

Department:

Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Project Development Agreement among the City of Huntsville, The Industrial Development Board of the City of Huntsville, and GAN Corporation.

Resolution No.

Finance Information:

Account Number: Click or tap here to enter text.

City Obligation Amount: \$

Total Obligation: \$5,300,000

Special Circumstances:

Grant Funded: \$

Grant Title – CFDA or granting Agency: Click or tap here to enter text.

Resolution #: Click or tap here to enter text.

Location:

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 22-__

WHEREAS, the City Council (the “Council”) of the City of Huntsville, Alabama (the “City”), does hereby declare that the Mayor be and he is hereby authorized to execute on behalf of the City a Project Development Agreement by and among the City, The Industrial Development Board of the City of Huntsville (the “IDB”), and GAN Corporation, a corporation under the laws of the State of Alabama (the “Company”), the form of which said agreement is attached hereto, with such changes thereto as the Mayor shall deem necessary or desirable (the “Development Agreement”), an executed copy of said Development Agreement being permanently kept on file in the Office of the City Clerk-Treasurer of the City; and

WHEREAS, the Council hereby further recites that the City’s obligations under and in furtherance of the Development Agreement and the transactions therein described are being undertaken pursuant to the authority of Amendment 772 to the Constitution of Alabama of 1901, as amended, recodified as Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901 (“Amendment 772”), that such obligations are being undertaken by the City in furtherance of any power or authority authorized in Amendment 772, and that the Council has determined that the expenditure of public funds for the purpose specified in the Development Agreement and the transactions therein contemplated or described will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby authorizes and approves the Project Development Agreement, and that the Mayor be and he is hereby authorized to execute on behalf of the City the Project Development Agreement, along with such notices, certificates, instruments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Development Agreement.

ADOPTED this the 24th day of March, 2022

President of the City Council of
the City of Huntsville, Alabama

APPROVED this this the 24th day of March, 2022

Mayor of the City of
Huntsville, Alabama

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT (this "Agreement") is hereby made and entered into on March 24, 2022 (the "Effective Date"), by and among the **CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation (the "City"), **INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE**, a public corporation under the laws of the State of Alabama (the "IDB" and, together with the City, the "Local Authorities" and, individually, a "Local Authority"), and **GAN CORPORATION**, a corporation organized under the laws of the State of Alabama (the "Company"). The City, the IDB and the Company are herein together sometimes referred to collectively as the "Parties" and, individually, as a "Party".

RECITALS

WHEREAS, the Company is a technology company that provides technical and management services to government and commercial customers in the areas of cyber security, systems engineering, test and evaluation, software engineering, and information technology; and

WHEREAS, the Company heretofore undertook a national site selection process to identify an appropriate venue for the location of its headquarters operations; and

WHEREAS, after considering proposals from several local governments throughout the country, each of which offered financial and other incentives for the Company to locate its headquarters operations within its jurisdiction, the Company selected the City for the said operations; and

WHEREAS, the Company currently maintains operations within the City wherein the Company employed approximately 93 full-time equivalent employees as of September 23, 2021 (the "Existing Facility"); and

WHEREAS, the Company has determined to construct, install and equip a new facility for its headquarters operations (the "New Facility") on real property located within the Cummings Research Park in the City (the Existing Facility and the construction, installation and equipping of the New Facility are herein together referred to as the "Project"); and

WHEREAS, the Company has represented to the Local Authorities that the Company will employ at the Project at least 193 net full-time equivalent employees (all of which shall be paid and employed on a salary basis); and

WHEREAS, the Company has represented to the Local Authorities that the average annual wage for the said salaried employees at the Project will be at least \$90,000, exclusive of overtime pay and Fringe Benefits (as hereinafter defined); and

WHEREAS, the Company has represented to the City and the IDB that the Company intends make a total capital investment in the acquisition, construction and equipping of the Project of at least \$5,300,000; and

WHEREAS, in order to recruit the Company to select the City, including the New Facility, as the jurisdiction for the aforesaid headquarters operations of the Company, the IDB is willing to cause the abatement of certain ad valorem taxes with respect to the New Facility; and

WHEREAS, the City is willing to provide parking spaces for the Company's use at the Existing Facility at a reduced cost and help offset a portion of certain construction costs of the Company incident to locating the aforesaid headquarters operations in the City at the New Facility, all as more particularly set forth herein; and

