Agent. If the Registered Owners and the Issuer fail to so appoint a successor Trustee, hereunder within forty-five (45) days after the Trustee has given notice of its resignation, has been removed, has been dissolved, has otherwise become incapable of acting hereunder or has been taken under control by a public officer or receiver, the Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor hereunder. Every such Trustee appointed pursuant to the provisions of this Section 704 shall (i) be a trust company or bank organized and in good standing under the laws of Mississippi or any state or the District of Columbia or be a national banking association organized under the laws of the United States (in either case, having trust powers), and (ii) have a combined capital and surplus of not less than \$50,000,000 as set forth in its most recent published annual report of condition.

(c) Notwithstanding any of the provisions of this Article VII to the contrary concerning the resignation or removal of the Trustee or the appointment of a successor Trustee, so long as a Letter of Credit is supporting the payment of the Bonds, no such resignation, removal or appointment shall be effective until the Bank shall have issued and delivered to the successor Trustee (i) a substitute Letter of Credit in substantially the same form as the existing Letter of Credit, but in favor of the successor Trustee, whereupon the retiring Trustee shall simultaneously return the Letter of Credit then held by it to the Bank for cancellation, or (ii) an amendment to the existing Letter of Credit, evidencing transfer thereof in all respects to the successor Trustee, to the extent permitted by law and by the terms of the Letter of Credit.

(d) Any company, bank, trust company or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any company, bank, trust company or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, provided such company shall be eligible under Section 704(b) hereof, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

SECTION 705. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the Bank, the Issuer and the Borrower and signed by the owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) delivered to the Trustee and the Issuer and signed by the Borrower and consented to by the Bank; which consent shall not be unreasonably withheld, *provided* that if an Event of Default has occurred and is continuing hereunder, the Trustee may not be removed without the consent of the holders of a majority in aggregate principal amount of the Bonds then Outstanding. No removal of the Trustee and no appointment of a successor Trustee shall become effective until the successor Trustee has accepted its appointment in the manner provided in Section 704 hereof. Upon such removal and the payment of its fees, costs and expenses, the Trustee shall assign to the successor Trustee all of its right, title and interest in the Security in the same manner as provided in Section 704 hereof, and transfer and assign its right, title and interest in the Letter of Credit pursuant to the terms of the Letter of Credit.

SECTION 706. Instruments of Bondholders. Any instrument required by this Indenture to be executed by Bondholders may be in any number of writings of similar tenor and may be executed by Bondholders in person or by an agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent shall be sufficient for any of the purposes of this Indenture if it is established by a 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. Proof of the ownership of Bonds shall be established by the ownership records noted in the Bond Register.

The Trustee may rely on such an instrument of Bondholders unless and until the Trustee receives notice in the form specified above that the original such instrument is no longer trustworthy. In the event that the Trustee receives conflicting directions from two groups of Bondholders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the Majority Direction shall be controlling and the Trustee shall follow such Majority Direction as required in this Indenture.

SECTION 707. Power to Appoint Co-Trustees. At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project is located, the Issuer and the Trustee, with the written consent of the Bank and the Borrower, may appoint, and, upon the request of the Trustee or of the holders of not less than a majority

of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall, with the written consent of the Bank and the Borrower, join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more Persons approved by the Trustee either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project, or to act as separate trustee or separate co-trustees of all or any part of the Project, and to vest in such Person or Persons, in such capacity, such title to the Project or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the provisions of this Section 707.

The Bank shall not be required to honor a draft on the Letter of Credit from a co-trustee unless the Trustee has transferred and assigned to such co-trustee its right, title and interest in the Letter of Credit in accordance with the terms of the Letter of Credit.

If the Issuer has not joined in such appointment within thirty (30) days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Trustee alone shall have the power to make such appointment.

The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law or any applicable contract, be appointed subject to the following terms, namely:

(a) This Indenture shall become effective once the Bonds are authenticated and delivered, and thereupon the Trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(b) All rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(c) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(d) Any co-trustee or separate trustee to the extent permitted by law may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(e) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer evidenced by a resolution, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 707. If an Event of Default has occurred and is continuing, the Trustee may accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 707.

(f) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(g) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by any Bondholder and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee.

(h) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it shall be vested with the security interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the security interest in the Security and all rights, powers, trusts, duties and obligations of such co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 704 hereof.

SECTION 708. Recordation and Other Instruments. In order to perfect the security interest of the Trustee and to perfect the security interest in the Note, the Issuer, to the extent permitted by law, will execute such security agreements or financing statements, naming the Trustee as assignee and pledgee of the Bonds assigned and pledged under this Indenture for the payment of the principal of, premium, if any, and interest on the Bonds and as otherwise provided herein, and the Borrower will cause the same to be duly filed and recorded, as the case may be, in the appropriate state and county offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the State, as from time to time amended. To continue the security interest evidenced by such security agreements or financing statements, the Borrower, at its own expense, shall prepare and deliver to the Trustee, and the Trustee, at the Borrower's expense, shall file and record or cause to be filed

and recorded such necessary continuation statements or supplements thereto and other instruments from time to time as may be required pursuant to the provisions of the said Uniform Commercial Code or other similar law to fully preserve and protect the security interest of the Trustee in the Bonds and to perfect the security interest in the Note. The Issuer, to the extent permitted by law, at the expense of the Borrower, shall execute and cause to be executed any and all further instruments as shall be reasonably required by the Trustee or the Bank for such protection and perfection of the interests of the Trustee, the registered owners and the Bank, and the Borrower shall file and refile or cause to be filed and refilled such instruments which shall be necessary to preserve and perfect the lien of this Indenture upon the Bonds until the principal of, premium, if any, and interest on the Bonds issued hereunder shall have been paid or provision for their payment shall be made as herein provided.

SECTION 709. Remarketing Agent. At the request of the Borrower, J.P. Morgan Securities Inc., is hereby appointed as the initial Remarketing Agent. The Borrower, with the consent of the Bank, which consent shall not be unreasonably withheld, shall appoint any successor Remarketing Agent for the Bonds, subject to the conditions set forth in Section 710 hereof. Any Remarketing Agent shall designate to the Issuer and the Trustee its principal office for purposes hereof, which shall be the office of such Remarketing Agent at which all notices and other communications in connection herewith may be delivered to it. The Remarketing Agent shall signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower, the Trustee and the Bank, under which such Remarketing Agent will agree particularly to (i) perform its obligations under Section 203 hereof with respect to the determination of the Variable Rate and the Fixed Rate, (ii) perform its obligations under Section 207 hereof with respect to any Bond delivered or deemed to have been delivered to the Trustee as tender agent for purchase pursuant to Section 205 or 206 hereof, and (iii) keep books and records with respect to all its activities hereunder available for inspection by the Issuer, the Trustee, the Borrower and the Bank at all reasonable times.

SECTION 710. Qualifications of Remarketing Agent; Resignation; Removal. The Remarketing Agent shall be a bank, trust company or member of the National Association of Securities Dealers, Inc. organized and doing business under the laws of the United States of America or any state or the District of Columbia, shall have a combined capital stock, surplus and undivided profits of at least \$15,000,000 as set forth in its most recent published annual report and shall be authorized by law to perform all the duties imposed upon the Remarketing Agent by this Indenture and the Remarketing Agreement. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least thirty (30) days' notice to the Issuer, the Borrower, the Trustee and the Bank. The Remarketing Agent may be removed at any time, without cause, upon at least thirty (30) days' written notice to the Remarketing Agent, at the direction of the Borrower, by an instrument signed by the Borrower and filed with the Remarketing Agent, the Trustee, the Issuer and the Bank. In no event shall the resignation or removal of the Remarketing Agent be effective until a qualified successor has accepted appointment as such. Each successor Remarketing Agent shall be an institution rated at least "Baa3" or "P-3" by Moody's Investors Service, Inc. (or Moody's Investors Service, Inc. shall have provided written evidence that the appointment of

such successor Remarketing Agent would not result in a reduction or withdrawal of the rating currently applicable to the Bonds if the Bonds are then rated by Moody's Investors Service, Inc., and at least "BBB-" or "A-3" by Standard & Poor's Ratings Group (or Standard & Poor's Ratings Group shall have provided written evidence that such successor Remarketing Agent is otherwise acceptable to Standard & Poor's Ratings Group) if the Bonds are then rated by Standard & Poor's Ratings Group, and authorized by law to perform all the duties imposed upon it by this Indenture.

In the event of the resignation or removal of the Remarketing Agent, the Remarketing Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity to its successor. Upon the resignation or removal of the Remarketing Agent, the Borrower, with the written consent of the Bank, which consent shall not be unreasonably withheld, shall appoint a successor Remarketing Agent. The Bank may appoint a successor Remarketing Agent if the Borrower fails to do so within thirty (30) days after the resignation or removal of the prior Remarketing Agent.

SECTION 711. Trustee as Custodian of the Funds, Bond Registrar, Paying Agent and Tender Agent. The Trustee shall be custodian of the funds, bond registrar and paying agent for principal of and premium (if any) and interest on the Bonds. The Trustee shall be tender agent for the Bonds as provided in Article II hereof. The Trustee hereby agrees that in performing its duties as tender agent referred to in Article II hereof that it is acting as the agent and representative of the Borrower and the Bondholders and not as the agent or representative of the Issuer. In performing its duties under the Pledge Agreement, its duties as tender agent, custodian of the funds, and its duties as bond registrar and paying agent for the Bonds, J.P. Morgan Trust Company, National Association shall be afforded the same rights, discretions, privileges and immunities as the Trustee, and the tender agent, custodian of the funds, bond registrar and paying agent may resign and/or be removed in the same manner as is provided herein for the resignation and/or removal of the Trustee.

