

90

LEASE AGREEMENT

between

CITY OF PELHAM, ALABAMA

and

HEMOCRAFTERS WAREHOUSE, INC.

Dated August 31, 1984

BOOK 003 PAGE 893

Relating to

\$1,500,000

**First Mortgage Industrial Revenue Bonds
(Homecrafters Warehouse Project)
Series 1984**

Dated August 31, 1984

THIS INSTRUMENT WAS PREPARED BY
WYATT R. HASKELL
800 First National Southern Natural Bldg.
BIRMINGHAM, ALABAMA

Craig Rastell
Homecrafters Warehouse
P.O. Box - 18084 -
Birmingham 35202
NORTH HASKELL SLAUGHTER YOUNG & LEWIS
PROFESSIONAL ASSOCIATION
800 FIRST NATIONAL-SOUTHERN NATURAL BUILDING
BIRMINGHAM, ALABAMA 35203

Executed in 6 Counterparts of
Which This is Counterpart # 1

TABLE OF CONTENTS*

to
LEASE AGREEMENT
between
CITY OF PELHAM, ALABAMA
and
HOMECRAFTERS WAREHOUSE, INC.

| | <u>Page</u> |
|----------------|-------------|
| Parties | 1 |
| Recitals | 1 |

ARTICLE I

DEFINITIONS AND USE OF PHRASES

| | | |
|-------------|---|---|
| Section 1.1 | Definitions | 1 |
| Section 1.2 | Definitions Contained in the Indenture | 9 |
| Section 1.3 | Use of Phrases | 9 |

ARTICLE II

REPRESENTATIONS AND WARRANTIES

| | | |
|-------------|--|----|
| Section 2.1 | Representations and Warranties by the City | 10 |
| Section 2.2 | Representations and Warranties by the Company | 12 |

ARTICLE III

DEMISING CLAUSES

| | | |
|-------------|------------------------|----|
| Section 3.1 | Demising Clauses | 15 |
|-------------|------------------------|----|

*The Table of Contents appears here for convenience only and should not be considered a part of the Lease Agreement.

BOOK 003 PAGE 895

ARTICLE IV
CONCERNING THE PROJECT
DEVELOPMENT WORK;
ISSUANCE OF THE SERIES 1984 BONDS

| | | |
|-------------|--|----|
| Section 4.1 | Performance of the Project Development Work | 16 |
| Section 4.2 | Agreement to Issue Series 1984 Bonds | 17 |
| Section 4.3 | Disbursement of Proceeds from the Sale of the Series 1984 Bonds | 17 |
| Section 4.4 | No Warranty of Suitability by the City. Company Required to Make Arrangements for Payment of Project Development Costs | 18 |
| Section 4.5 | City to Pursue Rights against Suppliers and Contractors, etc. | 19 |
| Section 4.6 | Certification of Completion Date | 19 |

ARTICLE V
DURATION OF LEASE TERM AND RENTAL PROVISIONS

| | | |
|--------------|--|----|
| Section 5.1 | Duration of Lease Term | 20 |
| Section 5.2 | Basic Rent | 20 |
| Section 5.3 | Additional Rent - Trustee's Fees and Expenses | 22 |
| Section 5.4 | Additional Rent - City's Expenses | 22 |
| Section 5.5 | Basic Rent Due in the Event of a Series 1984 Determination of Taxability | 22 |
| Section 5.6 | Additional Rent - Bond Preference Taxes | 24 |
| Section 5.7 | Optional Prepayment of Basic Rent | 24 |
| Section 5.8 | Payments of Municipal Service Fee | 25 |
| Section 5.9 | General Provisions Concerning Prepayment of Basic Rent | 25 |
| Section 5.10 | Obligations of the Company Unconditional | 25 |

ARTICLE VI

PROVISIONS CONCERNING MAINTENANCE, ADDITIONS, PARTY WALLS, REMOVAL OF PROJECT EQUIPMENT, INSURANCE AND TAXES

| | | |
|-------------|--|----|
| Section 6.1 | Maintenance, Additions, Alterations, Improvements and Modifications | 26 |
| Section 6.2 | Party Wall Provisions | 27 |
| Section 6.3 | Removal of Project Equipment | 29 |
| Section 6.4 | Taxes, Other Governmental Charges and Utility Charges | 33 |
| Section 6.5 | Insurance Required | 34 |
| Section 6.6 | Performance by City or Trustee of Certain Obligations of the Company. Reimbursement of Expenses | 35 |

ARTICLE VII

PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

| | | |
|-------------|--|----|
| Section 7.1 | Damage and Destruction Provisions | 36 |
| Section 7.2 | Condemnation Provisions | 39 |
| Section 7.3 | Condemnation of Right to Use of the Project for Limited Period | 44 |
| Section 7.4 | Condemnation of Property Owned by the Company | 44 |
| Section 7.5 | Cooperation of the City in the Con- duct of Condemnation Proceedings | 45 |
| Section 7.6 | Cooperation of the City with Re- spect to Restoration of the Project in the Event of Casu- alty or Condemnation | 45 |
| Section 7.7 | Provisions Relating to the Incur- ring of Certain Expenses after Indenture Indebtedness Paid | 45 |

ARTICLE VIII

PARTICULAR COVENANTS OF THE COMPANY

| | | |
|-------------|---|----|
| Section 8.1 | General Covenants | 46 |
| Section 8.2 | Release and Indemnification Covenants | 46 |

| | | |
|-------------|---|----|
| Section 8.3 | Inspection of Project | 48 |
| Section 8.4 | Agreement to Maintain Corporate Existence | 48 |
| Section 8.5 | Covenants with Respect to Exemption of Interest on Series 1984 Bonds from Federal Income Taxation | 50 |
| Section 8.6 | No-Arbitrage Covenants | 50 |
| Section 8.7 | Financial Statements, etc. | 51 |
| Section 8.8 | Further Assurances | 52 |

ARTICLE IX

CERTAIN PROVISIONS RELATING TO ASSIGNMENT, SUBLEASING AND MORTGAGING AND TO THE SERIES 1984 BONDS

| | | |
|-------------|---|----|
| Section 9.1 | Provisions Relating to Assignment and Subleasing by the Company | 52 |
| Section 9.2 | Mortgaging of the Project by City | 53 |
| Section 9.3 | References to Series 1984 Bonds Ineffective after Indenture Indebtedness Paid | 54 |
| Section 9.4 | Concerning Issuance of Additional Parity Bonds | 54 |
| Section 9.5 | Disposition of Trust Fund Moneys after Full Payment of Inden- ture Indebtedness | 54 |

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

| | | |
|--------------|---|----|
| Section 10.1 | Events of Default Defined | 55 |
| Section 10.2 | Remedies on Default | 56 |
| Section 10.3 | No Remedy Exclusive | 57 |
| Section 10.4 | Agreement to Pay Attorneys' Fees | 57 |
| Section 10.5 | No Additional Waiver Implied by One Waiver | 58 |
| Section 10.6 | Notice and Right to Cure | 58 |

ARTICLE XI

OPTIONS

| | | |
|--------------|---------------------------------------|----|
| Section 11.1 | Options to Terminate the Lease Dur- | |
| | ing the Lease Term | 58 |
| Section 11.2 | Option to Purchase - Casualties | 59 |
| Section 11.3 | Option to Renew | 61 |
| Section 11.4 | Option to Purchase Unimproved Parts | |
| | of Project Site | 62 |
| Section 11.5 | Options - In General | 63 |

ARTICLE XII

MISCELLANEOUS

| | | |
|-----------------------|------------------------------------|----|
| Section 12.1 | Covenant of Quiet Enjoyment. Sur- | |
| | render | 64 |
| Section 12.2 | Retention of Title to Project by | |
| | City. Granting of Easements | 64 |
| Section 12.3 | Exemption from Taxation | 64 |
| Section 12.4 | This Lease a Net Lease | 65 |
| Section 12.5 | Statement of Intention Regarding | |
| | Certain Tax Matters | 65 |
| Section 12.6 | Notices | 65 |
| Section 12.7 | Certain Prior and Contempo- | |
| | raneous Agreements Can- | |
| | celled | 66 |
| Section 12.8 | Limited Liability of City | 66 |
| Section 12.9 | Binding Effect | 66 |
| Section 12.10 | Severability | 67 |
| Section 12.11 | Article and Section Captions | 67 |
| Section 12.12 | Governing Law | 67 |
| Testimonium | | 67 |
| Signatures | | 68 |
| Acknowledgments | | 69 |
| Exhibit A | | |

LEASE AGREEMENT between the CITY OF PELHAM, a municipal corporation under the laws of the State of Alabama, party of the first part (herein called the "City"), and HOMECRAFTERS WAREHOUSE, INC., a corporation under the laws of Delaware, party of the second part (herein called the "Company").

RECITALS

Pursuant to this Lease Agreement, the City has undertaken to acquire, construct and equip the Project hereinafter referred to for use as a wholesale warehouse building for use in the distribution of general building supplies. In order to finance the costs of acquiring, constructing and equipping the said Project on a long-term basis, the City will, simultaneously with the execution and delivery of this Lease Agreement, issue the Series 1984 Bonds hereinafter described under a Mortgage and Trust Indenture dated August 31, 1984 (herein called the "Indenture"), between the City and AmSouth Bank N.A., as Trustee (herein called the "Trustee"). In order to secure the payment of the principal of and the interest and premium (if any) on the said Series 1984 Bonds, the City will mortgage the Project hereinafter described under the Indenture and will pledge and assign thereunder the City's interest in this Lease Agreement (other than certain expense payment and indemnification rights and certain rights which are herein expressly provided to be exercised by the City), including particularly the "Basic Rent" payable hereunder by the Company for the use of said Project. Also simultaneously with the delivery of this Lease Agreement, the Company will enter into a Bond Guaranty Agreement with the Trustee, which will also be dated August 31, 1984 (herein called the "Series 1984 Bond Guaranty") in and by which the Company will unconditionally guarantee to the Trustee, for the benefit of the holders of the Series 1984 Bonds, the full and prompt payment of the principal of and the interest and premium (if any) on the Series 1984 Bonds.

