



19740329000014870 1/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

LEASE AGREEMENT between the INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF HELENA, ALABAMA, a public corporation and instrumentality organized under the laws of the State of Alabama (herein called "the Board"), and POLLUTION CONTROL-WALTHER, INC. a corporation organized under the laws of the State of Delaware (herein called "the Company"),

### R E C I T A L S

The Board proposes to acquire the real property and buildings hereinafter described and to renovate the said buildings so as to make them suitable for use as a plant for the manufacture of pollution control devices, and to acquire and install in said plant certain items of machinery and equipment for use in the operation thereof, all for lease to and use and occupancy by the Company. To finance the cost of acquiring said real property and buildings and the costs of renovating said plant and acquiring and installing said machinery and equipment therein, all for the promotion of local manufacturing and industrial development, the Board proposes to issue \$230,000 principal amount of its First Mortgage Industrial Revenue Bonds, Pollution Control Series 1974, to be dated March 1, 1974 (herein called "the Bonds"). The Bonds are to be secured by a pledge and assignment of the Board's interest in this Lease Agreement and by a pledge and assignment of the revenues and receipts to be derived by the Board from the leasing or sale of the Project hereinafter referred to and will be issued under and additionally secured by a Mortgage and Trust Indenture dated as of March 1, 1974 (herein called "the Indenture"), from the Board to City National Bank of Birmingham, a national banking association whose principal office is located in Birmingham, Alabama [said banking association, in its capacity as trustee under the Indenture (as well as any successor trustee under the Indenture), being herein called "the Trustee"], under which Indenture the said Project will be mortgaged and conveyed to the Trustee. The Indenture is being executed and delivered simultaneously with the delivery hereof, and the terms and conditions thereof, including particularly and without limitation those relating to the amounts and maturity dates of the principal of the Bonds, the interest rates thereof and the provisions for redemption thereof prior to their respective maturities, are hereby made a part of this Lease Agreement as fully and completely as if set out herein.

The renovation of the said plant, the acquisition and installation of said machinery and equipment therein, the issuance and sale of the Bonds and the lease of said real property, plant, machinery and equipment to the Company will enable

Executed in 5 Counterparts of  
Which This is Counterpart # 1

BOOK 286 PAGE 79





19740329000014870 2/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

the Company to expand an existing plant in the State of Alabama and will promote the continued industrial development of said state and the Town of Helena, Alabama. Under the provisions of Act No. 648 enacted at the 1949 Regular Session of the Legislature of Alabama, as amended, the Board has the power to renovate said plant, to acquire and install said machinery and equipment therein, to issue and sell the Bonds and to lease said real property, plant, machinery and equipment to the Company. To achieve certain of the objectives hereinabove outlined, the Board and the Company have entered into this Lease Agreement.

NOW, THEREFORE, THIS AGREEMENT

W I T N E S S E T H:

That in consideration of the respective agreements on the part of the Board and the Company hereinafter contained, the Board does hereby lease to the Company, and the Company does hereby rent from the Board, for and during the Primary Term hereinafter referred to and upon and subject to the terms and conditions hereinafter specified, the following described real property situated in the Town of Helena, Shelby County, Alabama (said real property being sometimes hereinafter referred to as "the Plant Site"):

TRACT 1: Part of the North half of the Southeast quarter, Section 15, Township 20 South, Range 5 West, Shelby County, Alabama, said part being more particularly described as follows: Beginning at a point on the South line of said North half of Southeast quarter, which is 1746.96 feet West of the Southeast corner of said North half of Southeast quarter, run thence West along said South line for a distance of 442.44 feet, thence turn an angle to the right of 78°20' and run Northwesterly for a distance of 263.59 feet, thence turn an angle to the right of 100°42' and run Easterly for a distance of 496.12 feet, thence turn an angle to the right of 91°02" and run Southerly for a distance of 266.54 feet to the point of beginning, containing 2.83 acres, more or less.

TRACT 2: Part of the North half of the Southeast quarter, Section 15, Township 20 South, Range 3 West, Shelby County, Alabama, said part being more particularly described as follows: Beginning at the intersection of the South line of said North half of Southeast quarter with the centerline of Prairie Branch, which is about 1300.00 feet West of the Southeast corner of

BOOK 286 PAGE 80





19740329000014870 3/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

said North half of Southeast quarter, run thence West along said South line for about 447.00 feet to a point which is 1746.96 feet West of the Southeast corner of said North half of Southeast quarter, thence turn an angle to the right of 90°04' and run Northerly for a distance of 266.54 feet, thence turn an angle to the right of 88°58' and run Easterly for a distance of 210.00 feet, more or less, to the centerline of Prairie Branch, run thence Southeasterly along the center of Prairie Branch for a distance of 350.00 feet, more or less, to the point of beginning, containing 1.9 acres, more or less.

together with the Plant and the Leased Equipment, both hereinafter referred to, and all other improvements now or hereafter situated on the Plant Site and forming a part thereof (said real property, plant, equipment and improvements subject to the demise hereof being herein together called "the Project"), not including, however, any machinery, equipment or other property that, under the terms hereof, is or is to become the sole property of the Company or third parties.

This Lease Agreement is made, however, upon and subject to the following terms and conditions, to each of which the Board and the Company hereby agree:

## ARTICLE I

### RENOVATING AND FINANCING THE PLANT AND THE LEASED EQUIPMENT

Section 1.1 Agreement to Renovate Plant and Acquire and Install Machinery and Equipment. The Board will proceed with, and will complete as promptly as practicable,

(a) the renovation of two buildings located on the Plant Site so as to make them suitable for operation as a manufacturing plant having a floor area of approximately 18,400 square feet (herein called "the Plant"), substantially in accordance with plans and specifications therefor prepared by the Company, and

(b) the acquisition and installation, in or about the Plant and wholly within the boundary lines of the Plant Site, of those items of machinery and equipment that are generally described on Exhibit A attached hereto and made a part hereof (which said machinery and equipment





19740329000014870 4/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

is herein called "the Leased Equipment"), such acquisition and installation to be made substantially in accordance with written orders and directions from the Company,

and will pay, solely out of the principal proceeds derived by it from the sale of the Bonds, the costs of such renovation, acquisition and installation. The Company may cause such changes to be made to the aforesaid plans and specifications as it may desire and as will not result in any material change in the appearance or basic design of the Plant or in changing its character as a part of a "project" under the provisions of the aforesaid Act No. 648.. Except as provided in the preceding sentence and in subsection (a) of Section 1.3 hereof, neither the Company nor the Board will cause or permit any changes to be made to the aforesaid plans and specifications.

The Board will not hereafter enter into any contract for such renovation, acquisition and installation, or any part thereof, unless there is endorsed thereon a legend indicating that the Company has approved both the form and substance of such contract or order and such legend is signed on behalf of the Company by the Authorized Company Representative at the time acting as such under the provisions of the Indenture. Any such contract entered into by the Board for such construction shall require the contractor to carry builder's risk insurance in amounts satisfactory to the Board and the Company. The Company and the Board will cooperate with each other in order that the renovation of the Plant and the acquisition and installation of the Leased Equipment may be completed as promptly as practicable.

Section 1.2 Agreement to Issue Bonds. In order to provide funds for the permanent financing of the cost of the Plant Site and the costs of constructing the Plant and acquiring and installing the Leased Equipment therein and the other "Project Development Costs," as that term is defined in the Indenture, the Board will, simultaneously with the delivery hereof, issue and sell the Bonds at a price of not less than 95% of their par or face value plus accrued interest on the Bonds from their date to the date of their delivery.

Section 1.3 No Warranty of Suitability by Board.  
Company Required to Bear Certain Costs in Certain Events.  
The Company recognizes that since the plans and specifications for the Plant have been prepared by it and that since the items of Leased Equipment have been and are to be selected by it, the Board can make no warranty, either express or implied, or offer any assurances that the Plant or the Leased Equipment will be suitable for the Company's purposes or needs or that the proceeds derived from



19740329000014870 5/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

the sale of the Bonds will be sufficient to pay in full all the said Project Development Costs. In the event said proceeds are insufficient to pay all said costs, the Company

(a) will cause such changes to be made to said plans and specifications as will result in said Project Development Costs not exceeding the moneys available for payment thereof derived from the sale of the Bonds (provided that such changes will not result in any material alteration in the appearance or basic design of the Plant or in altering its character as part of a "project" under the provisions of said Act No. 648), or

(b) will complete said renovation, acquisition and installation itself and will pay that portion of the said Project Development Costs in excess of the available moneys derived from the sale of the Bonds, or

(c) will pay into the "Construction Fund" (to be created in the Indenture and herein called "the Construction Fund") such moneys as are necessary to provide for payment of all said costs, in which case the Board will complete said renovation, acquisition and installation.

The Company shall not, by reason of any changes in said plans and specifications or any payment of such excess costs (whether by virtue of direct payments thereof or payments into the Construction Fund), be entitled to any reimbursement from the Board or to any diminution of the rental payable hereunder.

Section 1.4 Board to Pursue Rights against Contractors, etc. In the event of default by any contractor or sub-contractor under any contract with the Board for renovation of the Plant or acquisition or installation of the Leased Equipment, or any part of either, the Board will, upon written request made to it by the Company, proceed, either separately or in conjunction with others, to exhaust all remedies the Board may have against such contractor or sub-contractor so in default and against each surety (if any) for the performance of such contract. Further, the Board will, in the event it proceeds in an arbitration proceeding or by an action at law or in equity against any such contractor, sub-contractor or surety pursuant to the provisions of this section or in the event any such contractor, sub-contractor or surety brings any such proceeding or action against the Board in connection with or relating to the aforesaid renovation, acquisition





19740329000014870 6/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

or installation, follow all reasonable directions given to it by the Company in connection with such proceeding or action, and the Company shall have full and complete control thereof, including (without limitation) the right to select counsel for the Board. The net proceeds recovered by the Board in any such action shall be paid into the Construction Fund [or, in the event that at the time such proceeds are received by the Board the Construction Fund is closed, into the Bond Principal and Interest Fund (to be created in the Indenture and therein and herein called "the Bond Fund")].