SECTION 712. Several Capacities. Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Bank, the Trustee and the Remarketing Agent and in any other combination of such capacities, to the extent not prohibited by law.

SECTION 713. Representations, Warranties and Covenants of the Trustee. All federal, state and local governmental, public, and regulatory authority approvals, consents, notices, authorizations, registrations, licenses, exemptions, and filings that are required to have been obtained or made by the Trustee with respect to the authorization, execution, delivery, and performance by, or the enforcement against or by, Trustee of the Indenture have been obtained and are in full force and effect and all conditions of such approvals, consents, notices, authorizations, registrations, licenses, exemptions, and filings have been fully complied with.

The Trustee is not (i) required to qualify or obtain any certificate of authority to do business in the State of Mississippi or (ii) subject to any filing requirement to pay any fees or

taxes required of foreign entities doing business in the State of Mississippi, in either case solely as a result of executing, delivering, or performing the Indenture.

The Trustee has a combined capital and surplus of at least \$50,000,000 or, alternatively, a liability policy having the type of coverage and in an amount acceptable to the and the Borrower. The Trustee has an administrative group of at least four (4) experienced trust officers, with primary responsibility for municipal bond issues. The Trustee administers at least twenty-five (25) municipal bond indentures aggregating at least \$25,000,000 under its administration.

ARTICLE VIII  
AMENDMENTS, SUPPLEMENTAL INDENTURES

SECTION 801. Supplemental Indentures. The Issuer and the Trustee, with the written consent of the Bank but without the consent of or notice to any Bondholders, may enter into an indenture or indentures supplemental to this Indenture and not inconsistent herewith for one (1) or more of the following purposes:

(a) To cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which do not adversely affect the interest of the Bondholders or the Bank;

(b) To grant to or confer upon the Trustee for the benefit of the Bondholders or the Bank any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee;

(c) To grant or pledge to the Trustee for the benefit of the Bondholders and the Bank any additional security other than that granted or pledged under this Indenture;

(d) To modify, amend or supplement this Indenture or any supplemental indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then 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;

(e) To appoint a successor Trustee, separate trustees or co-trustees in the manner provided in Article VII hereof;

(f) To make any change necessary to secure from a Rating Agency a rating on the Bonds equal to the rating on the unsecured indebtedness of the Bank other than a change requiring consent of the holders of all Bonds then outstanding; and

(g) To make any other change which, in the judgment of the Trustee, is not materially adverse to the Trustee or the Bondholders.

When requested by the Issuer or the Borrower, and upon receipt of an opinion of Bond Counsel to the effect that all conditions precedent under this Indenture have been met, the Trustee shall join the Issuer in the execution of any such supplemental indenture. A copy of all such supplemental indentures shall be promptly furnished to the Bank and the Borrower.

SECTION 802. Amendments to Indenture; Consent of Bondholders, the Bank and the Borrower. Exclusive of supplemental indentures covered by Section 801 hereof and subject to the terms and provisions contained in this Section 802, and not otherwise, the holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding and affected by such indenture or indentures supplemental hereto, with the written consent of the Bank, shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and direct the execution by the Trustee of such other indenture or indentures supplemental hereto as shall be consented to by the Issuer, which consent shall not be unreasonably withheld, for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; *provided, however*, that nothing in this Article VIII shall permit, or be construed as permitting (a) without the consent of the holders of all Bonds then outstanding (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Bond, or (ii) a reduction in the principal amount of, or the premium or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien prior to the lien of this Indenture, (v) a reduction in the aggregate principal amount of the Bonds required for consent to any supplemental indenture, or (vi) a modification or change which impairs the ability of a Bondholder to tender Bonds for purchase pursuant to Section 205 hereof or (b) a modification or change in the duties of the Trustee hereunder without the consent of the Trustee. The giving of notice to and consent of the Bondholders to any such proposed supplemental indenture shall be obtained pursuant to Section 806 hereof.

Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article VIII which affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower consents to the execution of such supplemental indenture, amendment or other document.

Copies of any such supplemental indentures shall be filed with the Borrower and the Bank.

SECTION 803. Amendments to Loan Agreement Not Requiring Consent of Bondholders. The Issuer may with the written consent of the Bank and the Trustee but without the consent of or notice to any of the Bondholders, enter into or permit any amendment of the Loan Agreement acceptable to the Borrower as may be required (i) to cure any ambiguity or formal defect or omission which shall not adversely affect the interest of the Bondholders; (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Bondholders or the Bank, any additional security; or (iii) in connection with any other change therein which, in the judgment of the Trustee, is not materially adverse to the Trustee or the Bondholders.

Copies of any such amendments to the Loan Agreement shall be filed with the Trustee and the Bank.

SECTION 804. Amendments to Loan Agreement Requiring Consent of Bondholders and the Bank. Except as provided in Section 803 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement, nor shall any such modification or amendment become effective, without the written consent of the Bank and the consent of the holders of not less than a majority of the aggregate principal amount of the Bonds at the time Outstanding, such consent to be obtained in accordance with Section 806 hereof. No such amendment may, without the consent of the holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Loan Repayments under the Loan Agreement.

Copies of any such amendments to the Loan Agreement shall be filed with the Trustee and the Bank.

SECTION 805. Amendments, Changes and Modifications to the Letter of Credit and the Promissory Note. Except for Letter of Credit substitutions permitted under Section 308 hereof, subsequent to the initial issuance of Bonds and prior to payment of the Bonds in full (or provision for the payment thereof having been made in accordance with the provisions of this Indenture), the Letter of Credit may not be amended, changed or modified without the prior written consent of the Trustee; *provided*, that the Stated Expiration Date of the Letter of Credit may be extended without the consent of the Trustee. The Trustee may, without the consent of the owners of the Bonds, consent to any amendment of the Letter of Credit as may be required (a) for purposes of curing any ambiguity, formal defect or omission or for purposes of making any other change which, in the Trustee's judgment, does not prejudice in any material respect the interests of the Bondholders and (b) pursuant to Section 308 hereof as a result of a conversion of the Bonds to a Fixed Rate. Except for such amendments, the Letter of Credit may be amended only with the consent of the Issuer, the Trustee and the owners of a majority in aggregate principal amount of Outstanding Bonds, except that no such amendment may be made which would reduce the amounts required to be paid thereunder, extend the time for payment of such amounts or accelerate the Stated Expiration Date of the Letter of Credit without the written consent of the owners of all Outstanding Bonds.

The Trustee may, with the consent of the Borrower and the Bank but without the consent of the owners of the Bonds, consent to any amendment of the Promissory Note as may be required for purposes of curing any ambiguity, formal defect or omission or in connection with any other change therein which, in the Trustee's judgment, acting in reliance upon an opinion of Counsel, does not prejudice in any material respects the interests of the Bondholders. Except for such amendments, the Promissory Note may be amended only with the consent of the Borrower, the Issuer, the Trustee, the Bank and the owners of a majority in aggregate principal amount of Outstanding Bonds, except that no such amendment may be made which would reduce the amounts required to be paid or the time for payment of such amounts under the Promissory Note without the written consent of the owners of all the Outstanding Bonds.

Copies of any such amendments, changes or modifications to the Promissory Note shall be filed with the Trustee and the Bank.

SECTION 806. Notice to and Consent of Bondholders. If consent of the Bondholders is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Letter of Credit or the Promissory Note for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first class mail to the last known holders of the Outstanding Bonds then shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal corporate trust office of the Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the holders of a majority or all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Bondholders shall thereby be conclusively presumed.

SECTION 807. Waivers. The Trustee shall not waive on its own behalf or on behalf of the Issuer any obligation of the Borrower under the Loan Agreement without the prior written consent of the Bank and the Trustee shall do so if directed by the Bank.

ARTICLE IX  
MISCELLANEOUS

SECTION 901. 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 to any Person other than the parties hereto, the Bondholders, the Bank and the Borrower 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 herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Bondholders, the Bank and the Borrower as herein provided.

SECTION 902. Rights of the Bank. So long as the Bank has not dishonored, which dishonor has not been cured, a proper drawing (which drawing strictly complies with, and conforms to, the terms and conditions of the Letter of Credit) under the Letter of Credit, the Bank shall be deemed the owner of 100% of the Bonds secured by the Letter of Credit for the purposes of any action, notice, direction or consent permitted to be taken by the owners of such Bonds. Provided, all rights of the Bank under this Indenture to consent to certain extensions, remedies, waivers, actions and amendments hereunder shall cease and become null and void (i) for so long as the Bank wrongfully dishonors any draft presented in strict conformity with the requirements of the Letter of Credit and until it has honored a subsequent draft, if any, thereunder or (ii) if the Letter of Credit is no longer in effect and all of the Borrower's obligations to the Bank pursuant to the Reimbursement Agreement have been paid.

