

DAUPHIN ISLAND TRUST INDENTURE

THIS TRUST INDENTURE, made and entered into this, the 18th day of November, 1953, between MOBILE CHAMBER OF COMMERCE, an Alabama corporation, hereinafter referred to as the "Chamber" and THE MERCHANTS NATIONAL BANK OF MOBILE, hereinafter referred to as the "Trustee",

Witnesseth:

WHEREAS, it has long been the desire of the inhabitants of the State of Alabama, and particularly those residing in the County of Mobile, to have a bridge constructed connecting Dauphin Island, which lies at the entrance to Mobile Bay, with the mainland, and to develop said island as a recreational center and residential and resort area for the benefit of the inhabitants of Mobile County, the State of Alabama and Mobile Gulf Coast trade area; and

WHEREAS, many plans for private and public development of Dauphin Island and the construction of said bridge have been formulated over the years, but all have failed; and

WHEREAS, the Chamber has formulated and is prepared to carry to conclusion a plan which will enable the said bridge to be constructed and the said Island to be developed without profit to the Chamber and in a manner which will assure the establishment and maintenance of public and semi-public community and recreational beaches, playgrounds and other recreational facilities, and the development of residential and attendant commercial areas on said Island, all of which will be in furtherance of the purposes of the Chamber and beneficial to the businesses located in and the inhabitants of the County of Mobile, the State of Alabama and the Gulf trade area served by Mobile; and

WHEREAS, in furtherance of said plan, the Chamber has obtained an option which will enable it to acquire the major portion of the land on said Island, and thereafter to subdivide said land in accordance with the subdivision plan of Dauphin Island now on file in the office of the Title Insurance Company of Mobile, Alabama, and to dedicate and establish the streets, roads, parks, beaches and public and semi-public areas shown on said subdivision plan, and to accept offers for the sale of lots shown on said plan, all of which the Chamber proposes to do at the earliest practicable date without profit to it; and

WHEREAS, said offers will provide that the proceeds of all sales made by the Chamber of said lots shall be divided and distributed (a) Fifty per cent (50%) to the Chamber to be used by it solely to pay taxes against and the cost of said Dauphin Island land, including engineering, surveying, dredging, development, sales, legal and interest charges and all other taxes and expenses actually incurred by the Chamber or attributable to, in connection with or by reason of the acquisition, development, sale or financing of said Dauphin Island properties or said bridge, (b) Fifty per cent (50%) to the Trustee hereunder to be by the Trustee invested, pledged and paid as and when provided, in this Trust Indenture, and (c) such part, if any, of the fifty per cent (50%) to be paid the Chamber which shall remain after payment of said taxes, costs, charges and expenses also shall be paid to the Trustee hereunder and be by it invested and disbursed as provided in clause (b) above, and also will provide that it is the intent of the parties who may purchase lots on said Dauphin Island and of the Chamber that the Chamber shall not make a profit from the development of Dauphin Island or the sale of properties thereon, and that all of the proceeds derived from the sale of said properties remaining after payment of said taxes, costs, charges and expenses shall be used solely in the development of said Island; and

WHEREAS, the Chamber, in order to assure the payment and distribution of the proceeds of said sales in accordance with the terms of said offers, desires the Trustee to act as Trustee of that portion of the proceeds of said sales which, by the terms of said offers, are to be paid to a Trustee, and the Trustee is willing to act as such Trustee upon and subject to the terms and provisions hereof;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and the covenants and agreements herein contained, it is covenanted and agreed as follows:

I. The Chamber will pay over and deliver to the Trustee and the Trustee will receive and hold in trust for the uses and purposes and upon the terms and conditions and with the rights, privileges, powers, duties and immunities herein provided, fifty per cent (50%) of the proceeds of all sales, made by or in behalf of the Chamber, of said property on Dauphin Island, together with such portion of the remaining fifty per cent (50%) as shall not be used by the Chamber in paying taxes against and the cost of said land, including engineering, surveying, dredging, development, sales, legal and interest charges, and all other taxes and expenses actually incurred by the Chamber attributable to, in connection with or as a result of the acquisition, development, sale or financing of said Dauphin Island property or said bridge.