Section 1.5 Supplemental Agreement on Completion. Upon completion of renovation of the Plant and the acquisition and installation of the Leased Equipment, the Board and the Company will enter into a supplemental agreement identifying, with such particularity as the Trustee shall specify, the items of Leased Equipment installed in or about the Plant and confirming the demise thereof to the Company hereunder.

## ARTICLE II

### DURATION OF TERM AND RENTAL PROVISIONS

Section 2.1 Duration of Term. The primary term of this Lease Agreement and of the lease herein made (herein called "the Primary Term") shall begin on the date of the delivery of this Lease Agreement and, subject to the provisions of this Lease Agreement, shall continue until 11:59 o'clock, P. M., on March 1, 1994. The Board will deliver to the Company sole and exclusive possession of the Project (or such portion or portions thereof as are then in existence) on the commencement date of the Primary Term, subject to the inspection and other rights reserved in Section 5.3 hereof, and the Company will accept possession thereof at such time; provided however, that the Board will be permitted such possession of the Project as shall be necessary and convenient for it to construct the Plant and to install the Leased Equipment therein; and provided further, that the Board will be permitted such possession of the Project as shall be necessary and convenient for it to make any repairs, restorations or improvements required or permitted to be made by the Board pursuant to the provisions hereof or pursuant to the provisions of any agreement between the Board and the Company supplemental hereto.

Section 2.2 Rental Provisions. For and during the Primary Term, the Company will pay to the Board the following base rental (herein called "Basic Rent") for





19740329000014870 7/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

use and occupancy of the Project: On August 15, 1974, and on each February 15 and August 15 thereafter until and including February 15, 1994, an amount equal to the interest and principal (if any) that will mature with respect to the Bonds on the then next succeeding interest payment date; provided, however, that upon the transfer or payment of moneys (other than Basic Rent) into the Bond Fund pursuant to any provision of this Lease Agreement or the Indenture, the moneys so paid or transferred shall be credited on that portion of the then next Basic Rent payment due hereunder that is referable to principal of the Bonds and on such portion of each succeeding Basic Rent payment due thereafter until the entire sum so paid or transferred has been so credited.

So long as any of the Bonds are outstanding, all Basic Rent payments shall be made directly to the Trustee, or its successor as Trustee under the Indenture, for the account of the Board. The Board will, promptly following the designation of any successor Trustee under the Indenture, give written notice to the Company of the name and location of the principal office of such successor Trustee, or it will cause such notice to be promptly given. In the event the due date of any installment of Basic Rent payable hereunder is a Sunday or legal holiday in Alabama, such installment shall be due on the next preceding business day. Any Basic Rent payment due hereunder that is not paid within fifteen (15) days after the due date thereof shall bear interest from such due date until paid at the rate of 8% per annum. The Company will also pay, as additional rental, the fees, charges and disbursements of the Trustee under the Indenture (other than its initial acceptance fee), such fees, charges and disbursements to be paid directly to the Trustee for its own account upon presentation of its statements therefor.

Section 2.3 Obligation of Company Unconditional. The obligation of the Company to pay the Basic Rent, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Board. The Company will not suspend or discontinue any such payment or fail to perform and observe any of its other agreements and covenants contained herein or (except as expressly authorized in this Lease Agreement) terminate this Lease Agreement for any cause, including, without limiting the generality of the foregoing, the failure of the Board to complete the renovation of the Plant or the acquisition or installation of the Leased Equipment, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration or commercial frustration of purpose, or any damage to or destruction of the Project or any part thereof, or the taking by eminent domain of title to or the right to temporary use of all or





19740329000014870 8/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

any part of the Project, or any change in the tax or other laws of the United States of America, the State of Alabama or any political or taxing subdivision of either thereof, or any failure of the Board to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement.

The provisions of the preceding paragraph of this Section 2.3 shall continue in effect only so long as any part of the principal of or the interest on any of the Bonds remains unpaid. Nothing herein contained shall, however, be construed to prevent the Company, at its own cost and expense and in its own name or in the name of the Board, from prosecuting or defending any action or proceeding or taking any other action involving third persons which the Company deems reasonably necessary in order to secure or protect its rights of use and occupancy and other rights hereunder, and the Board will cooperate fully with the Company in any such action or proceeding.

### ARTICLE III

#### MAINTENANCE, TAXES AND INSURANCE

Section 3.1 Maintenance, Additions, Alterations, Improvements and Modifications. The Company will, at its own expense, (a) keep the Project in as reasonably safe condition as the Company's operations permit and (b) subject to the provisions of Section 3.2 hereof, keep the Plant, the Leased Equipment and the other improvements located on the Plant Site in good repair and operating condition (ordinary wear and tear excepted), making from time to time all necessary and proper renewals thereof and repairs and replacements thereto (including, without limitation, exterior and structural repairs, renewals and replacements); provided however, that nothing contained in this sentence shall be construed to require the Company to make any renewals, repairs or replacements that are elsewhere in this Lease Agreement expressly required to be made by the Board. The Company may, also at its own expense, make any additions, alterations, improvements or modifications to the Project that it may deem desirable for its business purposes, that do not adversely affect the structural integrity of any building or other structure forming a part of the Project, and that will not impair the operating unity of the Plant, substantially reduce its value or change its character as a "project" under said Act No. 648; provided that all such additions, alterations, improvements or modifications

(1) are located wholly within the boundary lines of the Plant Site, or





19740329000014870 9/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

(2) are located wholly within the boundary lines of other adjacent real property hereafter acquired by the Board, leased to the Company by the Board and subjected to the demise of these presents and to the lien of the Indenture and with respect to which the Board and the Trustee have been furnished with an opinion of counsel satisfactory to each of them to the effect that the Board has good and marketable title thereto, subject only to the lien of the Indenture and such matters as are defined as "Permitted Encumbrances" in the Indenture, or

(3) are located wholly within the boundary lines of the Plant Site and such other adjacent real property.

Any such adjacent real property so subjected to the demise hereof and to the lien of the Indenture shall henceforth be considered, for purposes of this Lease Agreement, as part of the Plant Site. All such additions, alterations, improvements and modifications so made by the Company shall become a part of the Project.

The Company will not permit any mechanics' or other liens to stand against the Project for labor or materials furnished it in connection with any additions, alterations, improvements, repairs or renewals so made by it. The Company may, however, at its own expense and in good faith, contest any such mechanics' liens or other liens and in the event of any such contest may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless by such action the lien of the Indenture to any part of the Project shall be endangered or any part of the Project shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall (unless they are bonded or superseded in a manner satisfactory to the Trustee) be promptly satisfied.

Section 3.2 Removal of Leased Equipment. The Board and the Company recognize that after the Leased Equipment is installed in the Plant, portions thereof may become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Plant as a manufacturing plant, but the Company shall not (any provision hereof to the contrary notwithstanding) be under any obligation to renew, repair or replace any such inadequate, obsolete, worn-out, unsuitable, undesirable, or unnecessary Leased Equipment. However, in any instance where the Company in its sole discretion determines that any item of Leased Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Plant as a modern manufacturing plant,





19740329000014870 10/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

(a) the Company may remove such item of Leased Equipment from the Plant Site and (on behalf of the Board) sell, trade in, exchange or otherwise dispose of it without any responsibility or accountability to the Board or the Trustee therefor, provided that (i) the Company substitutes and installs in the Plant or on the Plant Site (either by direct payment of the costs thereof or by advancing to the Board the funds necessary therefor, as hereinafter provided) other machinery or equipment having equal or greater utility (but not necessarily the same value or function) in the operation of the Plant as a modern manufacturing plant, which such substituted machinery or equipment shall be free of all liens and encumbrances (other than the lien of the Indenture and "Permitted Encumbrances" as defined therein), shall be the sole property of the Board, shall be and become a part of the Leased Equipment subject to the demise hereof and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally comprising the Leased Equipment, and (ii) such removal and substitution do not impair the operating unity of the Plant; or

(b) the Company may remove such item of Leased Equipment from the Plant Site and (on behalf of the Board) sell, trade in, exchange or otherwise dispose of it, without any responsibility or accountability to the Board or the Trustee therefor and without being required to substitute and install in the Plant or on the Plant Site other equipment in substitution therefor, provided that (i) in the case of the sale of such equipment to anyone other than itself or any of its affiliates, or in the case of the scrapping thereof, the Company pays into the Bond Fund the proceeds from such sale or the scrap value thereof, respectively, (ii) in the case of the trade-in of such equipment for other property not to be installed in the Plant or on the Plant Site, the Company pays into the Bond Fund an amount in cash equal to the credit received by it in such trade-in, and (iii) in the case of the sale of such equipment to itself or any of its affiliates or in the case of any other disposition thereof, the Company pays into the Bond Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting principles; provided, however, that there may be credited on any payment that under the provisions of this subsection (b) is due to be made into the Bond Fund by the Company an amount not in excess of (A) the original cost

BOOK 286 PAGE 88





19740329000014870 11/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

to the Company of any other equipment then installed in the Plant or on the Plant Site that does not then constitute part of the Leased Equipment and is owned by the Company and that is free from all liens and encumbrances (other than the lien of the Indenture and "Permitted Encumbrances" as defined in the Indenture), less (B) depreciation thereon at rates calculated in accordance with generally accepted accounting principles - all to the extent that such amount so credited has not theretofore been credited on payments theretofore due to be made into the Bond Fund pursuant to this subsection (b); and provided further, that from and after any such credit, such other equipment shall be and become the sole property of the Board and part of the Leased Equipment subject to the demise hereof and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally comprising the Leased Equipment.