SECTION 903. Severability. If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other part or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

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

SECTION 904. Notices. Except as otherwise specifically provided for herein, all notices required to be given hereunder or under the Loan Agreement shall be in writing. Except as otherwise provided herein, it shall be sufficient service or giving of any notice, request, complaint, demand or other paper required by this Indenture to be given to or filed with the Issuer, the Trustee, the Bank, the Remarketing Agent, or the Borrower if the same shall be duly deposited in the United States mail and sent by first-class mail, postage pre-paid, or delivered, in each case to the parties at the addresses set forth below or as a party may designate by notice to the other parties:

If to the Issuer:

Mississippi Business Finance Corporation  
735 Riverside Drive  
Jackson, Mississippi 39202  
Attention: Executive Director  
Tel: 601/355-6232  
Fax: 601/355-3888

If to the Borrower:

Trex Company, Inc.  
160 Exeter Drive  
Winchester, Virginia 22603-8605  
Attention: Senior Vice President and Chief Financial Officer  
Tel: 540/542-6939  
Fax: 540/542-6889

If to the Trustee's  
Administrative Trust Office:

J.P. Morgan Trust Company, National Association  
1650 Market Street  
Suite 4700  
Philadelphia, Pennsylvania 19103  
Attention: Institutional Trust Services  
Tel: 215/640-3414  
Fax: 215/640-3430

If to the Trustee's  
Payment Trust Office:

J.P. Morgan Trust Company, National Association  
c/o JPMorgan Chase Bank, N.A.  
2001 Bryan Street  
Dallas, Texas 75201

If to the Bank:

Tel: 800-275-2048  
JPMorgan Chase Bank, N.A.  
277 Park Avenue, 22<sup>nd</sup> floor  
New York, New York 10172  
Attention: Sandra BVW Braun, Vice President  
Tel: 212-622-3622

If to the Remarketing  
Agent:

Fax: 646-534-0692  
J.P. Morgan Securities Inc.  
1 Bank One Plaza  
Mail Suite IL1-0463  
Chicago, Illinois 60670  
Attention: Municipal Bond Dept/Short Term Trading  
Tel: 312/732-3868  
Fax: 312/732-1033

SECTION 905. Additional Notices to Rating Agencies. The Trustee hereby agrees that if at any time (a) there is a change in the Trustee, the Remarketing Agent, or the Bank; (b) there are any modifications, supplements or amendments to the Indenture, Loan Agreement, Pledge Agreement or Letter of Credit of which the Trustee has notice; (c) the Letter of Credit expires, is terminated, is extended or is substituted; (d) the Trustee receives payment in full of all of the Bonds; or (e) the interest rate on the Bonds is converted to the Fixed Rate, then, in each case, the Trustee shall promptly give notice of any such event to each Rating Agency then maintaining a rating on the Bonds, which notice in the case of an event described in clause (b) above shall include a copy of any such amendment, modification or supplement.

SECTION 906. Payments Due on Non-Business Days. In any case where the date of maturity of interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business

Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment on the next succeeding Business Day, no interest shall accrue for the period from and after such date.

SECTION 907. Interest Computation. The interest on the Bonds shall be computed on the basis of a 365/366-day year, as the case may be, on actual days elapsed prior to the Conversion Date and a 360-day year comprised of twelve 30-day months thereafter.

SECTION 908. Fees, Charges and Expenses of the Issuer. The Issuer shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably made or incurred by the Issuer in connection with such services and in connection with entering into this Indenture, including any such fees and expenses incurred in connection with action taken hereunder.

The Issuer shall not be obligated to execute any documents or take any other action under or pursuant to this Indenture, the Agreement, the Promissory Note or any other document in connection with the Bonds unless and until provision for the payment of expenses of the Issuer shall have been made. Provisions for expenses shall be deemed to have been made upon arrangement reasonably satisfactory to the Issuer for the provision of expenses being agreed upon by the Issuer and the party requesting such execution.

SECTION 909. Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

SECTION 910. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

SECTION 911. Governing Law. This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of law principles.

SECTION 912. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Issuer has executed this Indenture by one of its members or authorized officers and the Trustee has caused this Indenture to be executed in its name by its duly authorized officer, all as of the day and year first above written.

**MISSISSIPPI BUSINESS FINANCE CORPORATION**, a  
public corporation duly organized and existing under the laws of  
the State of Mississippi

By: /s/ Bill Barry

Its: Executive Director

(SEAL)

ATTEST:

By: /s/ Vernon Smith

Its: Secretary

**J.P. MORGAN TRUST COMPANY,**  
**NATIONAL ASSOCIATION**, as Trustee

By: /s/ Marvin S. Kierstead

Its: Vice President

**EXHIBIT A**  
**FORM OF VARIABLE RATE SERIES 2004 BOND**

**R-\_\_**

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA  
STATE OF MISSISSIPPI

\$25,000,000

MISSISSIPPI BUSINESS FINANCE CORPORATION  
VARIABLE RATE DEMAND ENVIRONMENTAL IMPROVEMENT REVENUE BOND  
(Trex Company, Inc. Project),  
Series 2004

| <u>INTEREST RATE</u> | <u>MATURITY DATE</u> | <u>DATE OF ORIGINAL ISSUE</u> | <u>CUSIP</u> |
|----------------------|----------------------|-------------------------------|--------------|
| Variable             | December 1, 2029     | _____, 2004                   | _____        |

Registered Owner: CEDE & CO.

Principal Amount: Twenty-five Million and 00/100 Dollars (\$25,000,000)

THIS BOND AND THE OBLIGATION TO PAY INTEREST HEREON AND REDEMPTION PREMIUMS WITH RESPECT HERETO ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, SECURED AS AFORESAID AND PAYABLE SOLELY OUT OF THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT AND THE NOTE AND AS OTHERWISE PROVIDED IN THE INDENTURE OR BOND RESOLUTION AND LOAN AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THIS BOND CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE STATE OF MISSISSIPPI WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR PROVISION. NO OWNER OF THIS BOND SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF MISSISSIPPI TO PAY ANY

A-1

PRINCIPAL INSTALLMENT OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND. THE ISSUER HAS NO POWER TO LEVY TAXES FOR ANY PURPOSE WHATSOEVER.

FOR VALUE RECEIVED, the Mississippi Business Finance Corporation, a public corporation duly organized and existing under the laws of the State of Mississippi (the “Issuer”) hereby promises to pay to the Registered Owner specified above, or registered assigns, upon surrender hereof, at the payment trust office or other designated office of the Trustee named below, on the Maturity Date specified above, unless redeemed prior thereto, the Principal Amount specified above, together with interest thereon at the rates determined as set forth herein from the date hereof or such later date to which interest has been paid, but only from the sources and in the manner hereinafter provided on each Interest Payment Date (as hereinafter defined) until the principal hereof is paid or duly provided for upon redemption or maturity. Payment of the principal of, premium, if any, and interest on this Bond shall be made in lawful money of the United States of America which at the time of payment is legal tender for payment of public and private debts. Unless other arrangements are made pursuant to Section 202 of the Indenture (as defined herein), interest is payable by check or draft of the Trustee mailed, when due, to the registered holder hereof at the close of business on the Record Date (as hereinafter defined) immediately preceding any Interest Payment Date at the address of such holder as it appears on the Bond registration books of the Issuer maintained by the Trustee (the “Bond Register”).

Interest on this Bond shall be computed on the basis of a 365/366-day year, as the case may be, on actual days elapsed prior to the Conversion Date (as hereinafter defined) and a 360-day year consisting of twelve (12) months of thirty (30) days each thereafter.

This Bond is one of a series of Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004 (the “Bonds”) of the Issuer in the aggregate principal amount of \$25,000,000 issued under Section 57-10-401 et seq., Mississippi Code of 1972, as amended (the “Act”). The proceeds of the Bonds are being loaned to Trex Company, Inc., a Delaware corporation (the “Borrower”), in accordance with the Loan Agreement between the Issuer and the Borrower dated as of December 1, 2004 (the “Loan Agreement”) for the purpose of financing all or a portion of the costs of (i) the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi to be used by the Borrower in connection with the manufacture of non-wood decking, railing and fencing products (the “Project”), and (ii) to pay a portion of the costs of the issuance of the Bonds.

The Bonds are issued pursuant to and in full compliance with the Act and pursuant to a resolution of the Issuer adopted on November 17, 2004 (the “Resolution”) and a Trust Indenture (the “Indenture”) dated as of December 1, 2004, between the Issuer and J.P. Morgan Trust Company, National Association, as trustee (the “Trustee”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture.

The Bonds and interest due thereon shall not be a general obligation, a debt or a liability of the Issuer or an obligation, debt or liability of the State of Mississippi and do not constitute or give rise to any pecuniary liability or charge against the general credit of the Issuer or the credit

or taxing power of the State of Mississippi, but shall be special, limited obligations of the Issuer payable solely from and secured by the “Security,” including the moneys available to be drawn by the Trustee under a certain letter of credit (the “Letter of Credit,” and together with any Alternate Letter of Credit (as defined in the Indenture) delivered to and accepted by the Trustee in accordance with the Loan Agreement, the “Letter of Credit”), issued by JPMorgan Chase Bank, N.A. (together with the issuer of any alternate or replacement letter of credit delivered to and accepted by the Trustee in accordance with the Indenture, the “Bank”), all as defined in and subject to limitations set forth in the Indenture, for the equal and ratable benefit of the holders, from time to time, of the Bonds (the “Bondholders”), except as otherwise provided in the Indenture. The Issuer has no taxing power. Reference is hereby made to the Indenture for a description of the nature and extent of the Security, and to the Letter of Credit for the terms thereof. The Letter of Credit is being issued pursuant to the terms of a Reimbursement Agreement (together with any other agreement pursuant to which a Letter of Credit is issued, the “Reimbursement Agreement”) dated as of December 1, 2004, between the Bank and the Borrower.