2. The Trustee shall, from said deposits and from money to be borrowed by it solely in its capacity as Trustee, from time to time as and when such money becomes available and after the State of Alabama, the County of Mobile or some other governmental authority shall have agreed to construct a modern highway bridge from Cedar Point to Dauphin Island and shall have issued or agreed to issue in the aggregate \$2,000,000 principal amount of revenue bridge bonds to be used toward financing such bridge undertaking, (a) purchase at par for the trust \$1,025,000 of said revenue bridge bonds, (b) purchase at par for the trust, all notes given to the Chamber (and properly retained by it as part of the fifty per cent (50%) of the purchase price of said lots to be retained by the Chamber to cover its said taxes, costs and expenses) by purchasers of lots on said Dauphin Island to cover the balance owing by such purchasers on the purchase price of their lots, and also all vendor's liens or purchase money mortgages securing said notes, and (c) lend the Chamber, without interest, such amount of money as will, when added to the Chamber's portion of the net cash proceeds from the sale of said lots (i.e. such portion of the cash proceeds retained by the Chamber as shall remain after paying the charges and expenses to be paid therefrom by the Chamber) enable the Chamber, solely from said loan and said net proceeds, to pay \$25,000 on the purchase price of said Dauphin Island property and to purchase at par, when issued, \$975,000 principal amount of said bridge revenue bonds. The said bridge revenue bonds must be in such form and secured in such manner as shall be approved by the Chamber and the Trustee, and such of said revenue bonds as shall be so purchased by the Chamber shall be pledged to the payment of the note to be given by the Chamber in evidence of the \$975,000 balance which will be owing by the Chamber on the purchase price of the said Dauphin Island property.

All money loaned to the Chamber shall be repaid out of and payable solely out of such part of the Chamber's portion of the net proceeds to be derived from sales of then unsold lots in said Dauphin Island Subdivision as shall remain after payment of said taxes, costs and expenses of the Chamber.

3. It is understood that in order for the Trustee to purchase said revenue bonds and notes and to lend said money to the Chamber and to make such advances as the Trustee shall deem advisable to the Dauphin Island Property Owners Association, a non-profit Alabama corporation, and to the Dauphin Island Park and Beach Board, a board created under Chapter 18 of Title 12 of the Alabama Code of 1940 by the Board of Revenue and Road Commissioners of Mobile County, it will be necessary for the Trustee to borrow money, and the Trustee is authorized as Trustee, to borrow such money as may be required for such purposes; all such loans to be upon such terms and conditions as the Trustee in its absolute and sole discretion shall deem advisable. The Trustee also is authorized to mortgage, hypothecate and pledge such assets and properties of the trust to secure said loans as it in its absolute and sole discretion shall deem advisable.

4. As monies are received by the Trustee in excess of the amounts required to pay, and provide for the payment of, the Trustee's expenses and charges and to pay the installments on said loans and to assure (to such extent as the Trustee may deem advisable or the parties making said loans may require) future payment of said loans, such monies shall be distributed and disbursed (a) thirty per cent (30%) to the said Dauphin Island Park and Beach Board for use by said Board solely in the development of public parks, beaches and other community and public recreational facilities of whatsoever kind on Dauphin Island, and (b) seventy per cent (70%) to the said Dauphin Island Property Owners Association for use by it solely in making fresh water available to the property on Dauphin Island through the development and maintenance of a water system or otherwise, directly or through a water board or other agency or authority, to pay in part the cost of constructing and maintaining a public golf course on said Dauphin Island, and in the development and maintenance of parks, beaches and other community and recreational facilities and services of whatsoever kind on Dauphin Island for the use of the owners of residential lots in said subdivision, the members of their families and their guests. The said Park and Beach Board and the said Property Owners Association, respectively, shall determine for which of said purposes the money so received by them from the Trustee shall be spent, and also shall determine the amounts to be spent from time to time on each of said purposes.

The Trustee may, in its absolute and sole discretion, borrow money to be used to make advances from time to time to said Park and Beach Board and to said Property Owners Association, for use by the said Park and Beach Board and said Property Owners Association, respectively, for said purposes. All money so advanced shall be deducted and repaid from the said Park and Beach Board's and the said Property Owners Association's respective distributive shares of the trust receipts as and when determined by the Trustee. The Trustee shall have fulfilled its obligation with respect to, and shall be fully discharged from any and all liability for, the payment and disbursement of money and property paid and delivered to said Property Owners Association upon obtaining a receipt from the said Property Owners Association signed by the President, or Vice President, and by the Treasurer, or Assistant Treasurer, of the Property Owners Association, acknowledging receipt of the money so paid for use by the said Property Owners Association for said purposes. The Trustee likewise shall have fulfilled its obligation with respect to, and shall be fully discharged from any and all liability for, the payment and disbursements of money and property paid and delivered to said Park and Beach Board upon obtaining a receipt from the said Park and Beach Board signed by a majority thereof or an agent designated by a majority of said Park and Beach Board, acknowledging receipt of the money so paid for use by said Park and Beach Board for said purposes.