In any case where the Company is herein required to purchase, install and substitute in the Plant or on the Plant Site any item of machinery or equipment, it may, in lieu of purchasing and installing said machinery and equipment itself, advance to the Board the funds necessary therefor, whereupon the Board will purchase and install such machinery or equipment in the Plant or on the Plant Site. The term "affiliate" as used in this Section 3.2 means any person, firm or corporation controlled by, or under common control with, the Company and any person, firm or corporation controlling the Company.

If, at the time of the removal of any item of Leased Equipment from the Plant or the Plant Site, there is then installed in the Plant or on the Plant Site other equipment not then constituting part of the Leased Equipment, and if such other equipment has utility (though not necessarily the same value or function) in the operation of the Plant equal to or greater than that of the item of Leased Equipment to be removed and is free of all liens and encumbrances (other than the lien of the Indenture and "Permitted Encumbrances" as defined in the Indenture), and if no part of the cost of such other equipment has been credited on a payment theretofore due to be made into the Bond Fund pursuant to the provisions of subsection (b) of this section, the preceding provisions of this section shall not be applicable, it being understood and agreed, however, that from and after such removal such other equipment shall be and become the sole property of the Board and part of the Leased Equipment subject to the demise hereof and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally comprising the Leased Equipment.

In furtherance of the preceding provisions of this section, the Company will





19740329000014870 12/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

(1) pay to the Trustee such amounts as are required by the provisions of the preceding subsection (b) to be paid by the Company into the Bond Fund promptly after the sale, trade-in, exchange or other disposition requiring such payment, provided that no such payment need be made until the aggregate of such payments due but not theretofore made is \$10,000 or more;

(2) execute and deliver to the Board and the Trustee such documents as the Trustee may from time to time require to confirm the title of the Board (subject to this Lease Agreement) to, and the lien of the Indenture with respect to, any items of machinery and equipment that under the provisions of this section are to become a part of the Leased Equipment; and

(3) pay all costs (including reasonable counsel fees) incurred in subjecting to the demise of this Lease Agreement and the lien of the Indenture any items of machinery or equipment that under the provisions of this section are to become a part of the Leased Equipment.

The Company will not remove, or permit the removal of, any of the Leased Equipment from the Plant Site except in accordance with the provisions of this Section 3.2.

The preceding provisions of this Section 3.2 shall apply only so long as any part of the principal of or the interest on any of the Bonds remains unpaid. After full payment of the principal of and the interest on the Bonds, neither the Board nor the Company shall be under any obligation to renew, repair or replace any of the Leased Equipment that may become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Plant as a modern manufacturing plant, and after such full payment the Company may, if in its sole discretion any item of the Leased Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Plant as a modern manufacturing plant, remove such item of Leased Equipment from the Plant Site and (on behalf of the Board) sell, trade in, exchange or otherwise dispose of it, without any responsibility or accountability to the Board therefor and without being required to substitute and install on the Plant Site other equipment in substitution therefor, and may retain any money or other consideration received by it upon any disposition of any such item of Leased Equipment.

Nothing contained herein shall prohibit the Company, at any time during which it is not in default hereunder, from removing from the Plant Site any machine-



19740329000014870 13/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

ry or equipment that is owned by it or leased by it from third parties and that does not constitute part of the Leased Equipment, provided (1) that such machinery or equipment may be removed without adversely affecting the structural integrity of any building or other structure forming a part of the Project or causing any material damage to any such building or structure or to the Plant Site, or (2) that if such removal results in adversely affecting the structural integrity of any such building or structure or in causing material damage to any such building or structure or to the Plant Site, the Company promptly thereafter takes such action as is necessary to restore the structural integrity of such building or structure or to repair such damage, as the case may be.

Section 3.3 Taxes, Other Governmental Charges and Utility Charges. The Board and the Company acknowledge (a) that under present law no part of the Project owned by the Board will be subject to ad valorem taxation by the State of Alabama or by any political or taxing subdivision thereof and that under present law no part of the receipts, income or profits (if any) of the Board from the Project are subject to either Federal or Alabama taxation, and (b) that these factors, among others, induced the Company to enter into this Lease Agreement. However, the Company will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may lawfully be assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Company therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to any part of the receipts, income or profits of the Board from the Project and any other taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project prior to the lien of the Indenture or a charge on the revenues and receipts therefrom prior to the charge thereon and pledge and assignment thereof to be created and made in the Indenture), (ii) all utility and other similar charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on 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 Company shall be obligated to pay only such installments as are required to be paid during the Primary Term.

The Company may, at its own expense and in its own name and behalf or in the name and behalf of the Board, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by such action the title





19740329000014870 14/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

of the Board to any part of the Project shall be materially endangered or the Project or any part thereof shall become subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid prior to their becoming delinquent. The Board will cooperate fully with the Company in any such contest.

Section 3.4 Insurance Required. The Company will take out and continuously maintain in effect insurance with respect to the Project against such risks as are customarily insured against by businesses of the size and type of the Company, paying as the same become due all premiums with respect thereto, including, but not necessarily limited to,

(a) Insurance against loss or damage to the Plant and the Leased Equipment by fire and lightning, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in Alabama, to such extent as is necessary to provide (i) for not less than full recovery whenever a loss from perils insured does not exceed 80% of full insurable value, or (ii) such lesser amount as may be required for full redemption and retirement of all the Bonds then outstanding;

(b) In time of war in which the United States of America is a belligerent, such insurance to the extent of the full insurable value of the Plant and the Leased Equipment as may be available from the United States of America against loss or damage by the risks and hazards of war; and

(c) Insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Plant Site or in any way related to the operations of the Plant, in the minimum amounts of \$500,000 for death of or bodily injury to any one person, \$1,000,000 for total death and bodily injury claims resulting from any one accident, and \$100,000 for property damage,

provided, however, that the Company shall not be required to take out and maintain the insurance referred to in the preceding clause (a) with respect to the Plant or the Leased Equipment until such time as the renovation of the Plant or the installation of the Leased Equipment, respectively, is completed.

BOOK 286 PAGE 92





19740329000014870 15/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

All policies evidencing the insurance required by the terms of the preceding paragraph shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State of Alabama to assume the respective risks undertaken [provided that any policy or policies evidencing the insurance required in clause (b) of the preceding paragraph may be taken out from and maintained in the United States of America or agency thereof] and may be written with deductible amounts comparable to those on similar policies carried by persons engaged in business- es of the size and type of the Company. All such insurance policies, other than those evidencing the insurance required by clause (c) of the preceding paragraph and such other policies or portions thereof as may evidence insurance against liability for injury to persons or property of others, shall name as insureds the Board, the Trustee and the Company (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder in excess of \$25,000 to be paid to the Trustee; provided that all losses (including those in excess of \$25,000) may be adjusted by the Company, subject, in the case of any single loss in excess of \$25,000, to the approval of the Trustee. All policies evidencing the insurance required to be carried by this Section 3.4 shall be deposited with the Trustee; provided however, that in lieu thereof the Company may deposit with the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the Company will furnish to the Trustee evidence reasonably satisfactory to the Trustee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease Agreement. Anything herein to the contrary notwithstanding, any insurance required by the provisions hereof may be evidenced by a blanket policy covering risks in addition to those hereby required to be covered, but if and only if appropriate allocation certificates and loss payable endorsements are furnished to the Board and the Trustee.

The Company will also insure the Plant and all Leased Equipment at the time situated on the Plant Site, or will cause them to be so insured, during the period of construction and installation thereof, against all risks of the types described in clause (a) of this section, to such extent as is necessary to provide for not less than full recovery whenever a loss from perils insured does not exceed 80% of full insurable value. All the pertinent provisions of the preceding paragraph of this section shall be applicable to such insurance and to the policy or policies evidencing it. The net proceeds from any such insurance shall, any provision hereof to the contrary notwithstanding, be applied to the repair, restoration or replacement of the property damaged or destroyed.





19740329000014870 16/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

Section 3.5 Advances by Board or Trustee. In the event the Company fails to take out or maintain the full insurance coverage required by this Lease Agreement or fails to keep the Project in safe condition and the Plant, the Leased Equipment and the other improvements located on the Plant Site in good repair and operating condition, the Board or the Trustee, after first notifying the Company of any such failure on its part and after the subsequent failure by the Company to take out or maintain such insurance or to take action reasonably calculated to keep the Project in safe condition and the Plant, the Leased Equipment and the other improvements located on the Plant Site in good repair and operating condition, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same or make such repairs, renewals and replacements as may be necessary to maintain the Project in safe condition and the Plant, the Leased Equipment and the other improvements located on the Plant Site in good repair and operating condition, respectively; and all amounts so advanced therefor by the Board or the Trustee shall become an additional obligation of the Company to the Board or to the Trustee, as the case may be, which amounts, together with interest thereon at the rate of 8% per annum from the date thereof, the Company will pay. Any remedy herein vested in the Board or the Trustee for the collection of rental payments shall also be available to the Board and the Trustee for the collection of all such amounts so advanced.