The Bonds are issuable as fully registered Bonds in the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof (the “Authorized Denominations”). This Bond, upon surrender hereof at the payment trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the registered holder hereof or his attorney duly authorized in writing, may, at the option of the registered holder hereof, be exchanged for an equal aggregate principal amount of Bonds of any other Authorized Denomination. This Bond is transferable as provided in the Indenture, subject to certain limitations therein contained, only upon the Bond Register and only upon surrender of this Bond for transfer to the Trustee duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by the registered holder hereof or his attorney duly authorized in writing. Thereupon, one (1) or more new Bonds of Authorized Denominations and in the same aggregate principal amount will be issued to the designated transferee or transferees.

Any service charge made by the Trustee for any such registration, transfer or exchange hereinbefore referred to shall be paid by the Borrower. The Trustee or the Issuer may require payment by the Bondholder of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. Neither the Issuer nor the Trustee shall make any such exchange or registration of transfer of any Bond after notice calling such Bond for redemption or partial redemption has been given and prior to such redemption unless the holder delivers to the Trustee a written statement acknowledging that such Bond has been called for redemption and the date of such redemption.

The Issuer, the Borrower, the Trustee and any other agent of the Issuer may treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for all purposes, except that payment of or on account of either principal, premium, if any, or interest shall be made only to or upon the order of the holder of record as of the Record Date or its duly authorized attorney, but such registration may be changed as provided in the Indenture. Neither the Issuer, the Borrower, the Trustee nor any other such agent shall be affected by notice to the contrary.

## Interest Rates on the Bonds

(a) Interest on the Bonds will be payable at the Variable Rate (as hereinafter defined) from the Date of Original Issue until the earlier of the date on which the interest on the Bonds is converted to the Fixed Rate (the “Conversion Date”) or the date of payment in full of the Bonds (the “Variable Rate Period”). During the Variable Rate Period, the Variable Rate shall be determined by J.P. Morgan Securities Inc., as Remarketing Agent under the Indenture (together with any successor Remarketing Agent under the Indenture, the “Remarketing Agent”), by 4:30 p.m. New York City time on each Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day) and shall be the minimum rate necessary (as determined by the Remarketing Agent based on the examination of tax-exempt obligations comparable to the Tax-Exempt Bonds known to the Remarketing Agent to have been priced or traded under then-prevailing market conditions) for the Remarketing Agent to sell the Bonds on the effective date of such Variable Rate at their principal amount (without regard to accrued interest). The first Variable Rate shall apply to the period beginning on the Issue Date and ending on the next Wednesday. Thereafter, each Variable Rate shall apply to the period beginning on the Thursday of the week in which such Variable Rate is set and ending on the following Wednesday, or if earlier, ending on the Conversion Date. Notwithstanding the foregoing, the Variable Rate shall not exceed the lesser of ten percent (10%) per annum or the maximum rate permitted by applicable law. If no Remarketing Agent shall be serving under the Indenture, or if for any reason the Remarketing Agent has not determined the Variable Rate on a Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day), the Variable Rate for the Tax-Exempt Bonds shall be equal to the Municipal Swap Index; *provided* that if such index is no longer provided by Municipal Market Data, Inc. or its successor, the rate shall be equal to the J.J. Kenny Index or if such index is not available, such other index (or percentage of an index) deemed appropriate for tax-exempt securities of the nature of the Tax-Exempt Bonds as the Remarketing Agent may have previously selected, or, if no rate or index is provided, the new rate shall be the same as the rate for the preceding week. The Trustee shall promptly notify the Bondholders by first class mail of any change in the interest rate determination method.

(b) The Bonds shall bear interest at the Fixed Rate (as hereinafter defined) from and including the Conversion Date until the payment in full of the Bonds (the “Fixed Rate Period”). The Fixed Rate for the Bonds shall be determined by the Remarketing Agent on a date which is not more than twenty (20) Business Days nor less than five (5) Business Days prior to the Conversion Date (the “Fixed Rate Determination Date”) and shall be the rate determined by the Remarketing Agent on the Fixed Rate Determination Date to be the rate which, if borne by the Bonds would, in the judgment of the Remarketing Agent having due regard to prevailing market conditions for tax-exempt revenue bonds or other tax-exempt securities comparable to the Tax-Exempt Bonds, be the interest rate necessary, but would not exceed the interest rate necessary, to enable the Remarketing Agent to remarket the Bonds or portion thereof tendered (or deemed to have been tendered) for purchase at a price of par (exclusive of accrued interest, if any) on the Fixed Rate Determination Date; *provided, however*, that the Fixed Rate shall not exceed the maximum rate permitted by applicable law. If for any reason the Remarketing Agent fails to determine the Fixed Rate by the close of business on the fifth (5<sup>th</sup>) Business Day preceding the

Proposed Conversion Date, the Bonds shall continue to bear interest at the Variable Rate determined in accordance with the Indenture.

(c) The determination of the Variable Rate or the Fixed Rate by the Remarketing Agent shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Remarketing Agent and the Bondholders.

(d) In determining the interest rate that the Bonds shall bear as provided herein, neither the Remarketing Agent nor the Trustee shall have any liability to the Issuer, the Borrower, the Trustee or any Bondholder except for its gross negligence or willful misconduct.

As used herein, “Business Day” means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which banking institutions in the city in which the administrative trust office or the payment trust office of the Trustee (or its bond registrar, paying agent or tender agent offices) is located or the principal office of the Remarketing Agent is located or the office of the Bank at which action is to be taken to realize moneys under the Letter of Credit are required or authorized by law or executive order to be closed, or (iv) a day on which the New York Stock Exchange is closed.

As used herein, “Interest Payment Date” means, (i) during the Variable Rate Period, the first Business Day of each month, commencing \_\_\_\_\_, (ii) the Conversion Date and (iii) following the Conversion Date, each June 1 and December 1.

As used herein, “Record Date” means with respect to each Interest Payment Date (i) on and prior to the Conversion Date, the Trustee’s close of business on the Business Day next preceding such Interest Payment Date, and (ii) after the Conversion Date, the Trustee’s close of business on the fifteenth day of the calendar month next preceding such Interest Payment Date, regardless whether such day is a Business Day.

#### Conversion of Interest Rate on the Bonds

(a) During the Variable Rate Period, the interest rate on the Bonds, at the option of the Borrower, shall be converted from the Variable Rate to the Fixed Rate, upon delivery by the Borrower to the Trustee, the Remarketing Agent, the Bank and the Issuer:

(1) On any Business Day during the Variable Rate Period, of a notice (the “Conversion Notice”) stating (i) that the Borrower has elected to convert the interest rate on the Bonds to the Fixed Rate and specifying the Proposed Conversion Date, which date shall be a Business Day at least forty-five (45) days after the date on which the Trustee receives the Conversion Notice, (ii) that the Borrower has obtained the written consent of the Bank to the giving of such Conversion Notice (and attaching such written consent) and (iii) whether the Bonds will be secured by a Letter of Credit during the Fixed Rate Period, and

(2) By 10:00 a.m. New York City time on the Proposed Conversion Date, of (i) a Favorable Opinion of Bond Counsel as to the conversion of the interest rate on the

Bonds; (ii) if the Borrower elects to secure the Bonds with a Letter of Credit during the Fixed Rate Period, an amendment to the Letter of Credit then in effect or an Alternate Letter of Credit, in either case to be effective on the Proposed Conversion Date and meeting the requirements of the Indenture; and (iii) a written undertaking by the Borrower, satisfactory in form and substance to the Remarketing Agent and the Issuer, whereby the Borrower agrees to comply with the continuing disclosure requirements of subsection (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, as then applicable; *provided, however*, that the Borrower shall not be required to make such a written undertaking if the Remarketing Agent provides the Issuer, the Trustee and the Borrower with an opinion of counsel that an exemption from compliance with Rule 15c2-12 is available.

(b) If (i) the Trustee receives written notification from the Borrower by the close of business on the Fixed Rate Determination Date of the Borrower's decision not to elect the conversion of the interest rate on the Bonds to the Fixed Rate on the Proposed Conversion Date, or (ii) the Borrower fails to satisfy the conditions described in paragraph (a)(2) above, or (iii) the Remarketing Agent fails to determine the Fixed Rate by the close of business on the fifth (5<sup>th</sup>) Business Day preceding the Proposed Conversion Date, the interest rate on the Bonds shall not be converted to the Fixed Rate on the Proposed Conversion Date. In such event, the Bonds shall bear interest for the remaining portion of the current interest rate period at the Variable Rate then in effect, or for an interest rate period of the Variable Rate in effect for the immediately preceding interest rate period, and will continue to remain outstanding in accordance with the terms of this Indenture as if no such election had been made by the Borrower to convert the interest rate borne by the Bonds to the Fixed Rate; *provided, however*, that the Bonds will continue to be subject to mandatory tender on the Proposed Conversion Date pursuant to Section 206 of the Indenture.

(c) No conversion of the interest rate on the Bonds shall occur as provided herein if at the time of such conversion an Event of Default shall have occurred under the Indenture and be continuing with respect to the Bonds.

(d) The Bonds shall not be subject to optional or mandatory tender for purchase as provided herein after the Conversion Date.

"Bond Counsel" means a firm of nationally recognized attorneys at law acceptable to the Issuer experienced in legal work relating to the issuance of bonds the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended.