WHEREAS, each of the Local Authorities has determined that the location of the aforesaid headquarters operations in the City, including at the New Facility, through the provision of the incentives and agreements herein set forth would be in its best interest and the best interests of the citizens of the City and the surrounding area by: (i) promoting, improving and expanding economic and technological development; (ii) increasing the number and diversity of technical and management jobs and related employment opportunities; (iii) enabling the area surrounding the New Facility to better attract and retain technical and management enterprises; (iv) expanding the overall tax base of the City; and (v) enhancing the overall quality of life for the citizens of the City; and

WHEREAS, the development of the Project as herein provided will further assist in the expansion of economic developments that are critical to the sustained economic health and wellbeing of the City, and the City hereby finds that the payment and other incentives for the Project as described in this Agreement are being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901 (the "Alabama Constitution"), and that the City has determined that the expenditure of public funds for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree and bind themselves as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1 Representations and Warranties of the Local Authorities.

(a) The City hereby makes the following representations and warranties:

(i) The City, by action of its governing body, has duly authorized the execution, delivery and performance of this Agreement, and has the power to perform its obligations contained herein.

(ii) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the City, violates or constitutes a default under or a breach of

any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the City is a party or to which the City or its assets or properties are subject.

(iii) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (A) the validity or organization of the City, (B) the members, titles or positions of the members of the governing body or the manner in which the officers of the City are selected, or (C) the subject matter of this Agreement.

(b) The IDB hereby makes the following representations and warranties:

(i) The IDB, by action of its governing body, has duly authorized the execution, delivery and performance of this Agreement, and has the power to perform its obligations contained herein.

(ii) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the IDB, violates or constitutes a default under or a breach of any agreement, instrument, contract, mortgage, ordinance, resolution or indenture to which the IDB is a party or to which the IDB or its assets or properties are subject.

(iii) There is not now pending nor, to the knowledge of the IDB, threatened, any litigation affecting the IDB which questions (A) the validity or organization of the IDB, (B) the members, titles or positions of the members of the governing body or the manner in which the officers of the IDB are selected, or (C) the subject matter of this Agreement.

Section 1.2 Representations and Warranties of the Company. The Company hereby makes the following representations and warranties:

(a) The Company is duly organized and validly existing as a corporation under the laws of the State of Alabama and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, violates or constitutes a default under or a breach of (i) the Company's organizational documents, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to the Company or any of its assets.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions the validity or organization of the Company, or any of the representations and warranties of the Company contained herein.

ARTICLE II

OBLIGATIONS AND COMMITMENTS OF THE COMPANY

Section 2.1 General. The Company acknowledges that the IDB and the citizens of the City anticipate the receipt of economic benefit in return for the benefits herein described, and the payments and expenditure of funds respecting the Project and the other obligations of the City and the IDB herein contained, and the Company agrees to diligently prosecute the development, construction, equipping and operation of the Project, and to achieve and maintain the employment levels, as set forth and described in this Article II and other provisions of this Agreement.

Section 2.2 Commencement of Construction; Commencement of Operations; Capital Commitment. The Company hereby covenants and agrees to Commence Construction of the New Facility by not later than March 31, 2023 (the "New Facility Construction Commencement Date"), to have Completed Construction of the New Facility by June 30, 2024 (the "New Facility Completion Date"), and to have Commenced Operations at the New Facility by not later than June 30, 2024. The Company further agrees that it and/or its Affiliates will invest not less than \$5,300,000 of Capital Costs in acquiring, developing, constructing and equipping the Project (the "Capital Commitment") by July 31, 2024 (the "Capital Commitment Deadline").

Section 2.3 Jobs Commitment. The Company and its Affiliates agree to employ at least 100 new Full-Time Employees at the Project, for a total employment level at the Project of at least 193 Full-Time Employees (all of which shall be Salary Pay Employees), with the said Salary Pay Employees earning an average annual wage of at least \$90,000, exclusive of Fringe Benefits and excluding overtime pay (the "Jobs Commitment"), and to have achieved the Jobs Commitment by the fifth (5th) anniversary of the Effective Date.

Section 2.4 Additional Obligations and Commitments.

(a) The Company hereby covenants and agrees to cause any construction activities regarding the Project to be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall require any architect, general contractor, subcontractor or other business performing any work in connection with the Project to obtain all necessary permits, licenses and approvals to construct the same.

(b) At all times during the Term (as hereinafter defined), the Company shall be in material compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City and all local government entities unless such payments are the subject of a bona fide dispute and are being challenged by the Company.

(c) The Company agrees that besides the reporting described in this Agreement, the Company shall otherwise meet the reporting requirements with respect to this Agreement as provided by applicable law.