#### ARTICLE IV

##### PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

Section 4.1 Damage and Destruction Provisions. If the Plant or any of the Leased Equipment is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Plant and the Leased Equipment resulting therefrom is not greater than \$25,000, the Company (a) will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition as prior to the event causing such damage or destruction, with such changes, alterations or modifications as will not impair the operating unity of the Plant or its character as a "project" under said Act No. 648, (b) will apply for such purpose so much as may be necessary therefor of any insurance proceeds referable thereto, as well as any other moneys required therefor, and (c) may, in the event the total costs of such repair, rebuilding and restoration are less than the amount of insurance proceeds referable thereto, retain the amount by which such proceeds exceed said total costs; provided that the Company may, if as a result of such damage or destruction it is entitled to do so under the pro-

BOOK 286 PAGE 94



19740329000014870 17/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

visions of Section 8.1 hereof, exercise the option to purchase there granted, in which event it need not repair, rebuild or restore the property damaged or destroyed.

If the Plant or any of the Leased Equipment is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Plant and the Leased Equipment resulting therefrom is in excess of \$25,000, the Company will promptly so notify the Trustee in writing. If, in such event, the Company is not entitled to exercise the option to purchase granted in Section 8.1 hereof or if, in such event, being entitled to, it does not exercise such option, any insurance proceeds recovered by the Board, the Company and the Trustee on account of such damage or destruction and remaining after payment of all costs of collection (said insurance proceeds so remaining being herein called "the Net Insurance Proceeds") shall be paid to and held by the Trustee (or, if the Bonds have been fully paid, the Board), whereupon

(i) the Board will proceed, as promptly as practicable under the circumstances and under such terms, conditions and contracts as shall be approved by the Company, to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as prior to the event causing such damage or destruction, with such changes, alterations or modifications as shall be specified by the Company and as will not impair the operating unit of the Plant or its character as a "project" under said Act No. 648, and

(ii) the Trustee (or, if the Bonds have been fully paid, the Board) will apply the Net Insurance Proceeds to payment of the costs of such repair, rebuilding or restoration, either on completion thereof or as the work progresses, as the Trustee or the Board, as the case may be, may elect.

Any balance of the Net Insurance Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be paid into the Bond Fund, or, in the event the Bonds have been fully paid, to the Company. In the event said proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Company (1) will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the amount of the Net Insurance Proceeds available therefor, or (2) will advance to the Board and the Trustee the moneys necessary to complete said work, in which case the Board will proceed so to complete said work, and the Board and the Trustee will, upon completion of and payment in full for such work, return to the Company any portion of such advance that is not needed therefor. The Company shall not, by reason of the payment of

BOOK 286 PAGE 95



such excess costs (whether by direct payment thereof or advances to the Board or Trustee therefor), be entitled to any reimbursement from the Board or to any abatement or diminution of the rental provided for herein.

If, after being furnished with the necessary funds (whether by the Company, from insurance proceeds or from both sources), the Board fails or refuses after reasonable request so to take any action required to repair, rebuild or restore the property damaged or destroyed, the Company may, for and in the name and behalf of the Board, take such action as is required to accomplish such repair, rebuilding or restoration, in which case it shall be entitled to reimbursement for the costs thereof from the funds referred to above, to the extent such funds are sufficient therefor.

96  
PAGE  
286  
In no event shall the Board undertake the work of any repair, rebuilding or restoration unless and until (i) it has been notified in writing by the Company that the Company irrevocably relinquishes any right it may have, on account of such damage or destruction, to exercise the option to purchase granted in Section 8.1 hereof, or (ii) the time within which the Company must exercise such option has expired without the Company having exercised such option. If, however, as a result of such damage or destruction (irrespective of whether the loss resulting therefrom is greater than \$25,000 or not), the Company is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 8.1, then neither the Company nor the Board shall be required to repair, rebuild or restore the property damaged or destroyed, in which event so much (which may be all) of any Net Insurance Proceeds referable to such damage or destruction as shall be necessary to provide for full retirement of the Bonds (as specified in Section 8.1 hereof) shall be paid or credited by the Trustee into the Bond Fund and the excess thereafter remaining (if any) shall be paid to the Company after or simultaneously with the exercise by the Company of such option.

BOOK  
Section 4.2 Condemnation Provisions. If the Project or any part thereof is taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority, the entire condemnation award, including any that may be recoverable by the Company, shall be paid to the Trustee (or, if the Bonds have been fully paid, to the Board) and applied as hereinafter provided:

(a) Taking of All or Substantially All the Project. If all or substantially all the Project is taken by such eminent domain pro-



ceeding, this Lease Agreement shall terminate [except as to the provisions of this subsection (a)] as of the forty-fifth (45th) day after the receipt by the Trustee of the entire final condemnation award unless the Company has theretofore exercised the option to purchase granted in Section 8.1 hereof. The Board will, as promptly as practicable following the Trustee's receipt of the entire final condemnation award, notify the Company of the date on which the Trustee received such entire final condemnation award, and will, on the forty-fifth (45th) day after such receipt by the Trustee, furnish to the Company a statement in writing of the amount of the Net Condemnation Award and the aggregate of the amounts on deposit in the Bond Fund and the Construction Fund. [The term "Net Condemnation Award" as used in this Lease Agreement means the total amount awarded as compensation for the property taken plus damages to any part not taken, less and except (i) any portion thereof to which the Company is entitled under the provisions of Section 4.4 hereof, and (ii) all reasonable attorneys' fees and other reasonable costs and expenses incurred in the condemnation proceeding with respect to which such award was made (other than those paid directly by the Company or deducted, pursuant to the provisions of said Section 4.4, from that portion of the award to which it is entitled under the provisions thereof).]

If the total of all such amounts is insufficient to pay and retire all the then outstanding Bonds [including, without limitation, principal, premium (if any), interest to maturity or earliest practicable redemption date (as the case may be), expenses of redemption and Trustee's fees, charges and disbursements] in accordance with the applicable provisions of the Indenture, the Company will promptly pay to the Board and the Trustee the amount of such deficiency as additional Basic Rent.

If the total of all such amounts is in excess of the sum needed to pay and retire all the outstanding Bonds, as aforesaid (or if the Bonds have been fully paid), then such excess (or, if the Bonds have been fully paid, such total amount) shall be paid to the Company.

(b) Taking of Less Than All or Less Than Substantially All the Project. If less than all or less than substantially all the Project is taken by such eminent domain proceeding, this Lease Agreement (including, without limi-



tation, the provisions hereof relating to the payment of Basic Rent) shall continue in full force and effect but with the following consequences:

(1) If no part of the Plant is taken or damaged and if in the Company's opinion the efficient utilization of the Plant is not impaired by such taking, the Net Condemnation Award referable thereto shall be paid into the Bond Fund or, in the event the Bonds have been fully paid, to the Company.

(2) If any part of the Plant is taken or damaged or if in the Company's opinion the efficient utilization of the Plant is impaired by such taking, the Board will proceed, as promptly as practicable under the circumstances and upon such terms as shall be approved in writing by the Company, to repair, rebuild or restore the Plant or to rearrange the Plant facilities so as to make them suitable for the Company's uses, and the Trustee (or, if the Bonds have been fully paid, the Board) will apply the Net Condemnation Award referable to such taking to payment of the costs of such repair, rebuilding, restoration or rearrangement. If the Net Condemnation Award is in excess of the costs of such repair, rebuilding, restoration or rearrangement, the excess shall be paid into the Bond Fund or, in the event the Bonds have been fully paid, to the Company. If the Net Condemnation Award is not sufficient to pay all the costs of such repair, rebuilding, restoration or rearrangement, the Company will pay the deficiency, provided that it shall not by reason of the payment of any such deficiency be entitled to any reimbursement from the Board or to any abatement or diminution of the rental provided for herein. If, after being furnished with the necessary funds (whether by the Company, from condemnation proceeds or from both such sources), the Board fails or refuses after reasonable request so to repair, rebuild or restore the Plant or to rearrange the Plant facilities so as to make them suitable for the Company's uses, the Company may, for and in the name and behalf of the Board, perform the work of such repair, rebuilding, restoration or rearrangement, in which case it shall be entitled to reimbursement for the costs thereof from the funds referred to above, to the extent that such funds are sufficient therefor.

The provisions of the preceding subparagraph (2) to the contrary notwithstanding, in no event shall the Board undertake the work of any repair,





19740329000014870 21/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

rebuilding, restoration or rearrangement thereunder unless and until (A) it has been notified in writing by the Company that the Company irrevocably relinquishes any right it may have, on account of such condemnation, to exercise the option to purchase granted in Section 8.1 hereof, or (B) the time within which the Company must exercise such option has expired without the Company having exercised such option. If, however, as a result of such taking, the Company is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 8.1, then the Board shall not be required to repair, rebuild or restore the Plant or to rearrange the Plant facilities nor shall any of the other provisions of said subparagraph (2) apply in such case, and so much (which may be all) of the Net Condemnation Award referable to such taking as may be necessary to provide for full payment and retirement of the Bonds (as specified in Section 8.1 hereof) shall be paid or credited by the Trustee into the Bond Fund and the excess thereafter remaining (if any) shall be paid to the Company after or simultaneously with the exercise by the Company of such option.

The Board will cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will follow all reasonable directions given to it by the Company in connection with such proceeding. In no event will the Board settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the prior written consent of the Company.