#### Optional Tender of Bonds for Purchase

The owner hereof shall have the right to tender this Bond or a portion hereof (in Authorized Denominations) to the Trustee as tender agent for purchase as a whole or in part (in any Authorized Denomination) (provided the Bonds which will continue to be held by such Beneficial Owner shall be in Authorized Denominations) on any Business Day during the

Variable Rate Period, but not thereafter, at a purchase price equal to one hundred percent (100%) of the principal amount hereof tendered plus accrued interest to the specified purchase date, in accordance with the Indenture. In order to exercise such option with respect to this Bond or any portion hereof, the owner hereof must give to the Trustee as tender agent at its designated corporate trust office by the opening of business at such office on a Business Day which is at least seven (7) days immediately preceding the proposed purchase date (i) telephonic notice of tender (which telephonic notice must be confirmed by written notice, which may be by facsimile transmission, of tender received by the Trustee as tender agent on a Business Day not more than two (2) Business Days after such notice) or (ii) written notice, which may be by facsimile transmission, of tender to the Trustee as tender agent (which written notice of tender shall be in the form attached hereto or shall be in such other form acceptable to the Trustee). If the Bonds are in a book-entry only system, such notice of tender shall be given, or caused to be given, by any Beneficial Owner of Bonds (through its Participant in the Depository, each as defined in the Indenture) to the Trustee and delivery of such Bonds shall be effected by causing such Participant to transfer its interest in the Bonds equal to such Beneficial Owner's interest on the records of the Depository to the participant account of the Remarketing Agent with the Depository. Upon the delivery of such written notice of tender, such election to tender shall be irrevocable and binding upon the owner (or Beneficial Owner) hereof. At or before 10:00 a.m., New York City time, on the specified purchase date, the Registered Owner or Beneficial Owner of each Bond as to which any such notice of tender shall have been given shall deliver his Bond and an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on the Bonds or in such other form acceptable to the Trustee) to the Trustee, as tender agent, at its designated corporate trust office and, on the specified purchase date, the Trustee as tender agent shall purchase such Bond only out of funds made available to it for such purpose, or cause such Bond to be purchased, at a purchase price equal to the principal amount thereof plus accrued interest, if any. If the Bonds are in a book-entry only system, the requirement for physical delivery of the Bonds in connection with a demand for purchase hereunder shall be deemed satisfied when the ownership rights in the Bonds are transferred by Participants on the records of the Depository to the participant account of the Remarketing Agent. The owners of the Bonds, by their acceptance of the Bonds, covenant and agree to tender their Bonds in the manner and at the times aforesaid. If any Bond is not so tendered after notice of tender from the owner thereof (an "Unsurrendered Bond"), and there has been irrevocably deposited in the Bond Purchase Fund referred to in the Indenture Eligible Funds in an amount sufficient to pay the purchase price of such Bond and all other Bonds so tendered or deemed tendered for purchase on such specified purchase date, such Bond shall be deemed to have been tendered by the owner thereof and purchased from such owner on the specified purchase date, and the owner thereof shall not be entitled to receive interest on such Bond on and after the specified purchase date. Upon surrender of any Unsurrendered Bond to the Trustee, the Trustee shall pay to the owner of such Unsurrendered Bond only an amount equal to the purchase price of such Unsurrendered Bond due on such purchase date. The Trustee shall, in its sole discretion, determine whether, with respect to any Bond, the owner thereof shall have properly exercised the option to have his Bond purchased as a whole or in part.

### Mandatory Tender of Bonds for Purchase

During the Variable Rate Period, the Registered Owner hereof shall be required to tender this Bond to the Trustee as tender agent for purchase on each date described below (each of the dates described below being a “Mandatory Tender Date”):

(1) On each proposed Conversion Date;

(2) On the date upon which an Alternate Letter of Credit is to be substituted for the Letter of Credit then in effect;

(3) On the Interest Payment Date next preceding the Stated Expiration Date of the Letter of Credit then in effect, if the Trustee has not received at least forty-five (45) days (or such shorter period as shall be acceptable to the Trustee, but not less than thirty (30) days) prior to the Interest Payment Date next preceding the Stated Expiration Date of the current Letter of Credit either an extension of the then existing Letter of Credit or an Alternate Letter of Credit meeting the requirements set forth therefor in the Indenture; and

(4) On each optional redemption date for which the Borrower with the written consent of the Bank has elected to purchase Bonds in lieu of an optional redemption pursuant to the Indenture.

At least twenty (20) days, but not more than forty-five (45) days, prior to each such Mandatory Tender Date, the Trustee shall give notice of such mandatory tender by first class mail to the Registered Owner hereof at his address appearing on the Bond Register. Such notice of mandatory tender shall (i) specify the Mandatory Tender Date and the reason for the mandatory purchase on such date, (ii) if such Mandatory Tender Date is a Proposed Conversion Date, state that such conversion to the Fixed Rate will not occur if the conditions described in paragraph (a)(2) above under the heading “Conversion of Interest Rate on the Bonds” are not satisfied but that such mandatory tender will still occur on the Proposed Conversion Date, and (iii) state that this Bond must be tendered by the Registered Owner hereof for purchase at or before 10:00 a.m., New York City time, on the Mandatory Tender Date to the Trustee as tender agent at its designated corporate trust office, together with an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on this Bond or such other form acceptable to the Trustee as tender agent), and that this Bond shall thereupon be purchased on the Mandatory Tender Date at a purchase price equal to the principal amount hereof plus accrued interest, if any, and if this Bond is not so tendered (an “Unsurrendered Bond”), but there has been irrevocably deposited in the Bond Purchase Fund referred to in the Indenture Eligible Funds sufficient to pay the purchase price of this Bond and all other Bonds so tendered or deemed tendered for purchase on the Mandatory Tender Date, this Bond shall be deemed to have been tendered for purchase by the Registered Owner hereof and purchased from such owner on the Mandatory Tender Date.

This Bond shall be tendered for purchase by the owner hereof to the Trustee as tender agent at or before 10:00 a.m., New York City time, on each Mandatory Tender Date, by

delivering this Bond to the Trustee as tender agent at its designated payment trust office, together with an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on this Bond or such other form acceptable to the Trustee), and on such Mandatory Tender Date the Trustee as tender agent shall purchase this Bond, or cause this Bond to be purchased, at a purchase price equal to the principal amount hereof, plus accrued interest, if any, and the Registered Owner of this Bond, by his acceptance hereof, hereby covenants and agrees to tender this Bond in the manner and at the time as aforesaid. If the Bonds are in a book-entry only system, a Beneficial Owner shall effect delivery of this Bond by causing its Participant in the Depository to transfer such Participant's interest in the Bonds equal to the Beneficial Owner's interest on the records of the Depository to the participant account of the Trustee with the Depository and the requirement for physical delivery of this Bond shall be deemed satisfied when the ownership rights in this Bond are transferred by such Participant on the records of the Depository. If this Bond is not tendered at or before 10:00 a.m., New York City time, on a Mandatory Tender Date, and there has been irrevocably deposited in the Bond Purchase Fund referred to in the Indenture an amount sufficient to pay the purchase price hereof and all other Bonds tendered or deemed tendered for purchase on such Mandatory Tender Date, this Bond shall be deemed to be tendered by the Registered Owner hereof and purchased from such owner on such Mandatory Tender Date, and the Registered Owner hereof shall not be entitled to receive interest on this Unsurrendered Bond on and after such Mandatory Tender Date. Upon surrender after a Mandatory Tender Date of an Unsurrendered Bond to the Trustee, the Trustee shall pay to the Registered Owner of such Unsurrendered Bond only an amount equal to the purchase price of such Unsurrendered Bond due on such Mandatory Tender Date.

#### **REDEMPTION OF BONDS**

The Bonds are not subject to redemption prior to maturity except as hereinafter provided.

##### Optional Redemption

On or prior to the Conversion Date, the Bonds are subject to redemption at any time prior to maturity, at the option of the Borrower, as a whole or in part in Authorized Denominations (and the Bonds which continue to be held by such Beneficial Owner will be in Authorized Denominations) at a redemption price of one hundred percent (100%) of the principal amount thereof plus accrued interest to the date fixed for redemption, upon receipt by the Trustee not less than forty-five (45) days prior to such redemption date of a written direction from the Borrower stating that it intends to exercise its option to prepay the Loan Repayments due under the Loan Agreement and thereby effect redemption of the Bonds.

After the Conversion Date, the Bonds are subject to redemption prior to maturity, at the option of the Borrower, on or after the dates specified in the Indenture, in whole at any time or in part in Authorized Denominations on any Interest Payment Date, at the redemption prices determined as provided in the Indenture upon receipt by the Trustee not less than forty-five (45) days prior to such redemption date of a written direction from the Borrower stating that it intends

to exercise its option to prepay the Loan Repayments due under the Loan Agreement and thereby effect redemption of the Bonds.

During the Variable Rate Period, the Borrower shall have the option to cause the Bonds to be subject to mandatory tender and purchase in lieu of an optional redemption of Bonds as described above. Such option may be exercised by delivery by the Borrower to the Trustee and the Remarketing Agent on or prior to the Business Day preceding the optional redemption date of a written notice specifying that the Bonds shall not be redeemed, but instead shall be subject to mandatory tender and purchase. Upon delivery of such notice, the Bonds shall not be redeemed but will instead be subject to mandatory tender and purchase pursuant to the Indenture at a tender price equal to the price at which the Bonds would have been redeemed on the date which would have been the optional redemption date.

#### Mandatory Redemption Upon Determination of Taxability

The Bonds shall be subject to mandatory redemption prior to maturity, as a whole and not in part, on the earliest practicable date for which notice can be given following the occurrence of a Determination of Taxability, at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date.

#### Mandatory Redemption from Insurance and Condemnation Proceeds

The Bonds are subject to mandatory redemption in whole at any time or in part (and if in part in Authorized Denominations; *provided* that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any Interest Payment Date, at a redemption price equal to one hundred percent (100%) of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, in an amount equal to any insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to Article VII of the Loan Agreement. Such redemption shall be effected by a drawing under the Letter of Credit and the Trustee shall use such insurance or condemnation proceeds to reimburse the Bank for such drawing pursuant to the Reimbursement Agreement.