Section 2.5 Force Majeure Events. If due to the occurrence of a Force Majeure Event the Company is not able to (a) Commence Construction of the New Facility by New Facility Construction Commencement Date, or (b) to have Completed Construction of the New Facility by New Facility Completion Date, or (c) to have Commenced Operations at the New Facility no later than June 30, 2024, or (d) to have satisfied the Capital Commitment by the Capital Commitment Deadline, then for each day of the Force Majeure Event, each said deadline shall be extended by one day to address such condition before the Company shall be considered in default of Section 2.2 of this Agreement; provided at the time of the Force Majeure Event the Company is claiming or anticipating the Company shall have first provided written notice to each of the Local Authorities providing: (i) a description of the Force Majeure Event, (ii) an explanation of how the Company anticipates such event will affect the Company's performance under said Section 2.2, (iii) the actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event, and (iv) an estimate of how long the Company anticipates the Force Majeure Event will delay the deadlines provided in Section 2.2; and, provided further, in no event shall any deadline be extended by more than 365 days.

ARTICLE III

OBLIGATIONS OF LOCAL AUTHORITIES

Section 3.1 City Obligations.

(a) In consideration of the Company's agreement to acquire and locate its headquarters operations in the City, including at the New Facility, as described in the recitals hereof, make the Capital Commitment, and to satisfy the construction, investment and jobs commitments of the Company described in Sections 2.2 and 2.3 hereof, the City hereby agrees to take certain other actions incident to the Project as more particularly described in this Article III.

(b) The City hereby leases to the Company an aggregate of twenty-five (25) parking spaces (the "Parking Spaces") within the City's Monroe Street Parking Deck (Garage M) (the "Parking Facility") for a period of two (2) years commencing on the Effective Date. During such two (2) year period, the Company shall have use of the Parking Spaces for vehicle parking and other appropriate uses twenty-four hours a day, seven days a week. The Parking Spaces shall be used by the Company for vehicular parking by the Company, its employees, agents and independent contractors, and by the Company's customers and/or invitees, and for no other purposes without the prior written consent of the City, in its sole discretion. Such use of the Parking Spaces shall be in a lawful and orderly manner, and the Company shall comply with all present and future laws and ordinances of governmental authorities having jurisdiction pertaining to the operation and safety of the Parking Spaces and with the reasonable rules, regulations and requirements of the City applied in a consistent manner to all users of the Parking Facility. The lease of the Parking Spaces to the Company hereunder shall be at no cost to the Company. The City and the Company acknowledge that the lease of the Parking Spaces hereunder equals a total incentive to the Company of \$33,600 (i.e., the City's standard fee of \$56 per Parking Space, for twenty-five (25) Parking Spaces, for twenty-four (24) months). The Company acknowledges and agrees that no particular parking spaces within the Parking Facility will be reserved for the Company's use and that all parking spaces within the Parking Facility are available on a first come, first served basis.

(c) The City also agrees, at such time as the Company shall have Completed Construction and Commenced Operations at the New Facility, to reimburse the Company for up to \$350,000 of aide-to-construction charges incurred by the Company and charged by Huntsville Utilities or the City with respect to the initial supplying or extension of water, gas, electric and sewer services to the New Facility.

Section 3.2 Abatement. The IDB does hereby agree to cause to be approved a 10-year abatement of the non-educational ad valorem taxes on real and personal property included in the New Facility, and for any new equipment installed at the New Facility, to the extent permitted under Alabama law; provided, such abatement shall not include any of the road and bridge ad valorem tax levied by the Madison County Commission at a rate of 4.0 mills.

Section 3.3 No Joint and Several Liability. Unless otherwise expressly set forth, the IDB shall not be liable for any obligations of the City under this Agreement, and the City shall not be liable for any obligations of the IDB under this Agreement.

ARTICLE IV **EVENTS OF DEFAULT AND REMEDIES**

Section 4.1 Events of Default by the City.

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

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City shall seek or consent to or acquiesce in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) failure by the City to perform or observe any of its agreements or covenants contained in Section 3.1 of this Agreement, which failure shall have continued for a period of 60 calendar days after written notice thereof from the Company to the City, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such 60-day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action.

(b) If a City Event of Default occurs, the Company shall have available to it the right and remedy of specific performance and mandamus, along with other rights and remedies

provided by law; provided, however, the Company shall not be entitled to any punitive, incidental, consequential, or other damages, whether arising at law, in equity or otherwise.

Section 4.2 Events of Default by the IDB.