NOW, THEREFORE, THIS LEASE AGREEMENT

WITNESSETH:

That in consideration of the respective representations, warranties and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND USE OF PHRASES

Section 1.1 **Definitions.** Unless the context clearly indicates a different meaning, the following words and phrases, as used herein, shall have the following respective meanings:

))

"Act" means the statutes codified as Code of Alabama of 1975, Title 11, Chapter 54, Article 2, as the same shall be hereafter otherwise amended and supplemented and at the time in force and effect.

"Additional Bonds" means bonds of the City authorized in Article VIII of the Indenture to be issued thereunder and secured thereby on a parity of lien and pledge with the Series 1984 Bonds.

"Affiliate" of any designated person means any person which, directly or indirectly, controls, or is controlled by, or is under common control with, such designated person.

"Authorized City Representative" means the person or persons at the time designated as such by written certificate furnished to the Company and the Trustee, containing the specimen signature or signatures of such person or persons and signed on behalf of the City by its Mayor; provided however, that no officer or employee of the Company or any Affiliate thereof may at any time be designated as an Authorized City Representative.

"Authorized Company Representative" means the person or persons at the time designated as such by written certificate furnished to the City and the Trustee, containing the specimen signature or signatures of such person or persons and signed on behalf of the Company by any duly authorized officer thereof.

"Basic Rent" means (i) the moneys payable by the Company pursuant to the provisions of Section 5.2 hereof, (ii) any other moneys payable by the Company pursuant to the Lease to provide for the payment of the principal of and the interest and premium (if any) on the Series 1984 Bonds (other than the aforesaid moneys payable pursuant to Section 5.2 hereof), and (iii) any other moneys payable by the Company pursuant to the Lease that are therein referred to as Basic Rent.

"Bond Counsel" means Independent Counsel whose opinions respecting the legality or validity of securities issued by or on behalf of states or political subdivisions thereof are nationally recognized.

"Bond Fund" means the Homecrafters Warehouse Principal and Interest Fund created in Section 10.1 of the Indenture and consisting of two accounts, the Primary Account and the Escrow Account.

"Bond Payment Date" means any January 1 and any July 1, commencing with January 1, 1985, on which any principal or interest with respect to the Bonds shall mature and be due and payable or on which any principal amount of the Series 1984 Bonds shall be required by the Indenture to be redeemed prior to the stated maturity thereof.

"Bond Preference Tax" means any tax or penalty hereafter imposed on the owner of Tax Exempt Obligations under the laws of federal income taxation, including without limitation any preference tax, excess profits tax or other tax measured in whole or in part with reference to (i) the interest on or the principal of Tax Exempt Obligations, or (ii) any amount of interest on indebtedness deemed attributable to the purchase or carrying of Tax Exempt Obligations.

"Bonds" means all bonds of the City issued under the Indenture (viz., the Series 1984 Bonds and all Additional Bonds).

"Book Value", when used with reference to any tangible property (whether or not then constituting part of the Project), means the cost thereof less accumulated depreciation calculated in accordance with generally accepted accounting principles, as said cost and depreciation are determined by the Company.

"City" means the party of the first part hereto and, subject to the provisions of Section 11.6 of the Indenture, includes its successors and assigns and any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Code" means the Internal Revenue Code of 1954, as amended and at the time in force and effect.

"Company" means the party of the second part hereto and, subject to the provisions of Section 8.4 hereof, includes its successors and assigns.

"Construction Fund" means the Homecrafters Warehouse Project Construction Fund created in Section 9.2 of the Indenture.

"Counsel" means any attorney duly admitted to practice before the highest court of any state of the United States of America or the District of Columbia (including any officer or full-time employee of the City, the Company or an Affiliate of any thereof who is so admitted to practice), it being understood that "Counsel" may also mean a firm of attorneys all of whose members are so admitted to practice.

"Declaration of Condominium" means that certain "Declaration of Condominium of The Homecrafters Warehouse Building, A Condominium" which appears of record in the Office of the Judge of Probate of Shelby County, Alabama in Real Volume ____ at Page ____, et seq.

"Event of Default" means an "Event of Default" as specified in Section 10.1 hereof.

"Financial Statements" means the balance sheet of the Company as of February 1, 1984 as certified by Peat, Marwick, Mitchell & Co. of Birmingham, Alabama, independent certified public accountants.

"Holder" means the person in whose name any Bond is registered on the registry books of the Trustee pertaining to the Bonds.

"Indenture" means the Mortgage and Trust Indenture between the City and AmSouth Bank N.A., as Trustee, dated August 31, 1984, under which (i) the Series 1984 Bonds are authorized to be issued, and (ii) the City's interest in this Lease Agreement and the revenues and receipts to be derived by the City from any leasing or sale of the Project are to be assigned, and the Project is to be mortgaged, as security for payment of the principal of and the interest and premium (if any) on the Series 1984 Bonds, as said Mortgage and Trust Indenture now exists and as it may hereafter be supplemented and amended.

"Indenture Indebtedness" means all indebtedness of the City at any time secured by the Indenture, including, without limitation (i) all principal of and interest and premium (if any) on the Bonds and (ii) all reasonable and proper fees, charges and disbursements of the Trustee for services performed under the Indenture.

"Independent Appraiser" means a person, firm or corporation not regularly employed or retained by the City, the Company or an Affiliate of any thereof and regularly engaged in the business of appraising real or personal property (as appropriate to the property being appraised or valued) and otherwise competent, in the opinion of the Trustee, to determine the value of the property in question.

"Independent Architect" means an architect or firm of architects licensed to engage in the independent practice of architecture under the laws of the State of Alabama and not regularly employed or retained by the City, the Company or an Affiliate of any thereof.

"Independent Counsel", when used to describe Counsel who is an individual attorney, means that he is not an officer or full-time employee of the City, the Company, or an Affiliate of any thereof and, when used to describe Counsel consisting of a firm of attorneys, means that none of the members of such firm is an officer or full-time employee of the City, the Company or an Affiliate of any thereof.

"Independent Engineer" means an engineer or engineering firm licensed to engage in the independent practice of engineering under the laws of the State of Alabama and not regularly employed or retained by the City, the Company or an Affiliate of any thereof.

"Inducement Agreement" means that certain Inducement Agreement dated as of August 1, 1983, between the City and the Company or its assignee, in which the City agreed, among other things, to acquire the Project Site, to construct the Project Building, to acquire and install the Project Equipment, to finance the costs of such undertakings and to lease the Project to the Company or to its assignee.

"Lease" or "this Lease Agreement" means this Lease Agreement as it now exists and as it may from time to time be modified, supplemented or amended as permitted by Article XV of the Indenture.

"Lease Term" means the period beginning on the date of delivery of this Lease Agreement and continuing until 11:59 o'clock, P.M., on July 1, 1999.

"Local Facilities" means "facilities" [as the term "facilities" is used in Section 103(b)(6) of the Code and the applicable regulations thereunder] of which the Company or a Related Person to either of them is or will be the Principal User and which are located wholly within the corporate limits of the City. For purposes of this definition, a contiguous or integrated "facility" located on both sides of the border between any two or more political jurisdictions shall be considered as being located wholly within each such political jurisdiction.

BOOK 003
PAGE 903

"Net Condemnation Award" means the total amount received as compensation for any part of the Project taken under the exercise of the power of eminent domain, plus damages to any part of the Project not taken (including any compensation referable to 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 not including any compensation belonging to the Company pursuant to the provisions of Section 7.4 hereof), which compensation shall consist of (i) all awards received pursuant to administrative or judicial proceedings conducted in connection with the exercise of the power of eminent domain, plus (ii) all amounts received as the result of any settlement of compensation claims (whether in whole or in part) negotiated with the condemning authority, less (iii) all attorneys' fees and other expenses incurred in connection with the receipt of such compensation, including attorneys' fees and expenses relating to such administrative or judicial proceedings and to such settlement negotiations (other than any that may be paid directly by the Company).

BOOK 003

"Net Insurance Proceeds" means the total insurance proceeds recovered by the City, the Company and the Trustee on account of any damage to or destruction of the Project or any part thereof, less all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such proceeds.

"Permitted Encumbrances" means, as of any particular time, any of the following: (i) the Declaration of Condominium; (ii) the Lease and the Indenture; (iii) liens imposed by law, such as mechanics', workmen's, materialmen's, carriers' and other like liens arising in the ordinary course of business, securing obligations which are not overdue or which are being contested in good faith and by appropriate proceedings; (iv) liens for property taxes not delinquent or for taxes which are being contested in good faith and by appropriate proceedings; and (v) utility, access, drainage and other easements and rights-of-way, mineral rights, covenants running with the land, zoning restrictions, environmental regulations and other restrictions and encumbrances affecting the use of real property, or minor irregularities in the title to real property, none of the foregoing of which, individually or in the aggregate, materially impair the title of the City to any part of the Project or the use of the Project for the purpose for which it was acquired or is held by the City.

"Prime Rate" means the rate of interest announced from time to time by AmSouth Bank N.A., a national banking association with its principal office in the City of Birmingham, Alabama, as its prime rate, with the understanding that the said prime rate is one of the base rates from time to time established by the said AmSouth Bank N.A. which serves as the basis upon which effective rates of interest are calculated for those loans of money making reference to the said prime rate and is evidenced by the recording thereof after its announcement in such internal publication or publications as the said AmSouth Bank N.A. may designate.

"Principal User" means, with respect to any "facilities" [as the term "facilities" is used in Section 103(b)(6) of the Code], a "principal user" of such "facilities" within the meaning of Section 103(b)(6) of the Code and the applicable regulations thereunder.

"Project" means the Project Site, the Project Building and the Project Equipment, as they may at any time exist, and all other property and rights of every kind that are or become subject to the demise of the Lease.

"Project Building" means the wholesale warehouse and distribution building as well as all related improvements which are now situated on the Project Site, as the said wholesale warehouse and distribution building and related improvements may at any time exist.