Section 4.3 Condemnation of Right to Use of Project for Limited Period. If the use, for a limited period, of all or part of the Project is taken by any such eminent domain proceeding, this Lease Agreement (including, without limitation, the provisions hereof relating to the payment of Basic Rent) shall, unless as a result thereof the Company is entitled to exercise the option to purchase granted in Section 8.1 hereof and duly does so in accordance with the provisions of said Section 8.1, continue in full force and effect, but with the consequences specified in the remaining provisions of this Section 4.3. If the period of such taking expires on or before the expiration of the Primary Term, the Company shall be entitled to receive the entire condemnation award made therefor, whether by way of damages, rent or otherwise, and shall upon being restored to possession restore the Project as nearly as practicable to the condition existing immediately prior to such taking, with such changes, alterations and modifications as will not impair the operating unity of the Plant or its character





19740329000014870 22/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

as a "project" under said Act No. 648. If such taking occurs during the Primary Term but the period of such taking expires after the expiration of the Primary Term, the Company shall be entitled to receive that portion of the award allocable to the period from the date of such taking to 11:59 o'clock, P. M., on March 1, 1994, and the Board shall be entitled to the remainder thereof; provided, however, that if within ten (10) days after such taking the Company exercises the option to renew granted in Section 8.2 hereof and pays to the Board the aggregate of the cash rentals that would, under the provisions of said Section 8.2, come due during the period commencing on March 1, 1994 and continuing until the expiration of such taking or the termination date of a renewal term (whichever is earlier), it (rather than the Board) shall be entitled to receive that portion of the award allocable to the period from 11:59 o'clock, P. M., on March 1, 1994, to and including the date of expiration of such taking or the termination date of such renewal term (whichever is earlier), and the Board shall be entitled to the remainder thereof (if any).

If such taking occurs during a renewal term and the period thereof expires during a renewal term, the Board shall be entitled to receive the entire condemnation award made therefor; provided, however, that if within ten (10) days after such taking the Company pays to the Board the aggregate of the cash rentals that would, under the provisions of Section 8.2 hereof, come due during the period of such taking, it (rather than the Board) shall be entitled to receive the aforesaid entire condemnation award. If such taking occurs during a renewal term but the period thereof expires after such renewal term, the Board shall be entitled to receive the entire condemnation award made therefor; provided, however, that if within ten (10) days after such taking the Company pays to the Board the aggregate of the cash rentals that would thereafter come due during the remainder of the renewal term under the provisions of Section 8.2 hereof, then it (rather than the Board) shall be entitled to receive that portion of the award allocable to the period from the date of such taking to and including the ending date of such renewal term, and the Board shall be entitled to the remainder thereof.

Section 4.4 Condemnation of Company-Owned Property. The Company shall be entitled to any condemnation award or portion thereof made for damages to or takings of its own property, as well as all other sums awarded as compensation for the interest of the Company in the part of the Project taken and as damages to the interest of the Company in any part thereof not taken, but there shall be deducted therefrom, or paid directly by the Company, all attorneys' fees and other expenses incurred in connection with the receipt of such award or sum or portion thereof.





19740329000014670 23/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

Section 4.5 Provisions Relating to the Incur-  
ring of Certain Expenses after Bonds Paid. The Board  
will not, at any time after full payment of the Bonds,  
incur any expenses in connection with the collection of  
any insurance proceeds or condemnation award with respect  
to the Project, or any part thereof, without the prior  
written consent of the Company.

## ARTICLE V

### PARTICULAR COVENANTS OF THE COMPANY

Section 5.1 General Covenants. The Company  
will not do or permit anything to be done on or about the  
Project that will affect, impair or contravene any poli-  
cies of insurance that may be carried on the Project or  
any part thereof against loss or damage by fire, casualty  
or otherwise. The Company will, in the use of the Plant  
Site, the Plant, the Leased Equipment and the public ways  
abutting the Plant Site, comply with all applicable lawful  
requirements of all governmental bodies.

Section 5.2 Release and Indemnification Cove-  
nants. The Company releases the Board from and covenants  
and agrees that the Board shall not be liable for, and to  
hold the Board harmless against, any loss or damage to  
property or any injury to or death of any person that may  
be occasioned on account of any defect in the Plant Site,  
the Plant, the Leased Equipment or the other improvements  
on the Plant Site, including any expenses incurred by the  
Board in connection with the defense of any claim against  
it arising out of any such loss, damage, injury or death;  
provided however, that nothing herein contained shall be  
construed to indemnify the Board against, or to release  
the Board from liability for, any loss or damage that may  
result from wanton misconduct on the part of the Board or  
from its own intentional wrongful acts. The Company will  
provide for and insure, in the public liability policies  
required in subsection (c) of Section 3.4 hereof, not on-  
ly its own liability in respect of the matters there men-  
tioned but also the liability herein assumed. The Board  
will not, without the prior written consent of the Com-  
pany, settle or consent to the settlement of any prospec-  
tive or pending litigation for which the Company is or  
may be obligated, under the provisions of this Section  
5.2, to indemnify the Board, and the Company shall have  
full and complete control of any such litigation, includ-  
ing (without limitation) the right to select counsel for  
the Board.





19740329000014870 24/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

Section 5.3 Inspection of Project. The Company will permit the Board, the Trustee, First Birmingham Securities, Inc., the original purchaser of the Bonds (hereinafter called "the Original Purchaser"), or successor firm thereto, and their duly authorized agents at all reasonable times to enter upon, examine and inspect the Project. So long as any of the Bonds are outstanding and unpaid, the Company will also permit the Trustee and its duly authorized agents to take such action as may be necessary and convenient to cause the Project to be kept in as reasonably safe condition as the Company's operations permit and to cause the Plant, the Leased Equipment and the other improvements on the Plant Site to be kept in good repair and operating condition, all as and to the extent provided in Sections 3.1 and 3.5 hereof.

Section 5.4 Agreement to Maintain Corporate Existence. The Company will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all its assets (either in a single transaction or in a series of related transactions) and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided that the Company may, without violating the agreements contained in this section, do or perform any of the following:

(a) It may consolidate with or merge into another United States corporation, or permit one or more other United States corporations to consolidate with or merge into it, if the corporation surviving such merger or resulting from such consolidation, if it shall be one other than the Company, expressly assumes in writing all the obligations of the Company contained in this Lease Agreement; and

(b) It may transfer to another United States corporation all or substantially all its assets as an entirety, and (if it so elects) thereafter dissolve, if the corporation to which such transfer shall be made expressly assumes in writing all the obligations of the Company contained in this Lease Agreement.

The term "United States corporation" as used in this Section 5.4 means any corporation organized and existing under the laws of one of the states of the United States of America. The Company will, promptly following any merger, consolidation or transfer permitted under the provisions of this Section 5.4, furnish to the Board and the Trustee fully executed or appropriately certified copies of the writing by which the Company's successor or transferee corporation expressly assumed the obligations of the Company contained in this Lease Agreement.

BOOK 286 PAGE 102





19740329000014870 25/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

If, after a transfer by the Company of all or substantially all its assets to another United States corporation under the circumstances described in the preceding clause (b) of this section, the Company does not thereafter dissolve, it shall not have any further rights or obligations hereunder.

Section 5.5 Qualification in Alabama. The Company warrants and represents that it is duly qualified to conduct its business in the State of Alabama and that it is in good standing in such state. If, in accordance with the permissive provisions of Section 5.4 hereof, the Company should merge into a corporation not organized and existing under the laws of Alabama, should consolidate with one or more corporations under circumstances wherein the consolidated corporation is not a corporation organized and existing under the laws of Alabama or should transfer all or substantially all its assets to a corporation not organized under the laws of Alabama, it will cause the corporation into which it merged, the corporation resulting from such consolidation or the corporation to which all or substantially all its assets were transferred, as the case may be, to qualify to do business in Alabama as a foreign corporation and to remain so qualified at all times during the remainder of the Primary Term.

Section 5.6 Concerning Certain Actions Under the Indenture. The Company will not approve, or permit to be approved on its behalf, any payment out of moneys in the Construction Fund if, as a result of such payment, less than substantially all of the proceeds of the Bonds would be considered as having been used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation within the meaning of Section 103(c)(6) of the Internal Revenue Code of 1954, as amended.

Section 5.7 Further Assurances. The Company will, at its own cost and expense, take all actions that may at the time and from time to time be necessary to perfect, preserve, protect and secure the interests of the Board and the Trustee, or either, in and to the Project, including, without limitation, the filing of all financing and continuation statements that may at the time be required under the Alabama Uniform Commercial Code. The Company further agrees, without in any way limiting the generality of the foregoing, to take any and all such actions that in the judgment of the Board or the Trustee are necessary for the perfection, preservation, protection and securing of such interests.