#### Partial Redemption

If less than all the outstanding Bonds are called for redemption, the Trustee shall select, or arrange for the selection of, the Bonds to be redeemed by lot, in such manner as it shall in its discretion determine; *provided* that any such Bonds selected for redemption shall be in Authorized Denominations and the Bonds which will continue to be held by such Beneficial Owner will be in Authorized Denominations. Notwithstanding the foregoing, Bonds pledged to the Bank (“Pledged Bonds”) pursuant to the Pledge Agreement (as defined in the Indenture) and Bonds held for the account of the Borrower or any affiliate of the Borrower (“Borrower Bonds”) shall be first selected by the Trustee for redemption before any other Bonds are selected for redemption. If less than the principal amount of a Bond is called for redemption, the Issuer shall execute and the Trustee shall authenticate and deliver, upon surrender of such Bond, without

charge to the owner thereof, in exchange for the unredeemed principal amount of such Bond, at the option of such owner, Bonds in any of the Authorized Denominations.

#### Notice of Redemption

Notice of redemption shall be mailed by the Trustee by first class mail at least thirty (30) days but not more than forty-five (45) days before any redemption date to the Registered Owner of each Bond to be redeemed in whole or in part at its last address appearing on the Bond Register; *provided*, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond or a portion thereof with respect to which no such failure or defect has occurred; and *provided*, further, that so long as the Letter of Credit is in effect, the Trustee shall not give notice of any optional redemption unless the Bank has consented in writing to such redemption. In addition, the Trustee may give such other notice or notices as may be recommended in releases, letters, pronouncements or other writings of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the Bondholder receives the notice. All Bonds so called for redemption will cease to bear interest on the specified date set for redemption, provided Eligible Funds for their redemption have been duly deposited with the Trustee pursuant to the Indenture and, thereafter, the holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed in any Authorized Denomination.

#### Certain Other Provisions

If provision is made for the payment of principal of, premium, if any, and interest on this Bond in accordance with the Indenture, this Bond shall no longer be deemed outstanding under the Indenture, shall cease to be entitled to the benefits of the Indenture, and shall thereafter be payable solely from the funds provided for payment.

Under certain circumstances as described in the Indenture, the principal of all the Bonds may be declared due and payable in the manner and with the effect provided in the Indenture. The Indenture directs the Trustee to declare an acceleration upon the occurrence of an event of default under the Reimbursement Agreement if directed to do so by the Bank. Except in certain circumstances related to payment of principal and Purchase Price of and premium, if any, and interest on the Bonds or the wrongful dishonor by the Bank of a draft or other request for payment under the Letter of Credit, the Trustee has the right to accelerate the outstanding balance of the Loan and the principal of the Bonds in certain events only with the Bank's consent, if the Letter of Credit is in effect, all as provided in more detail in the Indenture. Immediately following any such declaration of acceleration, the Trustee shall mail notice of such declaration by first class mail to each holder of Bonds at his last address appearing on the Bond Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations (if any) of the Issuer, the Borrower, the

Bank and the holders of the Bonds at any time with the consent of the Bank and the holders of a majority in aggregate principal amount of the Bonds at the time outstanding which are affected by such modifications. The Indenture also permits amendments and supplements to the Indenture and the Loan Agreement, without requiring the consent of any Bondholders, but with the consent of the Bank, in certain specifically described instances. The Indenture also contains provisions permitting, subject to the Bank's consent, holders of a majority in aggregate principal amount of the Bonds at the time outstanding, on behalf of all the holders of all Bonds, to waive compliance by the Issuer and the Borrower with certain provisions of the Indenture and their consequences. Any such consent or waiver by the holder of this Bond shall be conclusive and binding upon such holder and on all future holders of this Bond and of any Bond issued in lieu hereof whether or not notation of such consent or waiver is made upon this Bond. Supplements and amendments to the Indenture or the Loan Agreement may be made only to the extent and in circumstances permitted by the Indenture.

The holder of this Bond shall have no right to enforce the provisions of the Indenture or the Loan Agreement, or to institute action to enforce the covenants therein, or to take any action with respect to a default under the Indenture or the Loan Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided under certain limited circumstances described in the Indenture; *provided, however*, that nothing contained in the Indenture shall affect or impair any right of enforcement conferred on the holder hereof by the Act to enforce (i) the payment of the principal of and premium (if any) and interest on this Bond at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of and premium (if any) and interest on this Bond to the holder hereof at the time, place, from the source and in the manner as provided in the Indenture.

The holder of this Bond, by acceptance hereof, consents to all of the terms and provisions of the Indenture and the Loan Agreement.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED, that all acts, conditions and things required to exist, happen and be performed precedent to the execution and delivery of the Indenture and the issuance of this Bond and the issue of which it is a part, do exist, have happened and have been timely performed in regular form and manner as required by law, and the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation of the Issuer.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature of one of its authorized signers, this Bond shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

**IN WITNESS WHEREOF**, the Mississippi Business Finance Corporation has executed this Bond by the manual or facsimile signature of one of its members or one of its authorized officers and has caused its seal (or a facsimile thereof) to be impressed or imprinted hereon, all as of the Date of Original Issue set forth above.

**MISSISSIPPI BUSINESS FINANCE CORPORATION**, a public corporation duly organized and existing under the laws of the State of Mississippi

By: \_\_\_\_\_  
Its: Executive Director

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Its: Secretary

**TRUSTEE’S CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

**J.P. MORGAN TRUST COMPANY,  
NATIONAL ASSOCIATION**, as Trustee

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

Authentication Date: \_\_\_\_\_

**[FORM OF ASSIGNMENT]**

For value received, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address of Assignee)

(Taxpayer I.D. No.: \_\_\_\_\_)

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,

attorney to transfer such Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

NOTICE: The signature(s) to this Assignment must correspond with the name as it appears upon the face of the Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15) participating in a Securities Transfer Association recognized signature guarantee program.

VALIDATION CERTIFICATE

The issuance of the Bonds of which this Bond is one has been validated and confirmed by decree of the Chancery Court of the First Judicial District of Hinds County, Mississippi, rendered on this \_\_\_\_\_ day of \_\_\_\_\_.

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Secretary, Mississippi Business Finance Corporation

A-15

**[FORM OF BONDHOLDER TENDER]  
BONDHOLDER TENDER NOTICE**

The undersigned hereby elects to have the Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004 numbered \_\_\_\_\_ (the “Bond”), of the Mississippi Business Finance Corporation, a public corporation duly organized and existing under the laws of the State of Mississippi (the “Issuer”) (or any portion thereof in any Authorized Denomination) purchased in accordance with the provisions of the Bond and the Trust Indenture (the “Indenture”) dated as of December 1, 2004, by and between the Issuer and J.P. Morgan Trust Company, National Association, as Trustee (the “Trustee”), on \_\_\_\_\_ (the “Purchase Date”), which Purchase Date shall be a Business Day at least seven (7) days immediately following the Business Day of the submission of this Bondholder Tender Notice, which may be by facsimile transmission, to the Trustee, as tender agent (unless the undersigned has given telephonic notice of its election to tender the Bond by 9:00 a.m., prevailing time, at the Trustee’s designated payment trust office, confirmed by submission of this Bondholder Tender Notice, which may be by facsimile transmission, not more than two (2) Business Days after such telephonic notice, in which event such Purchase Date shall be a Business Day at least seven (7) days immediately following the date of such telephonic notice), at the purchase price of one hundred percent (100%) of the principal amount thereof being purchased plus accrued interest, if any, to the Purchase Date (the “Purchase Price”).

Pursuant to the terms of the Indenture, the Purchase Price of the Bond (or portion thereof) to be purchased shall be paid to the undersigned Registered Owner of the Bond in immediately available funds, which may be remitted by wire transfer to any requesting Owner, as provided in the Indenture, at or before 2:00 p.m., New York City time, on the Purchase Date upon presentation of the Bond to the Trustee, as tender agent, together with an instrument of assignment or transfer duly executed in blank (which instrument of assignment or transfer shall be in the form provided on the Bond or in such other form acceptable to the Trustee), at or before 10:00 a.m., New York City time, on the Purchase Date, at or to

J.P. Morgan Trust Company, National Association  
c/o J.P. Morgan Bank, N.A.  
2001 Bryan Street  
Dallas, Texas 75201  
Attn: Corporate Trust Department  
Telephone: 800-275-2048

The undersigned hereby acknowledges and agrees to such terms.

This Bondholder Tender Notice shall not be accepted by the Trustee unless it is properly completed and received by the Trustee at its designated corporate trust office.

If the Bond is submitted for purchase in part, the undersigned hereby directs the Trustee to exchange the Bond for (i) a Bond representing the principal amount of the Bond to be purchased, and (ii) a Bond (or Bonds of Authorized Denominations if the owner specifies the Authorized Denominations) representing the principal amount of the Bond not to be purchased.

The Bond or Bonds not to be purchased shall be registered in the same name(s) as the Bond tendered for purchase. Unless the undersigned Registered Owner of the Bond delivers instructions to the Trustee, with this Bondholder Tender Notice, specifying that said owner wishes to have the Trustee deliver more than one Bond representing the principal amount of the Bond not to be purchased, and specifying the Authorized Denominations of such replacement Bonds, the Trustee will deliver only one replacement Bond to such owner in the principal amount of the Bond not to be purchased.