"Project Development Costs" means the following: (i) all costs and expenses incurred in connection with the planning, development and design of the Project Building, including the costs of preliminary investigations, surveys, estimates and plans and specifications; (ii) all costs of acquiring, preparing and improving the Project Site; (iii) all costs and expenses of constructing the Project Building, including the cost to the Company of supervising construction, payments to contractors and materialmen and fees for professional or other specialized services; (iv) all costs and expenses of acquiring the Project Equipment and of installing the same on the Project Site; (v) the costs of contract bonds and of insurance of all kinds which may be necessary or desirable in connection with the Project Development Work and which are not paid by any contractor or otherwise provided for; (vi) all expenses incurred in connection with the issuance and sale of the Series 1984 Bonds, including (without limitation) all legal, accounting, financial, underwriting, printing, recording and filing fees and expenses and the initial charge of the Trustee; (vii) interest on moneys borrowed by the Company to pay any Project Development Costs; (viii) all other costs which the City has heretofore paid, under the terms of any contract or contracts, in connection with the Project Development Work; and (ix) the reimbursement to the Company of all amounts paid directly by the Company in respect of any of the aforesaid costs and expenses and of all amounts advanced by the Company to the City for the payment of such costs and expenses, to the extent that such costs were paid or incurred subsequent to the date of the Inducement Agreement.

"Project Development Work" means (i) the acquisition of the Project Site, as well as the preparation and improvement of the Project Site to the extent that the Company deems necessary or desirable in connection with the construction of the Project Building, (ii) the planning, design and construction of the Project Building in accordance with the provisions hereof and (iii) the planning, design and acquisition of the Project Equipment and the installation thereof on the Project Site, all in accordance with the provisions hereof.

"Project Equipment" means (i) all items (whether or not fixtures) of machinery, equipment or other personal property the costs of which, in whole or in part, have been paid for by the City out of the proceeds of any of the Bonds and (ii) all items (whether or not fixtures) of machinery, equipment or other personal property that are acquired by the City in substitution for or replacement of items of machinery, equipment or other personal property theretofore constituting part of the Project Equipment and that, under the provisions of the Lease and the Indenture, are to constitute part of the Project Equipment. As of the delivery of this Lease Agreement, the Project Equipment consists of those items (whether or not fixtures) of machinery, equipment or other personal property that are generally described in Exhibit A attached hereto and made a part hereof.

"Project Site" means (i) the parcel of land specifically described under the heading "I" in Section 3.1 hereof and (ii) any other land that, at the time and under the terms hereof, constitutes a part of the Project Site.

"Public Securities" means bonds, notes or other obligations of a state, territory or a possession or any political subdivision of the United States of America or any political subdivision of any of the foregoing or of the District of Columbia.

"Qualifying Project Development Costs" means Project Development Costs that are expended solely for the purpose of acquiring, constructing, reconstructing or improving land or property of a character subject to the allowance for depreciation within the meaning of Section 103(b)(6) of the Code and the applicable regulations thereunder, to the extent that such costs were incurred subsequent to the date of the Inducement Agreement.

"Redemption Fund" means the Homecrafters Warehouse Bond Redemption Fund created in Section 10.2 of the Indenture.

"Related Person", when used with reference to any Principal User or any Substantial User, means a "related person" within the meaning of Section 103(b)(6) of the Code and the applicable regulations thereunder.

"Series 1984 Bond Guaranty" means that certain Bond Guaranty Agreement dated August 31, 1984, between the Company, as the guarantor thereunder, and the Trustee in and by which the Company has unconditionally guaranteed the payment by the City of the principal of and the interest and premium (if any) on the Series 1984 Bonds and has agreed to pay or discharge certain other obligations relating to the Series 1984 Bonds, as such Bond Guaranty Agreement may from time to time be amended in accordance with the provisions thereof.

"Series 1984 Bonds" means the City's First Mortgage Industrial Revenue Bonds (Homecrafters Warehouse Project), Series 1984, dated August 31, 1984, which are authorized to be issued under the Indenture in the aggregate principal amount of \$1,500,000.

"Series 1984 Determination of Taxability" means a determination that the interest income on any of the Series 1984 Bonds is subject to federal income taxation as a result of the occurrence of a Series 1984 Event of Taxability, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(a) the date on which the Company determines that the interest income on any of the Series 1984 Bonds is subject to federal income taxation by filing with the Trustee a statement to that effect, supported by any tax schedule, return or document which discloses that a Series 1984 Event of Taxability has occurred; or

(b) the date on which the Company or any holder of any of the Series 1984 Bonds shall be advised by private ruling, technical advice or any other written communication from an authorized official of the Internal Revenue Service that, based upon any filings of the Company, or

upon any other grounds whatsoever, a Series 1984 Event of Taxability has occurred; or

(c) the date on which the Company shall receive notice from the Trustee in writing that the Trustee has been advised (i) by any holder of any Series 1984 Bonds that the Internal Revenue Service has assessed as includable in the gross income of such holder the interest on such Series 1984 Bonds due to the occurrence of a Series 1984 Event of Taxability, or (ii) by any authorized official of the Internal Revenue Service that the interest on the Series 1984 Bonds is includable in the gross income of any holder thereof due to the occurrence of a Series 1984 Event of Taxability; or

(d) the date upon which, by Act of the Congress of the United States of America or by any other official action of the government of the United States of America, the interest on any of the Series 1984 Bonds becomes subject to Federal income taxation; or

(e) the date on which the Holder of any of the Series 1984 Bonds shall determine in good faith, which determination shall be evidenced by written notice delivered to the City and to the Company and supported by an opinion of Bond Counsel, that a Series 1984 Event of Taxability has occurred;

provided that no Series 1984 Determination of Taxability shall be deemed to have occurred as a result of a determination by the Company pursuant to the preceding clause (a) unless supported by a written opinion of Independent Counsel acceptable to the Trustee that the interest income on any of the Series 1984 Bonds is subject to federal income taxation as a result of the occurrence of a Series 1984 Event of Taxability; provided further that no Series 1984 Determination of Taxability shall be deemed to have occurred as a result of events described in any of the preceding clauses (a), (b), (c) and (d) unless and until (1) the Company has been afforded a reasonable opportunity, at its expense, to contest such determination either through its own action (if permitted by law) or by or on behalf of one or more of the holders of the Series 1984 Bonds and (2) such contest, if made, has been abandoned by the Company or has been finally determined by a court of competent jurisdiction from which no further appeal exists, but if such contest has not been abandoned or finally determined within three years of the event described in any of said clauses (b), (c) and (d) which forms the basis of the Series 1984 Determination of Taxability in question, then such Series 1984 Determination of Taxability shall be deemed to have occurred three years after the date of such event.

"Series 1984 Event of Taxability" means the event which causes the interest income on any of the Series 1984 Bonds to become subject to federal income taxation as a result of any of the following conditions or circumstances:

(a) the Series 1984 Bonds constitute "arbitrage bonds" within the meaning of Section 103(c) of the Code; or

(b) the taking of any action by the City or the Company, or the failure of the City or the Company to take any action, or any mistake in

or untruthfulness of any representation of the City or the Company contained in the Lease or in any certificate of the City or the Company delivered pursuant to the Lease or the Indenture or in connection with the issuance of the Series 1984 Bonds, if such act or omission, or such mistake in or untruthfulness of such representation, has the effect of causing the interest income on the Series 1984 Bonds to be or become subject to federal income taxation; or

(c) the date upon which, by Act of the Congress of the United States of America or by any other official action of the government of the United States of America, the interest on any of the Series 1984 Bonds becomes subject to Federal income taxation;

provided that no Series 1984 Event of Taxability shall be deemed to have occurred with respect to any Series 1984 Bond if the interest income thereon shall be subject to federal income taxation for any period solely because during that period such bond was held by a person who is a Substantial User of the Project or a Related Person to such Substantial User.

"Series 1984 Guaranty Default" means the failure of the Company to fulfill any of its obligations, covenants or agreements under the terms of the Series 1984 Bond Guaranty.

"Series 1984 Issuance Expenses" means the expenses of issuing the Series 1984 Bonds to the extent, and only to the extent, that, in determining the amounts of the "proceeds" of the Series 1984 Bonds for purposes of the "substantially all" test provided by Treasury Regulations §1.103-8(a)(1)(i) and §1.103-10(b)(1)(ii), such expenses are properly deductible from the aggregate amount (excluding accrued interest) received by the City from the sale of the Series 1984 Bonds.

"Series 1984 Principal Proceeds" means the aggregate amount (excluding accrued interest, if any) received by the City from the sale of the Series 1984 Bonds, less the Series 1984 Issuance Expenses.

"Substantial User" means, with respect to any "facilities" [as the term "facilities" is used in Section 103(b)(6) of the Code], a "substantial user" of such "facilities" within the meaning of Section 103(b)(10) of the Code and the applicable regulations thereunder.

"Tax Exempt Obligations" means any obligations or debt securities the interest on which is exempt from federal income taxation under Section 103 of the Code.

"Trustee" means the Trustee at the time serving as such under the Indenture.

Section 1.2 Definitions Contained in the Indenture. Unless the context clearly indicates a different meaning, any words, terms or phrases that are used in the Lease as defined terms without being herein defined and that are defined in the Indenture shall have the meanings respectively given them in the Indenture.

Section 1.3 Use of Phrases. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to the Lease as an

entirety and not solely to the particular portion in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 **Representations and Warranties by the City.** The City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

BOOK 003 PAGE 908
(a) Organization. The City is a municipal corporation duly organized and validly existing under the laws of Alabama, and is in good standing as such.

(b) Litigation. There are no actions, suits or proceedings pending (nor, to the knowledge of the City, are any actions, suits or proceedings threatened) against or affecting the City or any property of the City in any court, or before an arbitrator of any kind, or before or by any governmental body, which might materially and adversely affect the transactions contemplated by this Lease Agreement or which might adversely affect the validity or enforceability of this Lease Agreement or any other agreement or instrument to which the City is or is to be a party relating to the transactions contemplated by this Lease Agreement.

(c) Sale and Other Transactions are Legal and Authorized. The sale and issuance of the Series 1984 Bonds, the execution and delivery of this Lease Agreement and the Indenture, and the compliance with all the provisions of each thereof and of the Series 1984 Bonds by the City (i) are within the power and authority of the City, (ii) will not conflict with or result in a breach of any of the provisions of, or constitute a default under, or result in or require the creation of any lien or encumbrance (other than Permitted Encumbrances) upon any property of the City under, the Act, the certificate of incorporation of the City, any agreement or other instrument to which the City is a party or by which it may be bound, or any license, judgment, decree, order, law, statute, ordinance or governmental regulation applicable to the City, and (iii) have been duly authorized by all necessary corporate action on the part of the City.