19740329000014870 26/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

## ARTICLE VI

### CERTAIN PROVISIONS RELATING TO ASSIGNMENT, SUBLEASING AND MORTGAGING AND TO THE BONDS

Section 6.1 Provisions Relating to Assignment and Subleasing by Company. The Company may assign this Lease Agreement and the leasehold interest created hereby, and may sublet the Project or any part thereof, without the necessity of obtaining the consent of either the Board or the Trustee; provided, however, that no assignee or sublessee or anyone claiming by, through or under any such assignment or sublease shall by virtue thereof acquire any greater rights in the Project or in any part thereof than the Company then has under this Lease Agreement, nor shall any such assignment (except an assignment resulting from or incident to a consolidation, merger or transfer under the conditions specified in and meeting the requirements of Section 5.4 hereof) or subleasing or any dealings or transactions between the Board or the Trustee or any sublessee or assignee in any way relieve the Company from primary liability for any of its obligations hereunder. Thus, in the event of any such assignment or subleasing, the Company shall, unless such assignment results from or is incident to a consolidation, merger or transfer under the conditions specified in and meeting the requirements of Section 5.4 hereof, continue to remain primarily liable for payment of the rentals herein provided to be paid by it and for performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

Section 6.2 Mortgaging of Project by Board. The Board may mortgage the Project to the Trustee as security for the payment of the Bonds, subject to this Lease Agreement (which Lease Agreement and the estate of the Company hereunder shall be prior and superior to the lien of the Indenture), and may assign its interest in and pledge any moneys receivable under this Lease Agreement to the Trustee as security for payment of the principal of and the interest and premium (if any) on the Bonds. The Board may in the Indenture obligate itself to follow the instructions of the Trustee or the holders of the Bonds or a certain percentage thereof in the election or pursuit of any remedies herein vested in it. In the event that the Board's interest in this Lease Agreement is so assigned and pledged to the Trustee, the Trustee shall have all rights and remedies herein accorded the Board and any reference herein to the Board shall be deemed, with the necessary changes in detail, to include the Trustee; and the Trustee and the holders of the Bonds shall be deemed to be third party beneficiaries of the covenants and agreements on the part of the Company herein contained and shall, to the extent contemplated by the Indenture, be entitled to enforce performance and

BOOK 286 PAGE 104





19740329000014870 27/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

observance of the agreements and covenants on the part of the Company contained herein to the same extent as if they were parties hereto. Subsequent to the issuance of the Bonds and prior to their payment in full, the Board and the Company shall have no power to modify, alter, amend or (except as specifically authorized herein) terminate this Lease Agreement without the prior written consent of the Trustee and then only as provided in the Indenture. The Board will not, so long as the Company is not in default hereunder, amend the Indenture or any indenture supplemental thereto without the prior written consent of the Company.

Without the prior written consent of the Company, the Board will not, at any time while the Company is not in default hereunder, hereafter issue any bonds or other securities (including refunding securities), other than the Bonds, that are payable out of or secured by a pledge of the revenues and receipts derived by the Board from the leasing or sale of the Project, nor, without such consent, will the Board, at any time while the Company is not in default hereunder, hereafter place any mortgage or other encumbrance (other than the Indenture and supplemental indentures contemplated thereby) on the Project or any part thereof.

Section 6.3 Prepayment of Basic Rent. The Company may, at its option at any time and from time to time, prepay directly to the Trustee, for the account of the Board, such amount of Basic Rent as shall be sufficient to enable the Board to redeem and retire, in advance of maturity, any or all of the Bonds, in accordance with their terms. In the event of such prepayment, the Board will cause the amount of Basic Rent so prepaid to be applied to redemption and retirement of Bonds, in accordance with the provisions of the Indenture, on the earliest practicable date after receipt of such prepaid Basic Rent on which, under their terms, such Bonds may be redeemed, and will take all action necessary under the provisions of the Indenture to effect such redemption. The Board recognizes that under the provisions of Section 2.2 hereof, any such prepayment of Basic Rent will result in a total or partial abatement of the Basic Rent that would thereafter have come due under the provisions of said Section 2.2, had it not been for such prepayment.

Section 6.4 References to Bonds Ineffective After Bonds Paid. Upon full payment of the Bonds, all references in this Lease Agreement to the Bonds and the Trustee shall be ineffective and neither the Trustee nor the holders of any of the Bonds shall thereafter have any rights hereunder. For purposes of this Lease Agreement, any of the Bonds shall be deemed fully paid if there exist, with respect thereto, the applicable conditions specified in Section 15.1 of the Indenture.



19740329000014870 28/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

In the event the Bonds are fully paid prior to the last maturity thereof, the Company shall be entitled to use and occupancy of the Project from the date of such payment until 11:59 o'clock, P. M., on March 1, 1994, without the payment of any further Basic Rent but otherwise on all the same terms and conditions hereof. If after full payment of the Bonds, any moneys then remain in any of the special funds created in the Indenture, the Board (A) will cause the Trustee to pay all such moneys to the Company, and (B) hereby assigns all such moneys to the Company.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default Defined. The following shall be "events of default" under this Lease Agreement, and the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the Company to pay the Basic Rent hereinabove provided or the fees, charges and disbursements of the Trustee, which failure shall have continued for a period of ten (10) days after such Basic Rent or Trustee's fees, charges or disbursements, as the case may be, became due and payable;

(b) Failure by the Company to perform or observe any of its other agreements or covenants contained in this Lease Agreement, which failure shall have continued for a period of sixty (60) days after written notice specifying, in reasonable detail, the nature of such failure and requiring the Company to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the Company by the Board or the Trustee, unless (i) the Board and the Trustee shall agree in writing to an extension of such period prior to its expiration, or (ii) during such sixty (60) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (iii) the Company is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent; or

(c) The dissolution or liquidation of the Company or the filing by the Company of a voluntary petition in bankruptcy, or its fail-

BOOK 286 PAGE 106





19740329000014870 29/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

ure promptly to lift any execution, garnishment or attachment of a size as seriously to impair its ability to carry on its operations, the commission by it of any act of bankruptcy or its adjudication as a bankrupt, an assignment by it for the benefit of creditors, the entry by it into an agreement of composition with its creditors or the approval by a court of competent jurisdiction as having been filed in good faith of a petition applicable to it in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under any similar act that may hereafter be enacted; provided that the term "dissolution or liquidation of the Company," as used in this subsection (c) shall not be construed to include the termination of the corporate existence of the Company resulting from a merger into or a consolidation with another corporation or the dissolution of the Company following a transfer of all or substantially all its assets to another corporation, under the conditions contained in Section 5.4 hereof and permitting such actions.

The term "force majeure" as used in subsection (b) of this section means acts of God or the public enemy, strikes, labor disputes, lockouts, work slowdowns or stoppages or other industrial disturbances, insurrections, riots or other civil disturbances, orders of the United States of America, the State of Alabama or any department, agency or political subdivision of either thereof, or of other civil or military authority, or partial or entire failure of public utilities.

BOOK 286 PAGE 107

Section 7.2 Remedies on Default. Whenever any such event of default shall have happened and be continuing, the Board and the Trustee (or the Trustee on behalf of the Board) may take any one or more of the following remedial steps:

(a) They or it may re-enter and take possession of the Project, exclude the Company from possession thereof and rent the same for the account of the Company, holding the Company liable for the balance due hereunder;

(b) They or it may terminate this Lease Agreement, exclude the Company from possession of the Project and lease the same for the account of the Board and the Trustee, holding the Company liable for all rent due up to the date such lease is made for the account of the Board and the Trustee;



(c) They or it may declare immediately due and payable all installments of rent thereafter coming due hereunder;

(d) They or it may have access to, and inspect, examine and make copies of, the books, records and accounts of the Company, but if and only if any of the Bonds are then outstanding; and

(e) They or it may take whatever other action at law or in equity may appear necessary or desirable to collect the rent then due, or to enforce any obligation, covenant or agreement of the Company under this Lease Agreement.

Section 7.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Board or the Trustee 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 Lease Agreement or now or hereafter existing at law or in equity or by statute. 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 or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Board or the Trustee to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

Section 7.4 Agreement to Pay Attorneys' Fees. In the event that, as a result of a default or a threatened default by the Company hereunder, the Board or the Trustee should employ attorneys at law or incur other expenses in or about the collection of rent or the enforcement of any other obligation, covenant, agreement, term or condition of this Lease Agreement, the Company will, if the Board or the Trustee are successful in such efforts or if a final judgment for either is rendered by a court of competent jurisdiction, pay to the Board or to the Trustee, as the case may be, reasonable attorneys' fees and other expenses so incurred by the Board or the Trustee.

Section 7.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be 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.





19740329000014870 31/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

Further, neither the receipt nor the acceptance of rental hereunder by the Board, or by the Trustee on its behalf, shall be deemed to be a waiver of any breach of any covenant or condition herein contained even though at the time of such receipt or acceptance there has been a breach of one or more covenants or conditions on the part of the Company herein contained and the Board or the Trustee (or both) have knowledge thereof.

## ARTICLE VIII

### OPTIONS

Section 8.1 Option to Purchase - Casualties.  
The Company shall have, and is hereby granted, the option to purchase the Project, at any time while this Lease Agreement is in full force and effect, if

(a) the Plant (including the Leased Equipment forming a part thereof) is damaged or destroyed, by fire or other cause, to such extent that in the opinion of an "Independent Engineer" (as that term is defined in the Indenture), expressed in a written certificate filed with the Board and the Trustee, (i) it cannot reasonably be restored to the condition thereof immediately preceding such damage or destruction within a period of six (6) consecutive months, or (ii) the Company is thereby prevented from carrying on its normal operations therein for a period of not less than six (6) consecutive months, or (iii) the cost of restoration thereof would exceed the sum of the Net Insurance Proceeds referable to such damage or destruction plus that amount of the loss referable to such damage or destruction with respect to which the Company is self-insured by virtue of the deductible amounts and co-insurance permitted under the provisions of Section 3.4 hereof, or

(b) title to, or the temporary use of, all or substantially all the Project is taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority [including any taking or takings (whether in whole or in part) that results (or, in the opinion of an "Independent Engineer," as that term is defined in the Indenture, expressed in a written certificate filed with the Board and the Trustee, is likely to result) in the

BOOK 286 PAGE 109





19740329000014870 32/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

Company being thereby prevented from carrying on its normal operations therein for a period of not less than six (6) months], or

(c) as a result of any changes in the Constitution of the State of Alabama or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), entered after the contest thereof by the Company in good faith, this Lease Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein or unreasonable burdens or excessive liabilities are imposed on the Board or the Company.