(a) Any one or more of the following shall constitute an event of default by the IDB under this Agreement (an "IDB Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) if occurring prior to time the IDB's agreements in Section 3.2 are satisfied:

(i) the dissolution or liquidation of the IDB, or the filing by the IDB of a voluntary petition in bankruptcy, or the IDB shall seek or consent to or acquiesce in the appointment of a receiver of all or substantially all of its property, or the adjudication of the IDB as a bankrupt, or any assignment by the IDB for the benefit of its creditors, or the entry by the IDB into an agreement of composition with its creditors, or if a petition or answer is filed by the IDB proposing the adjudication of the IDB as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days.

(b) If an the IDB Event of Default occurs, the Company shall have available to it the right and remedy of specific performance and mandamus, along with other rights and remedies provided by law; provided, however, the Company shall not be entitled to any punitive, incidental, consequential, or other damages, whether arising at law, in equity or otherwise.

Section 4.3 Events of Default by the Company.

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

(i) at any time prior to the completion by the Company of its obligations and commitments hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) failure by the Company to perform or observe any of its agreements or covenants contained in Sections 2.2 and 2.3 of this Agreement on or before the fourth (4th) anniversary of the Effective Date, which failure shall have continued for a period of 60 calendar

days after written notice thereof from the City, unless (A) the City and the IDB shall agree in writing to an extension of such period prior to its expiration, or (B) during such 60-day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action.

(b) If a Company Event of Default occurs, each of the City and the IDB shall have available to it the right of specific performance and mandamus, along with other rights and remedies provided by law; provided, however, the City and the IDB shall not be entitled to any punitive, incidental, consequential, or other damages, whether arising at law, in equity or otherwise.

Section 4.4 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article V may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article IV are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1 Severability; Enforceability. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

Section 5.2 Term. Unless sooner terminated in accordance with the terms hereof, the term of this Agreement shall expire on the fifth (5th) anniversary of the date of this Agreement (the "Term").

Section 5.3 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the transactions described herein, and there are no representations, oral or written, relating to the transactions described herein which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by each of the Parties hereto.

Section 5.4 Counterparts; Assignment.

(a) This Agreement may be executed in two or more counterparts, each of which shall constitute but one and the same agreement.

(b) This Agreement is not assignable by any Party hereto except upon the written consent of the other Parties hereto; provided, however, that the Company shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any financially solvent Affiliate of the Company that agrees to assume assigned obligations of the Company in and to the Project; and if so assigned, the Company shall continue to be responsible for the performance of the obligations of the assignee under this Agreement unless specifically excused therefrom by the Local Authorities, to be expressed in

writing and signed by an authorized representative of each of the City and the IDB and which such consent shall not be unreasonably withheld.

Section 5.5 Binding Effect; Governing Law; Construction of Agreement. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns. This Agreement shall be governed exclusively by, and construed and interpreted in accordance with, the laws of the State of Alabama without regard to Alabama's conflict of laws' provisions. The Parties agree that this Agreement has been negotiated and drafted at arm's-length and that no ambiguity or inconsistency in any term shall be construed or interpreted against any Party due to such Party being deemed the primary drafter of this Agreement or of the provision in question.

Section 5.6 Notices.

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the Party or to an officer of the Party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(i) If to the City:

The City of Huntsville
308 Fountain Circle
8th Floor
Huntsville, AL 35801
Attn: City Attorney

(ii) If to the IDB:

Industrial Development Board of the City of Huntsville
225 Church Street NW
Huntsville, Alabama 35801
Attn: Chairman

(iii) If to the Company

GAN Corporation
11247 Memorial Parkway SW
Huntsville, AL 35803
Attention: Jonn Kim

With copy to:

Johnnie Vann
Lanier Ford Shaver & Payne P.C.
2101 West Clinton Avenue, Suite 102
P.O. Box 2087
Huntsville, AL 35804

(b) In addition, the parties hereto agree that notices may be sent electronically to any electronic address provided by a party from time to time. Notices may be sent to a party's address as set forth above or to such other address as any party may give to the other for such purpose in accordance with this section.

(c) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of 3 days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. Notice sent by electronic mail shall be deemed to be received upon the sender's receipt of an electronic confirmation of delivery.

Section 5.7 Liabilities of the Local Authorities. Any provision hereof to the contrary notwithstanding, the Parties agree and acknowledge that the obligations and commitments of the City and the IDB as set forth in this Agreement are limited by the limitations imposed by Alabama law.

Section 5.8 Survival of Covenants. The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms.

Section 5.9 No Waiver. No consent or waiver, express or implied, by any Party hereto to any breach or default by any other Party in the performance by such other Party of its obligations and commitments hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations or commitments of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall be construed to be a waiver or limit the need for such consent in any other or subsequent instance.