(d) Governmental Consents. Other than (i) the filing with the Alabama Securities Commission of the notification of the City's intention to issue the Series 1984 Bonds required by Act No. 586 enacted at the 1978 Regular Session of the Legislature of the State of Alabama and the issuance by the Director of the Alabama Securities Commission of such Certificates of Notification as may be required by said Act No. 586 in connection with the issuance of the Series 1984 Bonds, (ii) the approval by the governing body of the City after a public hearing of the acquisition,

construction and equipping of the Project and the issuance of the Series 1984 Bonds by the City, (iii) the due filing or recording of the deed by which the City acquired title to the Project Site, the Lease and the Indenture, and (iv) the due filing of requisite Uniform Commercial Code financing statements, no consent, approval or authorization of, or filing, registration or qualification with, any governmental body on the part of the City is required in connection with the execution, delivery and performance of either this Lease Agreement or the Indenture or the offering, sale, issuance or delivery of any of the Series 1984 Bonds. The City has filed with the Alabama Securities Commission the notification of its intention to issue the Series 1984 Bonds as required by said Act No. 586, and the Director of the Alabama Securities Commission has issued a Certificate of Notification applicable to the issuance of the Series 1984 Bonds. The said Certificate of Notification has not been revoked or rescinded by the Alabama Securities Commission and continues in full force and effect.

BOOK 003 PAGE 909
(e) No Default. No event has occurred and no condition exists which would constitute an "Event of Default" under the Indenture, as "Event of Default" is therein defined, or which would become such an "Event of Default" with the passage of time or with the giving of notice or both. The City is not in default under its certificate of incorporation, or any agreement or instrument to which it is a party or by which it is bound.

(f) The Series 1984 Bonds. The Series 1984 Bonds, when issued and paid for in accordance with this Lease Agreement and the Indenture and when duly authenticated by the Trustee, will constitute legal, valid and binding special obligations of the City payable solely from the sources provided in the Indenture.

(g) Tax Exempt Status of Series 1984 Bonds. The City intends for the Series 1984 Bonds to be issued in compliance with the conditions necessary for the interest income thereon to be exempt from federal income taxation under Section 103(b)(6) of the Code, and the City understands that such exemption constitutes a principal inducement to the purchase of the Series 1984 Bonds by the original purchasers thereof from the City and will constitute a principal inducement to the purchase of any of the Series 1984 Bonds by any subsequent purchaser thereof.

(h) Title to Project. The City has fee simple absolute title to the Project Site, subject only to Permitted Encumbrances.

(i) Nature and Location of Project. The Project will constitute a "project" within the meaning of the Act, as now existing. As of the delivery of this Lease Agreement, the Project is located wholly within the now existing corporate limits of the City, and outside the corporate limits or the police jurisdiction of any other incorporated municipality.

(j) Fulfillment of Purposes of Act. The City has determined that the issuance of the Series 1984 Bonds, the performance of the Project Development Work and the leasing of the Project to the Company will promote industry, develop trade, further the use of the natural and human resources of the City and of the State of Alabama and otherwise fulfill the purposes of the Act, as now existing.

Section 2.2 Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Organization of Company. The Company is a corporation duly organized and existing under the laws of the State of Delaware, and is in good standing as such. The Company has the power and authority to own its properties and assets and to carry on its business as now being conducted. The Company also has all requisite power to enter into the Lease and to consummate the transactions contemplated thereby.

(b) Authorization and Validity of this Lease Agreement. When duly executed and delivered by the City, this Lease Agreement will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(c) Burdensome and Conflicting Agreements and Charter Provisions. The Company is not a party to any instrument or agreement or subject to any judgment, order, rule or regulation which materially and adversely affects, or in the future may (so far as the Company can now foresee) materially and adversely affect the business, prospects, operations, properties, assets or condition (financial or otherwise) of the Company. Neither the execution and delivery of this Lease Agreement, nor the offering, sale and issuance of any of the Series 1984 Bonds, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms and provisions hereof conflicts with, or results in a breach of, or constitutes a default under, the Articles of Incorporation or by-laws of the Company, or any applicable law, rule, regulation, agreement, instrument, judgment or order by which the Company is bound or to which the Company or its properties is subject.

(d) Governmental Consents. The Company is not required to obtain the consent or approval of any governmental body or agency in connection with the execution and delivery of this Lease Agreement or the offering, sale, issuance or delivery of any of the Series 1984 Bonds (other than those already obtained, taken or made and which continue in full force and effect).

(e) Litigation. There is no action, suit, or proceeding pending or overtly threatened against or affecting the Company before any court or governmental body (nor, to the best knowledge and belief of the Company, is there any basis

therefor) which might result in any material adverse change in the business, prospects, operations, properties or assets or in the condition (financial or otherwise) of the Company, or which might materially and adversely affect the transactions contemplated by this Lease Agreement, or which might impair the ability of the Company to comply with its obligations hereunder.

(f) No Defaults. No event has occurred and no condition exists which, upon the issuance of any of the Series 1984 Bonds, would constitute an Event of Default or which would become an Event of Default with the passage of time or with the giving of notice or both. To the best of the knowledge of the Company, no event has occurred and no condition exists which would constitute an "Event of Default" under the Indenture, as "Event of Default" is therein defined, or which would become such an "Event of Default" with the passage of time or with the giving of notice or both.

(g) Licenses, Permits, Etc. All licenses, permits or other approvals required in connection with the acquisition, construction, installation and operation of the Project have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals (i) which are not yet required and which will be duly obtained not later than the time required or (ii) the failure to obtain which will not materially and adversely affect the acquisition, construction, installation and operation of the Project.

(h) Project's Compliance with Statutes and Regulations. The operation of the Project for the purpose for which it was designed and acquired will not conflict with any zoning, planning or similar regulations applicable thereto and will comply in all material respects with all applicable statutes, regulations, orders and restrictions, including any thereof relating to the control of air and water pollution.

(i) Date of Acquisition of Project. No property which constitutes or is to constitute part of the Project was acquired by the City or by the Company prior to the effective date of the Inducement Agreement, nor did any of such parties enter into any binding commitment for the acquisition of any such property prior to such date.

(j) Nature and Location of Project. The Project constitutes a "project" within the meaning of the Act, as now existing. As of the delivery of this Lease Agreement, the Project Site is located wholly within the now existing corporate limits of the City, and outside the corporate limits or the police jurisdiction of any other incorporated municipality.

(k) Relationship of Qualifying Project Development Costs to Principal Amount of Series 1984 Bonds. The costs of acquiring, constructing and installing the Project that constitute Qualifying Project Development Costs amount, in the

aggregate, to not less than ninety percent (90%) of the Series 1984 Principal Proceeds.

(l) Use of the Project. As of the date of the delivery of this Lease Agreement, the Company does not have any plans and is not a party to any arrangement which, if consummated, would result in the Project being used by any Principal User other than the Company or a Related Person to the Company.

(m) Tax Exempt Status of the Series 1984 Bonds. The Company intends for the Series 1984 Bonds to be issued in compliance with the conditions necessary for the interest income thereon to be exempt from federal income taxation under Section 103(b)(6) of the Code, and the Company understands that such exemption constitutes a principal inducement to the purchase of the Series 1984 Bonds by the original purchasers thereof from the City and will constitute a principal inducement to the purchase of any of the Series 1984 Bonds by any subsequent purchaser thereof.

(n) No Previously Issued Public Securities. Except for the Series 1984 Bonds, no Public Securities have been issued since April 30, 1968, and are now outstanding, the proceeds of which have been or are to be used primarily with respect to Local Facilities, and there are not now outstanding any other Public Securities which are payable from the revenues from the Project.

(o) Inducement to Construct the Project in Alabama. The undertakings by the City to acquire, construct and equip the Project and to lease the same to the Company have induced the Company to locate a new wholesale warehouse and distribution building in the State of Alabama, which will fulfill the purposes of the Act.

(p) Financial Statements. The Financial Statements present fairly the financial position of the Company as of February 1, 1984, in conformity with generally accepted accounting principles.

(q) No Adverse Change in the Business of the Company. There has not occurred since February 1, 1984, a materially adverse change in financial condition, assets, liabilities or business of the Company.

(r) Average Maturity of the Series 1984 Bonds. The "average maturity" of the Series 1984 Bonds does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the proceeds of the Series 1984 Bonds, all within the meaning of Section 103(b)(14) of the Code and the applicable regulations thereunder.

ARTICLE III
DEMISING CLAUSES

Section 3.1 Demising Clauses. For and during the Lease Term, the City hereby demises and leases to the Company, subject to Permitted Encumbrances, and the Company hereby rents from the City, subject to Permitted Encumbrances, the following described properties and related rights:

I

The following described parcel of land situated wholly within the corporate limits of the City in Shelby County, Alabama:

BOOK 003 PAGE 913

Unit B of The Homecrafters Warehouse Building, a Condominium, according to the Declaration of Condominium, as recorded in Book ____, at Page ____, in the Office of the Judge of Probate of Shelby County, Alabama, together with an undivided fractional interest in the common elements as set out in the said Declaration of Condominium;

II

The Project Building and all other buildings, structures and other improvements now or hereafter situated on the Project Site, all permits, easements, licenses, rights-of-way, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Project Site and all fixtures now or hereafter owned by the City and installed on the Project Site or in any of such other buildings, structures and improvements now or hereafter located on the Project Site, it being the intention hereof that all property, rights and privileges hereafter acquired for use as a part of or in connection with or as an improvement to the Project Site shall be as fully covered hereby as if such property, rights and privileges were now owned by the City and were specifically described herein; and

III

All items (whether or not fixtures) of machinery, equipment and other personal property that at any time, under the provisions of the Lease, constitute the Project Equipment, including, without limitation, the items (whether or not fixtures) of machinery, equipment and other personal property generally described in Exhibit A attached hereto and made a part hereof, excluding, however, any equipment or other personal property that, under the provisions of the Lease, is, or is to become (prior to the termination of the Lease), the sole property of the Company or third parties.

ARTICLE IV
CONCERNING THE PROJECT DEVELOPMENT
WORK; ISSUANCE OF THE
SERIES 1984 BONDS

Section 4.1 Performance of the Project Development Work. The City and the Company have undertaken and completed the following work with respect to the Project:

(a) the improvement of the Project Site in such manner and to such extent as the Company deemed necessary and desirable in connection with the construction of the Project Building;

(b) the construction wholly within the boundaries of the Project Site, of the Project Building, in accordance with plans and specifications prepared by Carleton & McCurry, Architects of Birmingham, Alabama, and approved by the City and the Trustee; and

(c) the acquisition and installation, in or about the Project Building or elsewhere on the Project Site, of such items of machinery, equipment and other personal property necessary for or useful in the operation of the Project as shall be specified by the Company (said machinery, equipment and other personal property, as presently envisioned by the Company, being generally described in Exhibit A attached hereto and made a part hereof).