To exercise such option, the Company

(i) shall, within sixty (60) days following the event authorizing the exercise of such option, give written notice to the Board, the Trustee, and the Original Purchaser (or successor thereto),

(ii) shall specify therein the date of purchase, which shall be not less than forty-five (45) nor more than ninety (90) days after the date such notice is mailed, and

(iii) shall on the date of purchase pay to the Trustee (for the account of the Board), as and for the purchase price of the Project, an amount which, when added to the total of the amounts on deposit in the Bond Fund and the Construction Fund plus the amount of any Net Insurance Proceeds or Net Condemnation Award in the hands of the Trustee and referable to the damage, destruction or condemnation authorizing the exercise of such option, will be sufficient to pay, retire and redeem all the outstanding Bonds on the earliest practicable date next succeeding the termination date on which under their terms they may be redeemed, including, without limitation, principal, premium (if any), all interest to mature until and on such date, expenses of redemption and Trustee's fees, charges and disbursements; provided, however, that if on the date of purchase the Bonds have been paid in full, the Company shall not be required to pay any such amount in order to entitle it to exercise such option, in which event (any provision herein to the contrary notwithstanding) any Net Condemnation Award referable to any condemnation authorizing the exercise of such option (or, in the case of

BOOK 286 PAGE 110





19740329000014870 33/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

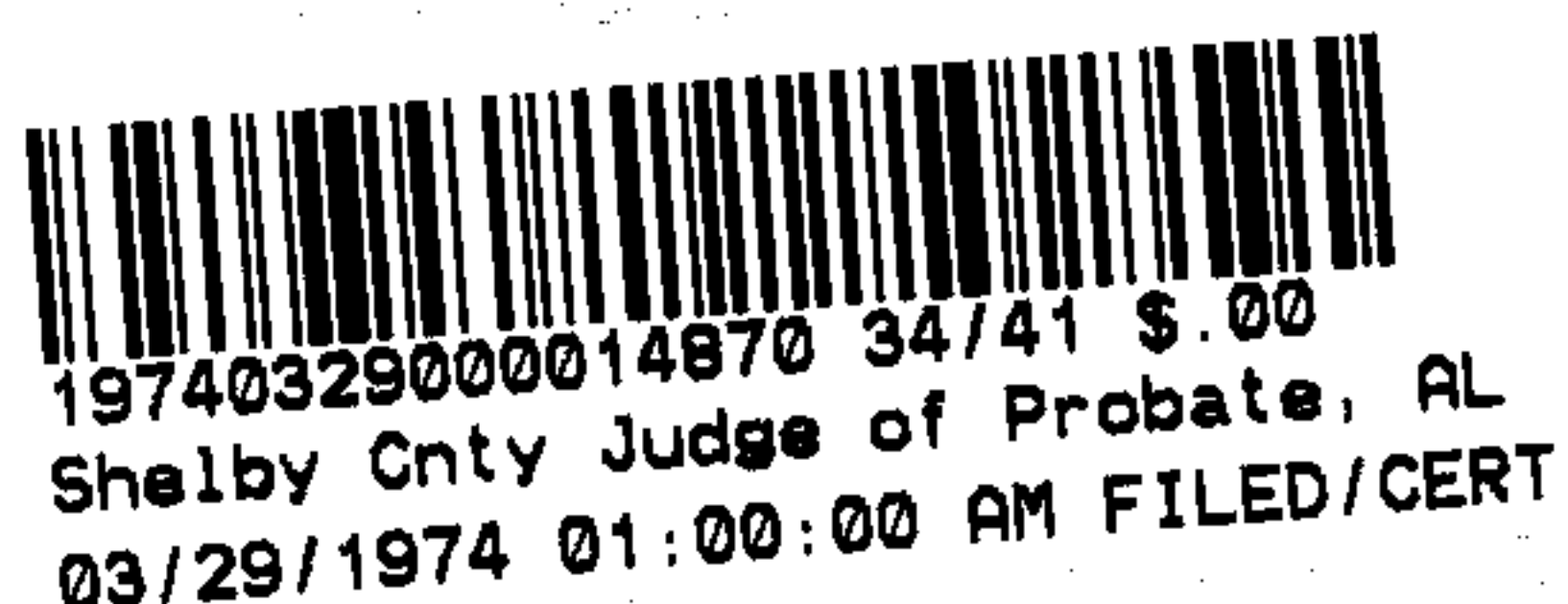
damage or destruction authorizing the exercise of such option, any Net Insurance Proceeds referable thereto) shall be paid to the Company simultaneously with or promptly after the exercise of such option.

Upon receipt of said sum (if payment of any such sum is required), and if at such time the Company is not in default in payment of the Basic Rent due hereunder, the Board will, by deed or other appropriate conveyance or instrument, transfer and convey the Project (or such portion - which may be none - thereof as is then in existence and is owned by the Board, and in its then condition, whatever that may be) to the Company.

In the event that at the time of the exercise of any option to purchase herein granted, there have not been collected by the Board, the Trustee or the Company the entire insurance proceeds or condemnation award referable to any damage, destruction or condemnation authorizing the exercise of such option, all Net Insurance Proceeds and all Net Condemnation Awards thereafter collected and referable to such damage, destruction or condemnation shall be paid to the Company, and the Board will take all actions necessary to cause the amount of any such award or proceeds to be paid to the Company. The provisions of this paragraph shall survive the expiration of the term of this Lease Agreement or any termination hereof unless at the time of such expiration or termination the Company is in default in the payment of any sums herein required to be paid by it.

Section 8.2 Option to Renew. The Company shall have the following rights and options, herein granted by the Board, to renew the term of this lease for the period commencing at 11:59 o'clock, P. M., on March 1, 1994, and continuing until 11:59 o'clock, P. M., on March 1, 1995, and thereafter for three (3) more such five year terms; provided, however, that such options shall not be exercisable at any time prior to full payment of the Bonds unless the Company is not in default hereunder. To exercise such options to renew, the Company shall so notify the Board in writing (a) not less than ninety (90) days prior to the expiration of the Primary Term or any then effective renewal term, or (b) in the event the use, for a limited period, of all or part of the Project is taken by eminent domain during the period of ninety (90) days prior to the expiration of the Primary Term or any then effective renewal term, within the applicable period specified in Section 4.3 hereof but in any event prior to the expiration of the Primary Term or any then effective renewal term. The annual cash rental due by the Company during such renewal term shall be the sum of \$1,200 per year, payable monthly in advance, but otherwise all the terms and conditions herein contained shall, with the





necessary changes in detail, apply during any such renewal term. In the event the Company exercises any such option to renew granted in this Section 8.2, it shall, at any time after the commencement of any such renewal term, have the right to terminate this Lease Agreement upon giving to the Board notice in writing not less than five (5) days prior to the date of termination.

Section 8.3 Option to Purchase Portions of Plant Site. The Company shall have, and is hereby granted, subject to the conditions hereinafter specified, the option to purchase from the Board any part of the Plant Site at any time and from time to time, provided that the Company furnishes to the Board, the Trustee, and the Original Purchaser (or successor thereto),

(a) A notice in writing containing (i) an adequate legal description of that portion of the Plant Site with respect to which such option is to be exercised (including the acreage thereof), (ii) a statement that the Company intends to exercise its option to purchase such portion of the Plant Site on a date stated, which shall not be less than thirty (30) nor more than ninety (90) days from the date of such notice, and (iii) a statement that the use to which the Company proposes to devote such portion of the Plant Site will promote the continued industrial development of the State of Alabama;

(b) A certificate signed by an Independent Engineer or an Independent Architect (as those terms are defined in the Indenture) stating (i) that no part of the Plant or the Leased Equipment nor any other improvement (except for roads, walkways, sewer, water, gas, electric and communication lines and the like, which shall be specified in such certificate) is located on the portion of the Plant Site with respect to which such option is exercised, and (ii) that the severance of such portion of the Plant Site from the Project will not impair the operating unity of the Plant or unduly restrict ingress or egress to or from the Plant; and

(c) An amount, in cash or bankable funds, equal to (i) if any of the Bonds are then outstanding and unpaid, \$4,000 per acre (prorated for fractional parts of an acre) of that part of the Plant Site proposed to be purchased, or (ii) if the Bonds have been fully paid, \$10 per acre (prorated for fractional parts of an acre) of that part of the Plant Site proposed to be purchased;

BOOK 286 PAGE 112





19740329000014870 35/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

and provided further, that such option shall not be exercisable at any time prior to full payment of the Bonds unless the Company is not then in default hereunder. Upon the receipt by the Board and the Trustee of the appropriate purchase price and a notice and certificate complying with the provisions of the preceding clauses (a) and (b), respectively, the Board will execute and deliver to the Company a warranty deed conveying to the Company that portion of the Plant Site with respect to which such option was exercised, subject only to such liens, encumbrances and exceptions to which title thereto was subject when this Lease Agreement was delivered, those to the creation or suffering of which the Company consented and those resulting from the failure of the Company to perform or observe any of the agreements or covenants on its part herein contained. If, at the time of any such purchase, any of the Bonds are outstanding and unpaid, the Board will pay into the Bond Fund the entire amount received by it from such purchase.

From and after the consummation of any purchase effected by the Company pursuant to the provisions of this section, any reference herein to the Plant Site shall be deemed to refer to the real property that immediately prior thereto constituted the Plant Site, less and except that part so purchased by the Company under the provisions of this section. No purchase effected by the Company under the provisions of this section shall entitle the Company to any abatement or diminution of the rental payable hereunder.

Section 8.4 Option to Purchase. If the Company pays the rental herein reserved to the Board, it shall have the right and option, herein granted by the Board, to purchase the Project from the Board at any time during the term (Primary or renewal) of this Lease Agreement after payment in full of the principal of and the interest on the Bonds and all fees, charges and disbursements of the Trustee, accrued and to accrue until the date of such full payment, at and for a purchase price of \$100.00.