5. The Trustee is hereby expressly given, in addition to all other rights, privileges, immunities, powers and authorities conferred upon it by law or by the terms of this Indenture, full power and authority to do any and all of and immunity with respect to the following:

(a) To collect, recover, receive, receipt for and hold all monies, securities and other property of whatsoever kind constituting a part of the trust estate, together with the income therefrom.

(b) To borrow money and to sell at public or private sale, for cash or on terms, without any liability on the purchaser to see to the application of the proceeds of such sale or sales, and to exchange, mortgage, pledge, convey and transfer the trust estate, or any part thereof from time to time, in such manner and upon such conditions, not inconsistent herewith, as the Trustee in its absolute and sole discretion, may deem advisable, and to execute and deliver all conveyances, mortgages, leases, powers of attorney, contracts, notes, bills of sale and other instruments deemed by the Trustee to be proper for the purpose of effecting or evidencing such loan, sale, conveyance, lease, mortgage, transfer, pledge or exchange.

(c) To compromise, arbitrate or otherwise adjust claims in favor of or against the trust.

(d) Set up reserves for and pay all taxes assessed against, make all repairs to, keep adequately insured and, where it deems advisable, improve any real estate or improvements thereon constituting a part of the trust estate.

(e) Participate in any recapitalization, refinancing or reorganization with respect to any securities forming a part of the trust estate.

(f) To sue for, collect and recover all property and assets of the trust estate, and to defend the validity and administration of the trust and all action taken or done or omitted by it.

(g) To pay all reasonable and proper costs incurred by it, including reasonable attorney's fees, out of the assets of the trust estate.

(h) The Trustee shall be fully protected in acting upon and in accordance with, and may accept without further inquiry as authentic, any notice, order, request, receipt, opinion, resolution, consent, certificate, advice, evidence of indebtedness or other instrument, document or paper believed by it, in the exercise of reasonable care, to be genuine and to have been signed or presented by the proper person or duly authorized or properly named.

(i) The Trustee may advise with legal counsel and shall be protected in respect of any action under this trust indenture taken in good faith by it in accordance with the opinion of counsel.

6. The Trustee shall report to the Chamber, the said Dauphin Island Property Owners Association and to the said Dauphin Island Park and Beach Board with respect to its administration of this trust, at least twice each year and shall keep accurate records of account with respect to its administration of this trust, which records shall be available for inspection at all reasonable times by the Chamber, the said property Owners Association and the said Park and Beach Board or the duly authorized representative thereof.

7. The Trustee shall be paid fair and reasonable compensation for all services rendered hereunder or in connection with the administration of this trust, such payments to be made semi-annually solely out of the income of the trust, if sufficient therefor, and if insufficient, out of the corpus of the trust.

8. No bond or other security shall be required of the trustee.

9. This trust, if not sooner terminated through the distribution and disbursement of all of the assets of the trust in the manner hereinabove provided, shall terminate fifty (50) years from the date hereof and all of the then remaining trust property shall be distributed thirty percent (30%) to the said Dauphin Island Park and Beach Board and seventy per cent (70%) to the said Dauphin Island Property Owners Association, it being understood and agreed that none of the assets or properties of the trust estate shall ever revert or be paid or distributed to the Chamber.

10. Any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to the business of the trustee, or any successor trustee, as a whole, or substantially as a whole, provided such corporation shall be a corporation organized under the laws of the United States of America or of the State of Alabama, shall be the successor trustee under this trust indenture without the execution or filing of any paper or any further act on the part of any of the parties hereto or any other party, anything herein to the contrary notwithstanding.

11. Any successor trustee hereunder shall have the same rights, powers, privileges, authorities, immunities and exemptions as if named as the original trustee hereunder, and no bond shall be required of any such successor trustee.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be executed in their name and on their behalf and their respective corporate seals to be affixed by their officers thereunto duly authorized, all in quadruplicate, on the day and year first above written.

SEAL
ATTEST:
ROBERT D. HAYS
As General Manager

MOBILE CHAMBER OF COMMERCE
By 0. H. DELCHAMPS
As President

SEAL
ATTEST:
E. G. CLEVERDON
As Senior Vice-President and Cashier

THE MERCHANTS NATIONAL BANK OF MOBILE
By J. F. McRAE
As President