The Company recognizes that the Project has been acquired, constructed and equipped to its specifications and under its supervision, and the Company acknowledges that such acquisition, construction and equipping is now complete. The Company further acknowledges to the City that it has inspected the Project as so completed, and that the Project has been constructed and equipped to its specifications and to its satisfaction. The Company therefore unconditionally accepts the lease of the Project from the City, and hereby releases the City of any further obligation or responsibility respecting the acquisition, construction and equipping of the Project or the performance of the Project Development Work.

The City hereby ratifies and confirms all actions heretofore taken by it pursuant to the Inducement Agreement and assumes and adopts all contracts heretofore entered into by the Company, whether in the name and behalf of the City or in the name and behalf of the Company, with respect to the Project Development Work; provided however, that any obligation for the payment of money incurred or assumed by the City with respect to any such contract shall be payable solely from the proceeds derived by the City from the sale of any of the Bonds, from income

earned by the City from the investment of such proceeds or from any moneys made available to the City by the Company for the payment of such obligation.

Section 4.2 Agreement to Issue Series 1984 Bonds. In order to finance the Project Development Costs on a long-term basis, the City will, simultaneously with the delivery hereof, issue and sell the Series 1984 Bonds and, as security therefor, execute and deliver the Indenture. All the terms and conditions of the Indenture (including, without limitation, those relating to the amounts and maturity date or dates of the principal of the Series 1984 Bonds, the interest rate or rates thereof and the provisions for redemption thereof prior to their respective maturities) are hereby approved by the Company, and to the extent that any provision of the Indenture is relevant to the calculation of any rental or other amount payable by the Company hereunder or to the determination of any other obligation of the Company hereunder, the Company hereby agrees that such provision of the Indenture shall be deemed a part hereof as fully and completely as if set out herein.

Section 4.3 Disbursement of Proceeds from the Sale of the Series 1984 Bonds. Subject to the conditions of Section 4.4 hereof, the City will pay, or cause to be paid, all Project Development Costs, but such costs shall be paid solely out of the principal proceeds from the sale of the Series 1984 Bonds, income earned from the investment of such proceeds and any other moneys which the Company may deposit with the Trustee for payment of Project Development Costs. Upon request by and with the approval of the Company, the City will cause such requisitions to be prepared and submitted to the Trustee as shall be necessary to enable the Trustee to pay in accordance with the provisions of Section 9.2 of the Indenture, all the Project Development Costs. Anything to the contrary herein contained notwithstanding, the City shall not be obligated to pay or cause to be paid, and the Company will not request or approve any requisition to be submitted to the Trustee for the payment of, any cost which, if paid, would result, as of the making of such payment, in the use for any purpose other than the payment of Qualifying Project Development Costs of more than ten percent (10%) of the Series 1984 Principal Proceeds.

As provided in the Inducement Agreement, the City will, simultaneously with the issuance of the Series 1984 Bonds or as soon thereafter as may be practicable, cause the Trustee, upon submission of requisitions satisfying the requirements of the Indenture, to reimburse the Company, out of the proceeds of the Series 1984 Bonds deposited in the Construction Fund, for (i) all costs and expenses that the Company may have heretofore paid or incurred in connection with the Project Development Work, and (ii) all advances and loans to the City heretofore made by the Company pursuant to the Inducement Agreement in order to enable the City to pay Project Development Costs. The Company hereby acknowledges and agrees that the failure by the City to reimburse the Company, or to cause the Company to be reimbursed, in full for all such costs and expenses and all such advances (whether such failure results from insufficient moneys being available in the Construction Fund for such purpose, a decision by the Company not to request such reimbursement or any other cause) shall not result in any diminution or postponement of any rentals payable by the Company hereunder, or in the acquisition of title to any part of the

Project by the Company, or in the imposition of a lien in favor of the Company upon any part of the Project.

Section 4.4 No Warranty of Suitability by the City. Company Required to Make Arrangements for Payment of Project Development Costs. The Company recognizes that the Project Development Work has been planned and carried out under its control and in accordance with its requirements, and the City can, therefore, make no warranty, either express or implied, or offer any assurances that the Project Development Work and the Project will be suitable for the Company's purposes or needs or that the proceeds derived from the sale of the Series 1984 Bonds will be sufficient to pay in full all the Project Development Costs. In the event such proceeds are insufficient to pay all the Project Development Costs, the Company

(a) will itself complete the Project Development Work as originally planned and will pay that portion of the Project Development Costs in excess of such proceeds and investment income, or

(b) will pay into the Construction Fund such moneys as are necessary for the payment of all Project Development Costs, in which case the City will complete the Project Development Work, or

(c) will, to the extent legally and economically possible, cause the City to sell and issue Additional Bonds in accordance with the provisions of the Indenture, in whatever principal amount is necessary to provide for payment of all Project Development Costs, in which case the City will complete the Project Development Work, or

(d) will take action pursuant to any two or more of the courses of action described in the preceding clauses (a), (b) and (c),

all to the end that all obligations incurred by the City in connection with the Project Development Work shall be paid in full and that the acquisition, construction and installation of the Project shall be completed. The Company shall not, by reason of (1) its direct payment of any excess Project Development Costs, (2) its payment of any moneys into the Construction Fund for the payment of any such costs or (3) any other arrangements made by it for the payment of such costs, be entitled to any reimbursement from the City (except out of the proceeds from the sale of any Additional Bonds that may hereafter be issued by the City for the purpose of funding the payment of any such excess costs) or to any diminution or postponement of any rentals payable by the Company hereunder. Further, the fact that the Company directly pays, or directly or indirectly furnishes money to the City for the payment of, any part of the Project Development Costs shall not result in the Company's acquisition of title to any part of the Project or in the imposition of a lien in favor of the Company upon any part of the Project, it being understood and agreed (A) that

BOOK 003 PAGE 316

title to all the Project shall, as between the City and the Company, be fully and solely vested in the City and (B) that any such lien in favor of the Company that might so result is hereby expressly waived and released by the Company.

003 PAGE 917
BOOK

Section 4.5 City to Pursue Rights against Suppliers and Contractors, etc. In the event of default by any supplier, contractor or subcontractor under any contract with the City for the performance of the Project Development Work or any part thereof, the City will, but only upon written request made to it by the Company, proceed, either separately or in conjunction with others, to exhaust all remedies the City may have against such supplier, contractor or subcontractor so in default and against each surety (if any) for the performance of such contract, but all actions taken by the City to exhaust such remedies shall be at the expense of the Company. Further, in the event the City proceeds in an arbitration proceeding or by an action at law or in equity against any such supplier, contractor, subcontractor or surety pursuant to the provisions of this section or in the event any such supplier, contractor, subcontractor or surety brings any such proceeding or action against the City in connection with or relating to the Project Development Work, the City will 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, but any Counsel selected by the Company for the City shall be subject to the reasonable approval of the City. The net amount recovered by the City in any such proceeding or action shall be paid into the Construction Fund or, if such amount is recovered after the Completion Date, to the Company, unless an Event of Default shall have occurred and be continuing, in which case such amount shall be paid into the Bond Fund.

The City hereby transfers and assigns to the Company all the City's rights and interests in, to and under any maintenance or surety bonds or warranties respecting quality, durability or workmanship obtained by or vested in the City in connection with the Project Development Work, and grants to the Company the right to take action, in the name of either the City or the Company, but at the Company's sole cost and expense, for the enforcement of such bonds and warranties. The net amount recovered in any such action shall be paid into the Construction Fund or, if such amount is recovered after the Completion Date, to the Company, unless an Event of Default shall have occurred and be continuing, in which case such amount shall be paid into the Bond Fund.

Section 4.6 Certification of Completion Date. The Completion Date shall be evidenced to the Trustee and the City by a certificate signed by an Independent Architect and by an Authorized Company Representative stating that

(a) the acquisition, construction and installation of the Project and all other Project Development Work have been completed in accordance with the applicable plans, specifications and directions furnished by the Company,

(b) all the Project Development Costs have been paid in full, except for amounts retained by the Trustee at the Company's direction for any such costs not then due and payable or the liability for payment of which is being contested or disputed by the Company or by the City at the Company's direction, and

(c) the Project is operational for the purpose for which it was designed.

ARTICLE V

DURATION OF LEASE TERM AND RENTAL PROVISIONS

BOOK 003 PAGE 918
Section 5.1 **Duration of Lease Term.** The Lease Term of the Lease shall begin on the date of the delivery of this Lease Agreement and, subject to the provisions hereof, shall continue until 12:01 o'clock, A.M., on July 1, 1999. The City will deliver to the Company sole and exclusive possession of the Project on the commencement date of the Lease Term, subject to the inspection and other rights reserved in Section 8.3 hereof, and the Company will accept possession thereof at such time; provided however, that the City will be permitted such possession of the Project as shall be necessary and convenient for it to make any repairs, restorations, additions or improvements required or permitted to be made by the City pursuant to the provisions of the Lease.

Section 5.2 **Basic Rent.** For the use and occupancy of the Project during the Lease Term, the Company will pay to the Trustee at its principal office, for the account of the City, the following installments of Basic Rent:

(a) On September 15, 1984, an amount equal to the interest that shall accrue on the Series 1984 Bonds from their date until September 15, 1984;

(b) On October 15, 1984, an amount equal to one-sixth (1/6) of the interest that will be due and payable on the Series 1984 Bonds on January 1, 1985, as well as one-third (1/3) of the principal of the Series 1984 Bonds that will be due and payable on July 1, 1985; and

(c) On November 15, 1984, and on the 15th day of each calendar month thereafter to and including the month of June 15, 1999, an amount equal to one-sixth (1/6) of the interest that shall be due and payable on the Series 1984 Bonds on the then next succeeding Bond Payment Date, plus an amount equal to one-twelfth (1/12) of the principal of the Series 1984 Bonds that will be due and payable on the then next succeeding July 1.