To exercise any such purchase option, the Company shall notify the Board in writing not less than thirty (30) days prior to the date on which it proposes to effect such purchase and, on the date of such purchase, shall pay the aforesaid purchase price to the Board in bankable funds, whereupon the Board will, by deed or other appropriate conveyance, transfer and convey the Project (in its then condition, whatever that may be) to the Company. Nothing herein contained shall be construed to give the Company any right to any rebate to or refund of any rental paid by it hereunder prior to the exercise by it of the purchase option hereinabove granted, even though such rental may have been wholly or partially prepaid.



ARTICLE IX  
MISCELLANEOUS

Section 9.1 Covenant of Quiet Enjoyment. Surrender of Project. So long as the Company performs and observes all the covenants and agreements on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Primary Term (and, if the Company exercises an option to renew granted in Section 8.2 hereof, the renewal term), subject to all the terms and provisions hereof. At the end of the Primary Term, or any such renewal term, as the case may be, or upon any prior termination of this Lease Agreement, the Company will (unless it has simultaneously purchased the Project from the Board) surrender possession of the Project peaceably and promptly to the Board in as good condition as at the completion of the construction and equipment of the Plant, excepting only (a) loss by fire or other casualty, (b) alterations, changes or improvements made in accordance with the provisions of this Lease Agreement, (c) acts of governmental or condemning authorities, and (d) ordinary wear and tear.

Section 9.2 Representations and Warranties.  
The Company represents and warrants

(1) that it has corporate power to enter into this Lease Agreement and to perform all acts herein required to be performed by it and that its execution hereof has been duly authorized by all necessary corporate action; and

(2) that no state, territory or possession of the United States, nor any political subdivision of any such state, territory or possession, nor the District of Columbia, has, since April 30, 1968, issued any obligations, the proceeds of which are to be or have been used primarily with respect to any facilities (i) that are located within the corporate limits of the Town of Helena, Alabama, and (ii) the principal user of which facilities was, is or will be, the Company or a related person [as the term "related person" is defined in Section 103(c)(6)(C) of the Internal Revenue Code of 1954, as amended].

The Board on its part, hereby represents and warrants as follows:





19740329000014870 37/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

(a) that it has corporate power to enter into this Lease Agreement and that its execution and delivery hereof have been duly authorized by all necessary corporate action;

(b) that the entire Plant Site is located wholly within the corporate limits of the Town of Helena, Alabama;

(c) that it has good and marketable title to the Plant Site, subject only to Permitted Encumbrances as defined in the Indenture.

Section 9.3 Retention of Title to Project by Board. Grant of Utility Easements. Releases from Demise. Without the prior written consent of the Company, the Board will not itself, at any time during which the Company is not in default hereunder, (a) sell, convey or otherwise dispose of all or any part of the Project (except to the Company as hereinabove provided), (b) except as provided in Section 6.2 hereof, mortgage or otherwise encumber the Project or any part thereof, or (c) dissolve or do anything that will result in the termination of its corporate existence. The Board will, however, grant such utility, access and other similar easements over, across or under the Plant Site as shall be requested by the Company and as in the judgment of the Company are necessary or convenient for the efficient operation of the Plant. The Company may at any time and from time to time and for the purpose of promoting the continued industrial or commercial development of the Town of Helena, Alabama, and the nearby territory, release to the Board, from the demise of this Lease Agreement, any unimproved portion or portions of the Plant Site, or any interest therein, provided that the Company shall not, by reason of any such release, be entitled to any abatement or diminution of the rental payable hereunder. From and after any such release of any portion of the Plant Site, the term "Plant Site," as used in this Lease Agreement, shall be construed to refer to the real property that immediately prior thereto constituted the Plant Site less and except that portion thereof so released.

Section 9.4 This Lease a Net Lease. The Company recognizes and understands that it is the intention hereof that this lease be a net lease and that until the Bonds are fully paid all Basic Rent be available for payment of principal and interest on the Bonds. This Lease Agreement shall be construed to effectuate such intent.

Section 9.5 Notices. All notices hereunder shall be deemed sufficient and properly given if in writing and sent by United States registered or certified mail, postage prepaid, addressed, if to the Board,





19740329000014870 38/41 \$.00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

c/o Town Hall, Helena, Alabama; if to the Company, at Post Office Box 7462-A, Birmingham, Alabama 35223; if to the Original Purchaser, at 1441 Daniel Building, Birmingham, Alabama, 35233; and if to the Trustee, at 1928 1st Avenue, North, Birmingham, Alabama 35203. The Board, the Company, the Original Purchaser, and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. A copy of any notice given to the Board, the Company the Original Purchaser, or the Trustee pursuant to the provisions of this Lease Agreement shall also be given to that one of the foregoing four parties to whom such notice is not herein required to be given, but the failure to give a copy of such notice to such other party shall not invalidate such notice or render it ineffective unless notice to such other party is otherwise herein expressly required. Any notice hereunder signed on behalf of the Board, the Company, the Original Purchaser, or the Trustee by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

Section 9.6 Certain Prior and Contemporaneous Agreements Cancelled. This Lease Agreement shall completely and fully supersede all other prior or contemporaneous agreements, both written and oral, between the Board and the Company relating to the renovation of the Plant, the acquisition and installation of the Leased Equipment and the leasing of the Project. Neither the Board nor the Company shall hereafter have any rights under any such prior or contemporaneous agreement but shall look solely to this Lease Agreement for definition and determination of all their respective rights, liabilities and responsibilities respecting the renovation of the Plant, the acquisition and installation of the Leased Equipment and the leasing of the Project. The Company and the Board acknowledge that they have no outstanding agreement, commitment or understanding, either express or implied, for the grant to the Company of any option to purchase the Project or any part thereof or of any option to renew the term of this Lease Agreement, other than those contained in Article VIII hereof.

Section 9.7 Limited Liability of Board. The Board is entering into this Lease Agreement pursuant to the authority conferred upon it in Act No. 648 enacted at the 1949 Regular Session of the Legislature of Alabama, as amended. No provision hereof shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon the Board except with respect to the proper application of the proceeds to be derived from the sale of the Bonds and the revenues and receipts to be derived from any leasing or sale of the Project or any part thereof, including insurance and condemnation proceeds.





19740329000014870 39/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

Section 9.8 Concerning the Investment Tax Credit.  
The Board will execute such documents as the Company may reasonably request in order to make available to the Company the investment tax credit provided for in the Internal Revenue Code of 1954, as amended.

Section 9.9 Binding Effect. This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Board, the Company, and their respective successors and assigns.

Section 9.10 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.11 Article and Section Captions.  
The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

IN WITNESS WHEREOF, the Board and the Company have caused this Lease Agreement to be executed in their respective corporate names, have caused their respective corporate seals to be hereunto affixed, and have caused this Lease Agreement to be attested, all by their duly authorized officers, in five counterparts, each of which shall be deemed an original, and have caused this Lease Agreement to be dated as of March 1, 1974, although actually executed by the Company on March 28, 1974, and actually executed by the Board and delivered on March 29, 1974.

INDUSTRIAL DEVELOPMENT BOARD OF THE  
TOWN OF HELENA, ALABAMA

Attest:

By

Russ Stork  
Chairman of its Board of Directors

James V. Sides  
Its Secretary

POLLUTION CONTROL-WALTHER, INC.

By

Its

President

Attest:

Charles W. Springfield  
Its Secretary



STATE OF ALABAMA,  
COUNTY OF JEFFERSON;

19740329000014870 40/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

I, Doris H. Willford, a Notary Public  
in and for said county in said state, hereby certify that  
Rual Stark, whose name as  
Chairman of the Board of Directors of the INDUSTRIAL DE-  
VELOPMENT BOARD OF THE TOWN OF HELENA, ALABAMA, a public  
corporation and instrumentality under the laws of Alabama,  
is signed to the foregoing instrument and who is known to  
me, acknowledged before me on this day that, being informed  
of the contents of the within instrument, he, as such of-  
ficer and with full authority, executed the same voluntarily  
for and as the act of said public corporation.

GIVEN under my hand and official seal of office,  
this 25<sup>th</sup> day of March, 1974.

[ NOTARIAL SEAL ]

Doris H. Willford  
Notary Public

My Commission Expires April 12, 1977

STATE OF Alabama )  
COUNTY OF Jefferson ;

I, Doris H. Willford, a Notary Public  
in and for said county in said state, hereby certify that  
Robert W. Arnold, whose name as  
President of POLLUTION CON-  
TROL-WALTHER, INC., a corporation organized under the laws  
of the State of Delaware, is signed to the foregoing in-  
strument and who is known to me, acknowledged before me on  
this day that, being informed of the contents of the within  
instrument, he, as such officer and with full authority,  
executed the same voluntarily for and as the act of said  
corporation.

GIVEN under my hand and official seal of office,  
this 25<sup>th</sup> day of March, 1974.

[ NOTARIAL SEAL ]

Doris H. Willford  
Notary Public

My Commission Expires April 12, 1977





19740329000014870 41/41 \$ .00  
Shelby Cnty Judge of Probate, AL  
03/29/1974 01:00:00 AM FILED/CERT

EXHIBIT A

Equipment consisting, inter alia, of band saw, grinder, dehumidifier, materials handling equipment, electrical controls, heating and air conditioning equipment, dies, machines and assessories for manufacturing discharge electrode wires, work tables, shelving, jigs and welding equipment.

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

*EXEMPT*  
1974 MAR 29 PM 3:37

U.C.C. FILE NUMBER OR  
REC. BK. & PAGE AS SHOWN ABOVE

*Conrad M. Smith*  
JUDGE OF PROBATE

BOOK 286 PAGE 119