THIS ELECTION IS IRREVOCABLE AND BINDING ON THE UNDERSIGNED AND CANNOT BE WITHDRAWN.

The undersigned hereby authorizes the Trustee to accept on behalf of the undersigned the Purchase Price of the Bond (or portion thereof) subject to this Bondholder Tender Notice.

Print or Type

Name(s) of Bondholder(s)

Street

City

State

Zip

( )

Area Code

Telephone Number

Signature(s)

Date:

Note: The signature(s) to this Bondholder Tender Notice must correspond exactly to the name(s) appearing on the registration books of the Issuer maintained by the Trustee, as bond registrar, in every particular, without alteration or enlargement or any change whatsoever.

The principal amount of the Bond subject to this notice of tender for purchase \$ . (Insert total principal amount of Bond or a portion thereof in the amount of \$100,000 or any integral multiple of \$5,000 in excess thereof).

IF NO AMOUNT IS INDICATED IN THE SPACE ABOVE, THE ABOVE SIGNED OWNER OF THE BOND SUBJECT TO THIS BONDHOLDER TENDER NOTICE WILL BE DEEMED TO HAVE TENDERED THE BOND IN ITS FULL PRINCIPAL AMOUNT FOR PURCHASE.

The principal amount of the Bond not subject to this notice of tender for purchase is \$ . (Must be \$100,000 or any integral multiple of \$5,000 in excess thereof).

**EXHIBIT B**  
**FORM OF FIXED RATE SERIES 2004 BOND**

**R-\_\_**

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Issuer or its agent for registration of transfer, exchange, or payment, and any Bond is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA  
STATE OF MISSISSIPPI

MISSISSIPPI BUSINESS FINANCE CORPORATION  
ENVIRONMENTAL IMPROVEMENT REVENUE BOND  
(TREX COMPANY, INC. PROJECT),  
SERIES 2004

| <u>INTEREST RATE</u> | <u>MATURITY DATE</u> | <u>DATE OF ORIGINAL ISSUE</u> | <u>CUSIP</u> |
|----------------------|----------------------|-------------------------------|--------------|
|                      | December 1, 20__     | _____ 2004                    |              |

Registered Owner:

Principal Amount:

THIS BOND DOES NOT CONSTITUTE A GENERAL OBLIGATION OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. UNDER NO CIRCUMSTANCES SHALL THIS BOND CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE STATE OF MISSISSIPPI WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR PROVISION. NO OWNER OF THIS BOND SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF MISSISSIPPI TO PAY ANY PRINCIPAL INSTALLMENT OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND. THE ISSUER HAS NO POWER TO LEVY TAXES FOR ANY PURPOSE WHATSOEVER.

FOR VALUE RECEIVED, the Mississippi Business Finance Corporation a public corporation duly organized and existing under the laws of the State of Mississippi (the “Issuer”) hereby promises to pay to the Registered Owner specified above, or registered assigns, upon surrender hereof, at the payment trust office of the Trustee (currently located in Dallas, Texas) or other designated office of the Trustee named below, on the Maturity Date specified above, unless redeemed prior thereto, the Principal Amount specified above, together with interest thereon at the interest rate specified above from the authentication date hereof or such later date to which interest has been paid, but only from the sources and in the manner hereinafter provided on each June 1 and December 1 (each an “Interest Payment Date”) until the principal hereof is paid or duly provided for upon redemption or maturity. Payment of the principal of, premium, if any, and interest on this Bond shall be made in lawful money of the United States of America which at the time of payment is legal tender for payment of public and private debts. Unless other arrangements are made pursuant to Section 202 of the Indenture (as defined herein) (hereinafter defined), interest is payable by check or draft of the Trustee mailed when due to the registered holder hereof at the close of business on the fifteenth (15<sup>th</sup>) day of the month immediately preceding any Interest Payment Date at the address of such holder as it appears on the Bond registration books of the Issuer maintained by the Trustee (the “Bond Register”).

Interest on this Bond shall be computed on the basis of a 360-day year consisting of twelve (12) months of thirty (30) days each.

This Bond is one of an authorized series of bonds of the Issuer designated “Variable Rate Demand Environmental Improvement Revenue Bonds (Trex Company, Inc. Project), Series 2004” (the “Bonds”), and issued in the aggregate principal amount of \$25,000,000). The proceeds of the Bonds are being loaned to Trex Company, Inc. a Delaware corporation (the “Borrower”), in accordance with the Loan Agreement between the Issuer and the Borrower dated as of December 1, 2004 (the “Loan Agreement”) for the purpose of financing all or a portion of the costs of (i) the acquisition, construction and equipping of solid waste disposal facilities in the City of Olive Branch, DeSoto County, Mississippi to be used by the Borrower in connection with the manufacture of non-wood decking, railing and fencing products (the “Project”), and (ii) to pay a portion of the costs of the issuance of the Bonds.

The Bonds are issued pursuant to and in full compliance with Section 57-10-401 et seq., Mississippi Code of 1972, as amended (the “Act”), and pursuant to a resolution of the Issuer adopted on November 17, 2004 (the “Resolution”) and a Trust Indenture (the “Indenture”) dated as of December 1, 2004, between the Issuer and J.P. Morgan Trust Company, National Association, as Trustee (the “Trustee”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture.

The Bonds and interest due thereon shall not be a general obligation, a debt or a liability of the Issuer or an obligation, debt or liability of the State of Mississippi and do not constitute or give rise to any pecuniary liability or charge against the credit of the Issuer or the credit or taxing power of the State of Mississippi, but shall be limited special obligations of the Issuer payable solely from and secured by the “Security,” including the moneys available to be drawn by the Trustee under a certain letter of credit (the “Letter of Credit,” and together with any Alternate

Letter of Credit (as defined in the Indenture) delivered to and accepted by the Trustee in accordance with the Loan Agreement, the “Letter of Credit”), issued by JPMorgan Chase Bank, N.A. (together with the issuer of any Alternate Letter of Credit delivered to and accepted by the Trustee in accordance with the Indenture, the “Bank”), all as defined in and subject to limitations set forth in the Indenture, for the equal and ratable benefit of the holders, from time to time, of the Bonds (the “Bondholders”), except as otherwise provided in the Indenture. The Issuer has no taxing power. Reference is hereby made to the Indenture for a description of the nature and extent of the Security, and to the Letter of Credit for the terms thereof. The Letter of Credit is being issued pursuant to the terms of a Reimbursement Agreement dated as of December 1, 2004 (together with any other agreement pursuant to which a Letter of Credit is issued, the “Reimbursement Agreement”), among the Bank and the Borrower.

The Bonds are issuable as fully registered Bonds in the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof (the “Authorized Denominations”). This Bond, upon surrender hereof at the payment trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the registered holder hereof or his attorney duly authorized in writing, may, at the option of the registered holder hereof, be exchanged for an equal aggregate principal amount of Bonds of any other Authorized Denomination. This Bond is transferable as provided in the Indenture, subject to certain limitations therein contained, only upon the Bond Register and only upon surrender of this Bond for transfer to the Trustee duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by the registered holder hereof or his attorney duly authorized in writing. Thereupon, one or more new Bonds of Authorized Denominations and in the same aggregate principal amount will be issued to the designated transferee or transferees.

Any service charge made by the Trustee for any such registration, transfer or exchange hereinbefore referred to shall be paid by the Borrower. The Trustee or the Issuer may require payment by the Bondholder of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. Neither the Issuer nor the Trustee shall make any such exchange or registration of transfer of any Bond after notice calling such Bond for redemption or partial redemption has been given and prior to such redemption, unless the holder delivers to the Trustee a written statement acknowledging that such Bond has been called for redemption and the date of such redemption.

The Issuer, the Borrower, the Trustee and any other agent of the Issuer may treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for all purposes, except that payment of or on account of either principal, premium, if any, or interest shall be made only to or upon the order of the holder of record as of the Record Date or its duly authorized attorney, but such registration may be changed as provided in the Indenture. Neither the Issuer, the Borrower, the Trustee nor any other such agent shall be affected by notice to the contrary.

## REDEMPTION OF BONDS

The Bonds are not subject to redemption prior to maturity except as hereinafter provided.

### Optional Redemption

The Bonds are subject to redemption prior to maturity, at the option of the Borrower, on or after the dates specified below, in whole at any time or in part in Authorized Denominations on any Interest Payment Date for which notice of redemption can be given pursuant to the Indenture, at the redemption prices (expressed as percentages of the principal amount so redeemed) set forth in the following table plus accrued interest to the redemption date, upon receipt by the Trustee not less than forty-five (45) days prior to such redemption date of a written direction from the Borrower stating that it intends to exercise its option to prepay the Loan Prepayments due under the Loan Agreement and thereby effect redemption of the Bonds as follows:

| Redemption Dates (Dates Inclusive) | Redemption Prices: |
|------------------------------------|--------------------|
| _____, ____ through _____, _____   | ____ %             |
| _____, ____ through _____, _____   | ____ %             |
| _____, ____ through _____, _____   | ____ %             |
| _____, ____ and thereafter         | 100%               |

[Complete schedule in accordance with Section 217(a) of the Indenture.]

### Mandatory Redemption Upon Determination of Taxability

The Bonds shall be subject to mandatory redemption prior to maturity, as a whole and not in part, on the earliest practicable date for which notice can be given following the occurrence of a Determination of Taxability, at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date.