Anything to the contrary contained in the Lease notwithstanding, there shall be credited against any installment of Basic Rent due hereunder (including components of principal and interest) any amount then held in the Bond Fund Primary Account to the extent that such amount has not theretofore been credited on a previously due installment of Basic Rent; provided however, that moneys in the Bond Fund Primary Account shall not be credited against any such installment if such moneys (i) are held therein for payment of matured but unpaid Series 1984 Bonds, Series 1984 Bonds called for redemption but not yet redeemed and matured but unpaid interest on the Series 1984 Bonds, (ii) are held therein pursuant to instructions from the Company for the future redemption or purchase of Series 1984 Bonds, (iii) are held therein subject to the applicable restrictions contained in Section 10.1 of the Indenture and cannot be applied as a credit against any such installment without violating such restrictions, or (iv) are held therein for the payment of unmatured Series 1984 Bonds not called for redemption if such Series 1984 Bonds are considered fully paid pursuant to the provisions of Section 16.1 of the Indenture by reason of the fact that such moneys are so held in the Bond Fund.

BOOK 003 PAGE 919
Anything to the contrary contained in the Lease notwithstanding, if for any reason after the payment by the Company of such installments of Basic Rent as are required to be paid by it pursuant to any provisions of the Lease, the moneys then held by and available to the Trustee for payment or redemption of the principal of and the interest and premium (if any) on the Series 1984 Bonds are not sufficient to pay, on the due or required redemption date thereof, the principal maturing or required to be redeemed with respect to the Series 1984 Bonds, the Company will promptly pay to the Trustee (for the account of the City) such additional Basic Rent as, when added to the aforesaid moneys held by and available to the Trustee, will equal an amount sufficient to pay such principal, interest and premium (if any).

Except as provided in Section 10.6 hereof, nothing herein contained shall be construed as imposing on the City or on the Trustee any duty or responsibility of giving any notice to the Company of the amount on deposit in the Bond Fund, or of the amount of any credits against Basic Rent available to the Company, as of any rent payment date, but the City will cause the Trustee to respond to any reasonable requests that the Company may make for such information. Neither the City nor the Trustee shall be obligated to give any prior notice to the Company of the due date or amount of any installment of Basic Rent, and failure to receive any such prior notice, even if customarily given by the City or the Trustee, shall not relieve the Company of its obligation to pay such installment of Basic Rent when it is due and payable.

The City will, promptly following the designation of any successor or interim successor Trustee under the Indenture, give written notice to the Company of the name and location of the principal corporate trust office of such successor or interim 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 Saturday, Sunday or legal holiday in the state in which the principal corporate office of the Trustee is located or a day on which the bank that is then acting as Trustee is legally authorized to close, such installment shall be due in immediately available funds no later than the close of business by the Trustee on the last business day next preceding

such due date. Any installment of Basic Rent due hereunder that is not paid on or before the Bond Payment Date next succeeding the original due date thereof shall bear interest from such Bond Payment Date until paid at the rate of two percent (2%) in excess of the Prime Rate or at the highest non-usurious per annum rate of interest then permitted by applicable law, whichever of the foregoing rates of interest is the lesser.

Section 5.3 Additional Rent - Trustee's Fees and Expenses. In addition to the Basic Rent and all other rental payments due from the Company hereunder, the Company will also pay, as additional rent, (i) the annual fee of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, (ii) the reasonable fees and charges of the Trustee as registrar, transfer agent and paying agent with respect to the Series 1984 Bonds, as well as the fees and charges of any other paying agent with respect to the Series 1984 Bonds who shall act as such agent in accordance with the provisions of the Indenture, (iii) the reasonable fees and expenses of the Trustee in connection with the issuance of any new Series 1984 Bond upon the partial redemption of any Series 1984 Bond (including, without limitation, the expenses of printing such new Series 1984 Bond), (iv) the reasonable fees and expenses of the Trustee in connection with any other registration, transfer or exchange of any of the Series 1984 Bonds if the Trustee is not permitted by Section 5.4 of the Indenture to charge the holder of such Series 1984 Bonds for such fees and expenses, and (v) the reasonable fees, charges and expenses of the Trustee for necessary extraordinary services rendered by it and necessary extraordinary expenses incurred by it under the Indenture. All such fees, charges and expenses shall be paid directly to the Trustee, for its own account upon presentation of its statements therefor, but the Company may, without creating a default hereunder, contest in good faith the necessity for any of the extraordinary services performed by the Trustee or the reasonableness of the fees, charges or expenses of the Trustee in connection therewith.

Section 5.4 Additional Rent - City's Expenses. In addition to the Basic Rent and all other rental payments due from the Company hereunder, the Company will also pay, as additional rent, the reasonable and necessary expenses, not otherwise provided for, which may be incurred by the City, or for which the City may in any way become liable, as a result of issuing any of the bonds, acquiring the Project and leasing the same to the Company, or being a party to the Lease or the Indenture; provided however, that so long as no Event of Default shall have occurred and be continuing, the Company's liability under this Section 5.4 shall not include expenses voluntarily incurred by the City without prior request or approval by the Company, unless such expenses are necessary to enable the City to perform its obligations under the Lease and the Indenture.

Section 5.5 Basic Rent Due in the Event of a Series 1984 Determination of Taxability. It is understood by the parties hereto, on the basis of representations, warranties and covenants contained in Sections 2.1, 2.2, 8.5 and 8.6 hereof,

(a) that the interest income on the Series 1984 Bonds will [except as provided in Section 103(b)(10) of the Code] be exempt from federal income taxation under the provisions of Section 103 of the Code,

(b) that the general rule of Section 103(b)(1) of the Code - denying to the interest income on Public Securities of the general nature of the Series 1984 Bonds exemption from federal income taxation - is not now applicable to the Series 1984 Bonds because they are an issue in the aggregate authorized face amount of \$10,000,000 or less, determined as provided in Section 103(b)(6)(A) of the Code, and

(c) that the Series 1984 Bonds will not be "arbitrage bonds" within the meaning of Section 103(c) of the Code.

BOOK 003 PAGE 921
The Company understands and agrees (i) that one of the principal inducements to the purchase of the Series 1984 Bonds by the original purchaser thereof from the City is that under existing law the interest income thereon will be exempt from federal income taxation, and (ii) that, as a result of a mistake in any one or more of the aforesaid representations, or as a result of the breach of any one or more of the aforesaid warranties or covenants, the interest income on the Series 1984 Bonds may, under the provisions of Section 103 of the Code, be or become subject to federal income taxation. Therefore, in the event of a Series 1984 Determination of Taxability, the Company will pay to the Trustee, for the account of the City and as a special installment of Basic Rent

(a) with respect to each of the Series 1984 Bonds that was outstanding on the date of a Series 1984 Determination of Taxability, an amount equal to the interest that accrued thereon from the Series 1984 Event of Taxability to the Series 1984 Determination of Taxability at the per annum rate that became applicable thereto as a result of the occurrence of a Series 1984 Event of Taxability, less a credit for all interest actually paid on the said Series 1984 Bonds; and

(b) with respect to each of the Series 1984 Bonds that was outstanding on the date of the Series 1984 Event of Taxability but that was not outstanding on the date of a Series 1984 Determination of Taxability, an amount equal to the interest accrued thereon, at the per annum rate applicable thereto as a result of the occurrence of the Series 1984 Event of Taxability (taking into account all interest theretofore paid thereon), from the date of the Series 1984 Event of Taxability until the stated maturity dated thereof or the date of its redemption, less a credit for all interest actually paid on any such Series 1984 Bonds.

It is understood and agreed that, for purposes of this Section 5.5, a Series 1984 Bond for the full retirement of which moneys or Federal Securities (or both)

were on the date of the Series 1984 Event of Taxability set aside as provided in the Indenture shall nonetheless be considered as being outstanding on the date of the Series 1984 Event of Taxability and thereafter until the date of its maturity (or, in case it had theretofore been duly called for redemption, the date fixed for its redemption). The special installment of Basic Rent required to be paid by the Company pursuant to this section shall be paid in immediately available funds within thirty (30) days following the Series 1984 Determination of Taxability; provided that if any of the moneys then held in the Bond Fund (exclusive of any moneys held therein for the payment of matured but unpaid Series 1984 Bonds, Series 1984 Bonds called for redemption but not yet redeemed and matured but unpaid interest) are not restricted to other purposes and may be applied to the payment of such special installment of Basic Rent, there shall be credited against such special installment of Basic Rent so much of such moneys as the Company may specify in writing to the City and the Trustee.

BOOK 003 PAGE 022
Section 5.6 **Additional Rent - Bond Preference Taxes.** In addition to the Basic Rent and all other rental payments due from the Company hereunder, if, as the result of any change in federal income tax laws pertaining to Tax Exempt Obligations after the date of original issuance of the Series 1984 Bonds, the Holder thereof shall be required to pay any Bond Preference Tax which is attributable, directly or indirectly, to the purchase or ownership of all or any of the Series 1984 Bonds with the result that the City shall be required to make a payment to such Holder pursuant to the provisions of Section 7.2 of the Indenture, then the Company shall pay to any such Holder thereof (for the account of the City), within five (5) days after receipt by the Company from the City of written notice that the City has received written demand for such payment from a Holder, an amount which, after deduction of all Federal, state and local income taxes payable by any such Holder with respect to such payment (assuming in each case that the highest marginal rate of federal income taxation is applicable to such Holder), shall equal the amount of any Bond Preference Tax payable by each Holder thereof with respect to the Series 1984 Bonds.

Section 5.7 **Optional 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 City, such amount of Basic Rent as shall be sufficient to enable the City to redeem and retire, in advance of maturity, any or all of the Series 1984 Bonds in accordance with their terms and the terms of the Indenture. In the event of such prepayment, the City will cause the amount of Basic Rent so prepaid to be applied to redemption and retirement of Series 1984 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 and the terms of the Indenture, such Series 1984 Bonds may be redeemed, and will (upon being notified by the Company in writing of the Company's intention in this respect and without the necessity of the moneys therefor being deposited with the Trustee) take all action necessary under the provisions of the Indenture to effect such redemption. Prepayments of Basic Rent referable to the Series 1984 Bonds shall be applied to the redemption of Series 1984 Bonds at the redemption prices and in accordance with the other terms and conditions set forth in Section 7.3 of the Indenture.