Section 5.10 Venue.

(a) Subject to the provisions of Sections 5.1, 5.2 and 5.3 of this Agreement, whenever any Party hereto shall default in the performance of any of its obligations or commitments under this Agreement, the other Party hereto may take whatever legal proceeding (including actions for specific performance to the extent provided by law) as shall be necessary or desirable to enforce any agreement or condition contained herein or any other obligation of the defaulting Party imposed by law. The Parties hereto recognize, and will not object to, an action for specific performance.

(b) Each of the Parties irrevocably submits to the jurisdiction of the Alabama state courts sitting in Madison County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any transaction undertaken in connection therewith (an "Agreement Action"); and waives, to the fullest extent permitted by law, any objection or defense that such Party may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts.

Section 5.11 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the Parties and their respective permitted successors and assigns.

Section 5.12 Headings. The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

Section 5.13 No Third-Party Beneficiaries. This Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest, obligations or commitments hereunder, is intended for the benefit of any other person or third-party.

ARTICLE VI **DEFINITIONS**

All initially capitalized terms not otherwise defined herein shall have the following meanings:

"Affiliate" of any specified entity shall mean any other entity directly or indirectly Controlling or Controlled by or under direct or indirect Control with, or which directly or indirectly owns voting securities of an entity directly or indirectly Controlled by, such specified entity.

"Capital Costs" shall mean costs to develop, construct or equip the New Facility that are chargeable to a capital account (or could be chargeable if so elected) determined in accordance with generally accepted accounting principles, or costs within the definition set forth in Section 40-18-190(a)(2) of the Code of Alabama 1975, as amended.

"Commence Construction" or "Commencement of Construction" means, with respect to the New Facility, that the Company has caused to be poured and completed the foundation and all footings for the New Facility.

"Commenced Operations" shall mean, with respect to the New Facility, that the Company has Completed Construction of the New Facility and installed all necessary equipment at the New Facility for the conduct of the Company's headquarters activities.

"Completed Construction" shall be deemed to have occurred, with respect to the New Facility, at such time as a certificate of occupancy shall have been delivered for the New Facility.

"Control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "Controlling" and "Controlled" have meanings correlative to the foregoing.

"Force Majeure Event" shall mean and include a material matter beyond the reasonable control of the Company (excluding unfavorable economic conditions), including acts of God, including without limitation earthquakes, fire, floods, tornadoes, hurricanes, and extreme weather conditions (but not including normal seasonal inclement weather); acts of terrorism, epidemics,

quarantine restrictions, freight embargos, and national financial crises that limit normal extensions of credit to the Company for the Project.

"Fringe Benefits" shall mean all non-wage consideration paid or otherwise provided to Full-Time Employees, including, but not limited to, health insurance, retirement benefits, life insurance, workers' compensation, unemployment compensation, and the employer portion of FICA taxes.

"Full-Time Employee" shall mean a person (expressly excluding unskilled temporary labor, construction workers and individuals employed by entities providing temporary workers): (a) who is being paid directly by the Company or an Affiliate of the Company and is employed at the Project for not less than 36 hours per work week; (b) who has a primary residence in the State of Alabama or who is subject to Alabama State income tax withholdings, (c) who the Company or an Affiliate of the Company identifies as its employee to the U.S. Internal Revenue Service and its Alabama Department of Revenue tax returns or reports filed with the foregoing; (d) who is eligible to participate under such benefit plans as are generally applicable to employees holding positions of like kind and character within the Company or an Affiliate of the Company within the United States of America; and (e) who was not employed by the Company or any Affiliate within the City within three (3) years of becoming employed at the Project. For avoidance of doubt, the Parties agree that an existing employee working at the Existing Facility that is transferred from their existing job to work on the Project may be classified by the Company as a Full-Time Employee of the Project so long as the Company has not eliminated such employee's previous position and that a new employee has been hired to fill the same job that the transferred employee previously held.

"Salary Pay Employee" shall mean a Full-Time Employee that is paid on a salary basis.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the City, the IDB, and the Company have each caused this Agreement to be duly executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated the date and year first above written.

"CITY":

CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle, Mayor

(SEAL)

ATTEST

By: _____
Kenneth Benion

Its: Clerk-Treasurer

"IDB":

**INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF HUNTSVILLE**

By: _____

Its: _____

(SEAL)

ATTEST

By: _____

Its: _____

"COMPANY":

**GAN CORPORATION, an Alabama
corporation**

By: _____

Name: _____

Its: _____