### Mandatory Redemption Upon Expiration of Letter of Credit During the Fixed Rate Period

If the Bonds are secured by a Letter of Credit during the Fixed Rate Period and at least forty-five (45) days prior to the Interest Payment Date next preceding the Stated Expiration Date of the Letter of Credit then in effect the Trustee has not been provided with an extension of such Letter of Credit or an Alternate Letter of Credit for the applicable period required by the Indenture, then the Bonds will be subject to mandatory redemption on the Interest Payment Date next preceding such stated expiration date at a redemption price equal to the lesser of (a) one hundred and two percent (102%) of the principal amount thereof plus accrued interest to the redemption date or (b) the redemption price which would apply as of the redemption date if the Bonds were optionally redeemed.

#### Mandatory Redemption from Insurance and Condemnation Proceeds.

The Bonds are subject to mandatory redemption in whole at any time or in part (and if in part in Authorized Denominations; *provided* that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any Interest Payment Date, at a redemption price equal to one hundred percent (100%) of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, in an amount equal to any insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to Article VII of the Loan Agreement. During any period in which a Letter of Credit secures the Bonds, such redemption shall be effected by a drawing under the Letter of Credit and the Trustee shall use such insurance or condemnation proceeds to reimburse the Bank for such drawing pursuant to the Reimbursement Agreement.

#### Partial Redemption

If less than all the outstanding Bonds are called for redemption, the Trustee shall select, or arrange for the selection of, the Bonds to be redeemed by lot, in such manner as it shall in its discretion determine; *provided* that any such Bonds selected for redemption shall be in Authorized Denominations. Notwithstanding the foregoing, Bonds held for the account of the Borrower or any affiliate of the Borrower (“Borrower Bonds”) shall be first selected by the Trustee for redemption before any other Bonds are selected for redemption. If less than the principal amount of a Bond is called for redemption, the Issuer shall execute and the Trustee shall authenticate and deliver, upon surrender of such Bond, without charge to the owner thereof, in exchange for the unredeemed principal amount of such Bond, at the option of such owner, Bonds in any of the Authorized Denominations.

#### Notice of Redemption

Notice of redemption shall be mailed by the Trustee by first class mail at least thirty (30) days but not more than forty-five (45) days before any redemption date to the Registered Owner of each Bond to be redeemed in whole or in part at its last address appearing on the Bond Register; *provided, however*, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond or a portion thereof with respect to which no such failure or defect has occurred; and *provided*, further, that so long as the Letter of Credit is in effect, the Trustee shall not give notice of any optional redemption unless the Bank has consented in writing to such redemption. In addition, the Trustee may give such other notice or notices as may be recommended in releases, letters, pronouncements or other writings of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the Bondholder receives the notice. All Bonds so called for redemption will cease to bear interest on the specified date set for redemption, provided funds for their redemption have been duly deposited with the Trustee pursuant to the Indenture and, thereafter, the holders of such Bonds called for redemption shall have no rights in

respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed in any of the Authorized Denominations.

#### Certain Other Provisions

If provision is made for the payment of principal of, premium, if any, and interest on this Bond in accordance with the Indenture, this Bond shall no longer be deemed outstanding under the Indenture, shall cease to be entitled to the benefits of the Indenture, and shall thereafter be payable solely from the funds provided for payment.

Under certain circumstances as described in the Indenture, the principal of all the Bonds may be declared due and payable in the manner and with the effect provided in the Indenture. The Indenture directs the Trustee to declare an acceleration upon the occurrence of an event of default under the Reimbursement Agreement if directed to do so by the Bank. Except in certain circumstances related to payment of principal of, premium, if any, and interest on the Bonds or the wrongful dishonor by the Bank of a draft or other request for payment under the Letter of Credit, the Trustee has the right to accelerate the outstanding balance of the Loan and the principal of the Bonds in certain events only with the Bank's consent if the Letter of Credit is in effect, all as provided in more detail in the Indenture to which reference is hereby made. Immediately following any such declaration, the Trustee shall mail notice of such declaration by first class mail to each holder of Bonds at his last address appearing on the Bond Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations, if any, of the Issuer, the Borrower, the Bank and the holders of the Bonds at any time with the consent of the Bank and the holders of a majority in aggregate principal amount of the Bonds at the time outstanding which are affected by such modifications. The Indenture also permits amendments and supplements to the Indenture and the Loan Agreement, without requiring the consent of any Bondholders in certain specifically described instances. The Indenture also contains provisions permitting holders of a majority in aggregate principal amount of the Bonds at the time outstanding, on behalf of all the holders of all Bonds, to waive compliance by the Issuer and the Borrower with certain provisions of the Indenture and their consequences. Any such consent or waiver by the holder of this Bond shall be conclusive and binding upon such holder and on all future holders of this Bond and of any Bond issued in lieu hereof whether or not notation of such consent or waiver is made upon this Bond. Supplements and amendments to the Indenture or the Loan Agreement may be made only to the extent and in circumstances permitted by the Indenture.

The holder of this Bond shall have no right to enforce the provisions of the Indenture or the Loan Agreement, or to institute action to enforce the covenants therein, or to take any action with respect to a default under the Indenture or the Loan Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided under certain limited circumstances described in the Indenture; *provided, however*, that nothing contained in the Indenture shall affect or impair any right of enforcement conferred on the holder hereof by

the Act to enforce (i) the payment of the principal of and premium, if any, and interest on this Bond at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of and premium, if any, and interest on this Bond to the holder hereof at the time, place, from the source and in the manner as provided in the Indenture.

The holder of this Bond, by acceptance hereof, consents to all of the terms and provisions of the Indenture and the Loan Agreement.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED, that all acts, conditions and things required to exist, happen and be performed precedent to the execution and delivery of the Indenture and the issuance of this Bond and the issue of which it is a part, do exist, have happened and have been timely performed in regular form and manner as required by law, and the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation of the Issuer.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature of one of its authorized signers, this Bond shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

**IN WITNESS WHEREOF**, the Mississippi Business Finance Corporation has executed this Bond by the manual or facsimile signature of its Executive Director and has caused its seal (or a facsimile thereof) to be impressed or imprinted hereon, all as of the Date of Original Issue set forth above.

**MISSISSIPPI BUSINESS FINANCE CORPORATION**, a public corporation duly organized and existing under the laws of the State of Mississippi

By: \_\_\_\_\_  
Its: Executive Director

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Its: Secretary

**TRUSTEE’S CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

**J.P. MORGAN TRUST COMPANY,  
NATIONAL ASSOCIATION**, as Trustee

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

Authentication Date: \_\_\_\_\_

**[FORM OF ASSIGNMENT]**

For value received, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Assignee)

(Taxpayer I.D. No. \_\_\_\_\_)

the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_,

attorney to transfer such Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

NOTICE: The signature(s) to this Assignment must correspond with the name as it appears upon the face of the Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15) participating in a Securities Transfer Association recognized signature guarantee program.

VALIDATION CERTIFICATE

The issuance of the Bonds of which this Bond is one has been validated and confirmed by decree of the Chancery Court of the First Judicial District of Hinds County, Mississippi, rendered on this \_\_\_\_\_ day of \_\_\_\_\_.

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Secretary, Mississippi Business Finance  
Corporation

B-10



FOR IMMEDIATE RELEASE

Contact: Paul Fletcher  
Chief Financial Officer  
540-542-6300

Harriet Fried  
Lippert/Heilshorn & Associates  
212-838-3777

**Trex Company Closes on \$25 Million Financing  
for New Manufacturing Plant**

**WINCHESTER, Va.** – December 16, 2004 – Trex Company, Inc. (NYSE: TWP), manufacturer of Trex<sup>®</sup> decking and railing, today announced that it has closed on a \$25 million financing, the proceeds of which will be used to fund a portion of the construction and equipment costs associated with the Company's new manufacturing plant, located in Olive Branch, Mississippi. The plant, Trex's third manufacturing facility, will initially supplement existing operations by serving markets in the Midwest and South. Production at the plant is anticipated to begin in mid-2005.

Chairman and Chief Executive Officer Robert Matheny commented, "We are very pleased with the progress of our Olive Branch plant. The site, which has excellent access to raw materials and offers many distribution advantages, will provide the additional capacity we need to fulfill consumers' growing demand for Trex's decking and railing products."

Variable Rate Demand Environmental Improvement Revenue Bonds due December 2029 were issued by the Mississippi Business Finance Corporation ("MBFC") and backed by a letter of credit from JPMorgan Chase Bank, N.A. The proceeds of the Bonds were loaned to the Company pursuant to a loan agreement between the Company and the MBFC. Interest on the Bonds will be payable at a variable rate established on a weekly basis.

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## About Trex Company.

Trex Company is the nation's largest manufacturer of non-wood decking, which is marketed under the brand name Trex®. Trex decking and railing are manufactured in a proprietary process that combines waste wood fibers and reclaimed polyethylene. For more information, visit [www.trex.com](http://www.trex.com). Trex® is a trademark of Trex Company, Inc., Winchester, Va.

*The statements in this press release regarding the Company's expected sales performance and operating results, its projections of net sales, net income, earnings per share and costs, its anticipated financial condition and its business strategy constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are subject to risks and uncertainties that could cause the Company's actual operating results to differ materially. Such risks and uncertainties include the extent of market acceptance of the Company's products, the sensitivity of the Company's business to general economic conditions, the Company's ability to continue to obtain raw materials at acceptable prices, the Company's ability to increase production levels to meet increasing demand for its products, and the highly competitive markets in which the Company operates. The Company's report on Form 10-K filed with the Securities and Exchange Commission on March 5, 2004 discusses some of the important factors that could cause the Company's actual results to differ materially from those expressed or implied in these forward-looking statements. The Company expressly disclaims any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.*