Section 5.8 **Payments of Municipal Service Fee.** The City and the Company acknowledge that, under present law, the Project, so long as it is owned by the City, is exempt from ad valorem taxation by the State of Alabama or any other political or taxing subdivision thereof. Nevertheless, the Company shall pay to the City [and not to the Trustee, the State of Alabama or any other political or taxing subdivision of said State] the sum of Five Thousand Dollars (\$5,000), not later than every December 31 (commencing on December 31, 1984) while this Lease Agreement shall be in force and effect. Notwithstanding the foregoing, there shall be credited against the aforesaid payments required to be made to the City by the Company the amount of any payments required to be made to or on behalf of the City by the Company under Section 6.4 hereof.

Section 5.9 **General Provisions Concerning Prepayment of Basic Rent.** The prepayment of Basic Rent pursuant to any provision of the Lease will result in a total or partial abatement of the Basic Rent that would thereafter have come due had it not been for such prepayment. After the prepayment of Basic Rent sufficient to pay, redeem and retire all the outstanding Series 1984 Bonds, the Company shall be entitled to the use and possession of the Project without the payment of any further Basic Rent but otherwise on all the same terms and conditions of the Lease.

Section 5.10 **Obligations of the 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 City. The Company will not suspend, discontinue, reduce or defer any such payment or fail to perform and observe any of its other agreements and covenants contained herein or (except as expressly authorized herein) terminate the Lease for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may deprive the Company of the use and enjoyment of the Project, 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 right to temporary use of all or 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 change in the cost or availability of labor, materials or energy adversely affecting the profitable operation of the Project by the Company, or any failure of the City to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with the Lease.

The provisions of the first paragraph of this section shall remain in effect only so long as any of the Indenture Indebtedness remains outstanding and unpaid. Nothing contained in this section shall be construed to prevent the Company, at its own cost and expense and in its own name or in the name of the City, 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 hereunder. Further, nothing contained in this section shall be construed to release the City from the performance of any of the agreements on its part herein contained or to preclude the Company from instituting such action

against the City as the Company may deem necessary to compel such performance, it being understood and agreed, however, that no such action on the part of the Company shall in any way affect the agreements on the part of the Company contained in the first paragraph of this section or in any way relieve the Company from performing any such agreements.

ARTICLE VI

PROVISIONS CONCERNING MAINTENANCE, ADDITIONS, PARTY WALLS, REMOVAL OF PROJECT EQUIPMENT, INSURANCE AND TAXES

Section 6.1 Maintenance, Additions, Alterations, Improvements and Modifications. The Company will, at its own expense, keep the Project in reasonably safe condition and keep all buildings, equipment and other facilities at any time forming part of the Project in good repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary and proper repairs thereto (including, without limitation, exterior and structural repairs); provided however, that the Company shall have no obligation hereunder to repair or maintain the Project after full payment of the Indenture Indebtedness. The City and the Company recognize that, as a result of reasonable wear and tear, technological obsolescence or other causes, various items of the Project Equipment may become inadequate, obsolete, worn-out or unsuitable in the use and operation of the Project by the Company, but the City shall not be obligated to replace or renew any such items of the Project Equipment.

The Company may, at its own cost and expense, make, or cause to be made, any additions, alterations, improvements or modifications to the Project that it may deem desirable, provided that such additions, alterations, improvements or modifications do not (i) change the character of the Project to such extent that it no longer constitutes a "project" under the Act or (ii) significantly impair the value or utility of the Project, and provided further that, if such additions, alterations, improvements or modifications affect the structural integrity of any building or other structure forming a part of the Project, the Company furnishes the City and the Trustee a certificate of an Independent Engineer reasonably acceptable to the Trustee, stating that such additions, alterations, improvements or modifications will not significantly impair the value or utility of the Project.

Subject to the privilege of making full use of the party wall easements created by Section 6.2 hereof, all additions, alterations, improvement or modifications to the Project made, or caused to be made, by the Company shall

- (a) be located wholly within the boundaries of the Project Site, or
- (b) be located wholly within the boundaries of other adjacent land hereafter acquired by the City that has been subjected (i) to the demise of the Lease and (ii) to the lien of the Indenture if the Indenture Indebtedness has not been fully paid, or

(

(

(c) be located wholly within the boundaries of the Project Site and such other adjacent land.

Prior to the payment in full of the Indenture Indebtedness, no additions, alterations, improvements or modifications to the Project shall be located, in whole or in part, on any land adjacent to the Project Site in accordance with the preceding clauses (b) and (c) unless the City and the Trustee shall have been furnished either (i) an opinion of Independent Counsel reasonably satisfactory to the Trustee to the effect that the City has good and marketable title to such land, subject only to Permitted Encumbrances, or (ii) a policy or policies of title insurance written by an insurer reasonably satisfactory to the Trustee and insuring the mortgage interest of the Trustee in such land, except with respect to Permitted Encumbrances, in an amount approximately equal to the cost of such land and the improvements located or to be located thereon. Any such adjacent land so subjected to the demise hereof and to the lien of the Indenture shall henceforth be considered, for purposes of the Lease and the Indenture, as part of the Project Site. All such additions, alterations, improvements and modifications to the Project so made, or caused to be made, by the Company shall become a part of the Project.

BOOK 003 PAGE 325

The Company will not permit any mechanics' or other liens to stand against the Project for labor, materials, equipment or supplies furnished in connection with the original acquisition, construction and equipment of the Project or in connection with any additions, alterations, improvements, modifications, repairs or renewals that may subsequently be made thereto. The Company may, however, at its own expense and in good faith, contest any such mechanics' 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 of 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.

At any time and from time to time, the Company may, at its own cost and expense, install on the Project Site any equipment or other personal property which does not constitute part of the Project Equipment and which in the Company's judgment is necessary or convenient for its use and operation of the Project, provided that the installation of such equipment or other personal property does not significantly impair the value or utility of the Project. Any such equipment or personal property owned (or leased pursuant to any lease contract other than the Lease) by the Company may be removed by the Company at any time and from time to time without responsibility or accountability to the City or the Trustee, but the Company shall promptly repair at its own expense any damage to the Project caused by the removal of any such equipment or other personal property.

Section 6.2 Party Wall Provisions. If the Company purchases any unimproved part of the Project Site pursuant to the provisions of Section 11.4 hereof, or if the Company owns, purchases, leases or otherwise acquires any other land

adjacent to the Project Site, or if any unimproved portion of the Project Site is released from the demise hereof, then, in any such event, all building walls now standing or hereafter erected on or contiguous to any common boundary between the Project Site that has been purchased by the Company, any other land adjacent to the Project Site that has been purchased, leased or otherwise acquired by the Company or any land theretofore constituting part of the Project Site that has been released from the demise hereof, as the case may be, shall be party walls, and each parcel of land on either side of such common boundary shall be subject to a reciprocal easement for the benefit of the other parcel, which easement on each side of such common boundary shall extend out fifteen feet from such boundary and shall be for the purposes of construction, inspection, maintenance, repair and replacement of any party wall now or hereafter erected on or contiguous to such common boundary.

To the extent permitted by applicable building codes and accepted principles of structural design, new buildings or other structures located on either side of any such common boundary may be structurally connected to any such party wall then in existence, but any party exercising such right of connection to an existing party wall shall indemnify and hold harmless the owner, mortgagee and lessee of the parcel of land on which such party wall was erected (as well as any other person having an interest in said parcel) against any and all losses and damages that may in any way result from the construction and connection of adjacent buildings and other structures to such party wall, including damage or loss occurring after the completion of construction as well as any that may occur during construction.

If a building or other structure now or hereafter located on a parcel of land on either side of any such common boundary utilizes a party wall with a building or other structure now or hereafter located on the parcel of land on the other side of such common boundary, and if all buildings or other structures utilizing such party wall are leased by the same person or are otherwise operated under common control, then such party wall may be constructed or modified to permit such openness between the buildings or other structures utilizing such party wall as may be deemed desirable by the person exercising common control over such buildings or structures, and the utilities serving either of such parcels may be tied in or connected with the utilities serving the other of such parcels, but in the event that such parcels thereafter cease to be leased by the same person or otherwise operated under common control, the openings in such party wall shall be closed by using any materials or construction methods which will produce a completed wall of a structural quality equivalent to or better than the structural quality of the existing wall in question, as it then exists, and separate utilities shall be provided for each of such parcels of land.

The covenants and agreements on the part of the City and the Company contained in this section shall run with all separate parcels of land into which the parcel of land described in the demising clauses of the Lease may be hereafter divided and shall be enforceable for the benefit of each such parcel by all present and future owners, lessees and mortgagees thereof.

Section 6.3 Removal of Project Equipment. So long as an Event of Default shall not have occurred and be continuing, the Company may remove any item of the Project Equipment upon compliance with the conditions set forth in either subparagraph (a) or (b) below:

BOOK 003 PAGE 927
(a) Such item of the Project Equipment may be removed from the Project Site and used by the Company in its other business operations or sold or otherwise disposed of in any way that the Company may see fit, free of the demise of the Lease and of the lien of the Indenture and without the Company having any responsibility or accountability to the City or the Trustee therefor, provided that the Company substitutes and installs on the Project Site (whether before, on or after the date of such removal but in no event later than two months after the date of such removal) other equipment or other personal property not then constituting part of the Project Equipment and having utility (but not necessarily the same value or function) in the operation of the Project equal to or greater than the utility of the item of Project Equipment so removed, it being understood (i) that no part of the Book Value of such substituted equipment or other personal property shall have been credited on a payment theretofore due to be made into the Bond Fund pursuant to the provisions of subparagraph (b) of this paragraph and (ii) that all such substituted equipment or other personal property shall be free of all liens and encumbrances (other than Permitted Encumbrances), shall be the sole property of the City, shall be and become a part of the Project Equipment subject to the demise of the Lease and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally constituting the Project Equipment.

(b) Such item of the Project Equipment may be removed from the Project Site and used by the Company in its other business operations or sold or otherwise disposed of in any way that the Company may see fit, free of the demise of the Lease and of the lien of the Indenture and without the Company having any responsibility or accountability to the City or the Trustee therefor or being required to substitute other property therefor, provided that (i) in the case of the sale of such item of Project Equipment to anyone other than the Company or an Affiliate of the Company, 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 or exchange of such item of Project Equipment for other property not to be substituted therefor pursuant to the provisions of subparagraph (a) of this paragraph, the Company pays into the Bond Fund an amount in cash equal to the credit received for such trade-in or exchange, and (iii) in the case of the sale of such item of Project Equipment to the Company or an Affiliate of it, or in the case of any other disposition thereof (including the Company's use thereof in any other business operations conducted by it or any of its Affiliates), the Company pays into the Bond Fund an amount equal to the Book Value thereof as of the date of such sale or other disposition.

The amount of any payment that, under the provisions of subparagraph (b) above, is due to be made into the Bond Fund by the Company may be reduced by a credit equal to the then Book Value of any equipment or other personal property then installed on the Project Site that does not then constitute part of the Project Equipment and is owned by the Company free from all liens and encumbrances (other than Permitted Encumbrances), but if any such payment into the Bond Fund is reduced by a credit against the Book Value of any such equipment or other personal property, the same shall immediately become the sole property of the City and part of the Project Equipment subject to the demise of the Lease and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally constituting the Project Equipment.

If, at the time of the removal of any Project Equipment from the Project Site, there is then installed on the Project Site other equipment or personal property owned by the Company not then constituting part of the Project, and if such other equipment or personal property has utility (though not necessarily the same value or function) in the operation of the Project equal to or greater than that of the Project Equipment to be removed and is free of all liens and encumbrances (other than Permitted Encumbrances), and if no part of the Book Value of such other equipment or personal property has been credited on a payment theretofore due to be made into the Bond Fund pursuant to subparagraph (b) of this section, the Company may, by failing to make the substitution or the cash payment alternatively prescribed by subparagraphs (a) and (b) of this section, elect to have such provisions not apply to such removal, but with the result, however, that from and after such removal such other equipment or personal property shall be and become the sole property of the City and part of the Project Equipment subject to the demise of the Lease and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally constituting the Project Equipment.

The Company will not remove any items of the Project Equipment pursuant to either subparagraph (a) or (b) of this section if the operating utility of the Project will be significantly impaired by such removal or if such removal changes the character of the Project to such an extent that it no longer constitutes a "project" under the Act. In any case where the Company is herein required to purchase, install and substitute on the Project Site any item of equipment or other personal property he may, in lieu of purchasing and installing said equipment or other personal property itself, advance to the City the funds necessary therefor, whereupon the City will purchase and install such equipment or other personal property on the Project Site.

In furtherance of the preceding provisions of this section, the Company will do the following:

- (1) If the Company elects to remove any item of the Project Equipment pursuant to subparagraph (b) of this Section 6.3, it will pay to the Trustee such amounts as are required thereby to be paid into the Bond Fund promptly after the sale or other disposition of the item requiring such payment; provided however, that no such payment need be made (i)

until such date as the aggregate of such payments due but not theretofore made is \$50,000 or more, or (ii) until the then next succeeding January 1 [which payment shall include only payments due in respect of transactions covered by said subparagraph (b) occurring prior to the previous December 1], whichever of the dates described in clauses (i) and (ii) occurs first.

(2) Within ninety (90) days after each December 31, beginning with December 31, 1985, the Company will furnish to the Trustee a certificate

(i) identifying (A) those items (if any) of the Project Equipment that were removed pursuant to subparagraph (a) of this section during the preceding twelve months ending with each such December 31 and (B) the items of equipment and other personal property (if any) substituted therefor pursuant to said subparagraph (a),

(ii) identifying those items of the Project Equipment (if any) that were removed pursuant to the provisions of subparagraph (b) of this section during the preceding twelve months ending with each such December 31 and stating the amounts respectively paid into the Bond Fund on account of the removal of such items and the basis, in reasonable detail, for determining such amount,

(iii) stating any Book Value credits allowed during the preceding twelve months ending with each such December 31 against any amounts required to be paid into the Bond Fund by subparagraph (b) of the second paragraph of this section and identifying the equipment and other personal property that, by reason of such credit, have become a part of the Project Equipment, and

(iv) containing such other information and data as shall be necessary, or as shall reasonably be requested by the Trustee, to evidence compliance with the provisions of this section.

(3) The Company will execute and deliver to the City and the Trustee such documents as the Trustee may from time to time require to confirm the title of the City (subject to the Lease) to, and the lien of the Indenture with respect to, any items of equipment and other personal property that under the provisions of this section are to become a part of the Project Equipment.

(4) the Company will pay all costs (including attorneys' fees) incurred in subjecting to the demise of the Lease and to the lien of the Indenture any items of equipment and other personal property that under

BOOK 003 PAGE 929

the provisions of this section are to become a part of the Project Equipment.

The Company will not remove, or permit the removal of, any of the Project Equipment from the Project Site except in accordance with the provisions of this section. the Company shall not, by reason of the removal of any items of the Project Equipment pursuant to this section, or any substitutions made for any items of the Project Equipment so removed, or any payments made to the Trustee on account of any items of the Project Equipment so removed, be entitled to any diminution or abatement of the rent payable by the Company hereunder.

Upon receipt of a written confirmation from the Trustee that any item of Project Equipment has been removed from the Project Site in compliance with the conditions of this section, the City will convey title to such item to the Company by bill of sale or other appropriate conveyance. Further, in accordance with agreements with the Trustee contained in the Indenture, the City will cause the Trustee to execute and deliver to the Company all instruments that may be necessary to release from the lien of the Indenture any item of Project Equipment removed from the Project Site in compliance with the conditions of this section. The Company will reimburse the City and the Trustee for their respective reasonable expenses incurred in connection with the conveyance of such title and the execution and delivery of such instruments.

The preceding provisions of this section shall apply only so long as any of the Indenture Indebtedness remains unpaid. After full payment of the Indenture Indebtedness and the cancellation, satisfaction and discharge of the lien of the Indenture in accordance with the provisions thereof, the Company may, if in its sole discretion it determines that any or all items of the Project Equipment have become unsuitable or unnecessary for its use and operation of the Project, remove such items of the Project Equipment from the Project Site and (on behalf of the City) sell or otherwise dispose of such items, without any responsibility or accountability to the City therefor and without being required to install in the Project Building or elsewhere on the Project Site equipment or other personal property in substitution therefor, and may retain any money or other consideration received by it upon any disposition of such items of Project Equipment.

Nothing contained herein shall prohibit the Company, at any time during which no Event of Default shall have occurred and be continuing, from removing from the Project Site any equipment or other personal property that is owned by it or leased by it from third parties and that does not constitute part of the Project Equipment; provided however, that if any such equipment or other personal property owned by the Company or leased by it from third parties is removed from the Project Site prior to full payment of the Indenture Indebtedness, the Company will promptly repair at its own expense any damage to the Project caused by such removal.

Section 6.4 Taxes, Other Governmental Charges and Utility Charges. The City and the Company acknowledge (i) that, under present law, the Project, so long as it is owned by the City, is exempt from ad valorem taxation by the State of Alabama or by any political or taxing subdivision thereof and that, under present law, the revenues, income and profits (if any) of the City from the Project are exempt from both federal and state taxation, (ii) that, as provided in Section 12.4 hereof, the exemption of the Project, as well as the revenues of the City from the leasing or sale thereof, from taxation by the State of Alabama and its political subdivisions constitute part of the contract between the City and the Company contained in this Lease Agreement, and (iii) that these factors, among others, induced the Company to enter into this Lease Agreement. Nevertheless, the Company will pay

(a) all taxes and governmental charges of any kind whatsoever that may lawfully be assessed or levied against or with respect to the Project, 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 City 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 or on a parity with the lien of the Indenture or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and pledge and assignment thereof made in the Indenture, and

(b) 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 any period while the Lease shall be in effect.

The City will promptly forward to the Company any bills, statements, assessments, notices or other instruments asserting or otherwise relating to any such taxes, assessments or charges.

The Company may, at its own expense and in its own name and behalf or in the name and behalf of the City, 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 lien of the Indenture as to any part of the Project shall be materially endangered, or the Project or any part thereof shall become subject to loss or forfeiture, or the revenues of the City from the Project shall become subject to a lien or charge thereon prior to or on a parity with the pledge and assignment thereof made in the Indenture, in any of which cases such taxes, assessments or charges shall (unless they are bonded or are superseded in a manner satisfactory to the Trustee) be paid prior to their becoming delinquent. The City will cooperate fully with the Company in any such contest.

the Company will also pay, as the same respectively become due, all utility and other similar charges incurred in the operation, maintenance, use and upkeep of the Project.

Section 6.5 Insurance Required. the Company will, not later than the date of delivery of this Lease Agreement, take out and thereafter continuously maintain in effect or cause to be taken out and thereafter continuously maintained in effect, insurance with respect to the Project against such risks as are customarily insured against by businesses of like size and type as the Company, paying as the same become due all premiums with respect thereto, including, but not necessarily limited to, the following:

(a) until such time as the construction of the Project Building shall have been completed, builder's risk insurance with respect to the Project Building and the Project Equipment to such extent as is necessary to provide for full payment of the costs of repairing, restoring or replacing the property damaged or destroyed or, if insurance to such extent is not available to the extent of the full insurable value (as determined by a recognized insurer) of the Project Building, such improvements and the Project Equipment;

(b) insurance against loss or damage to the Project Building, to all other improvements located on the Project Site and to the Project Equipment by fire, lightning, flood, vandalism and malicious mischief, 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 the State of Alabama, to such extent as is necessary to provide for full payment of the costs of repairing, restoring or replacing, the property damaged or destroyed or, if insurance to such extent is not available, to the extent of the full insurable value (as determined by a recognized insurer) of such improvements and the Project Equipment; and

(c) comprehensive general liability insurance against liability for personal or bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project Site or in any way related to the use, occupancy or operation of the Project, in the minimum amounts of \$1,000,000 for death of or personal or bodily injury to any one person, \$2,000,000 for all death and personal or bodily injury claims resulting from any one accident, and \$300,000 for property damage.

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, shall contain an agreement on the part of the insurer issuing such policy that the same shall not be cancelled, terminated or

permitted to lapse by such insurer unless thirty (30) days' prior written notice of such cancellation, termination or lapse in coverage shall have been given to the Trustee, and may be written with co-insurance provisions and deductible amounts comparable to those applicable to similar policies carried by persons engaged in businesses of like size and type as the business conducted at the Project by 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 City, the Trustee and the Company (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all recoveries thereunder in respect of losses greater than \$50,000 to be paid to the Trustee; provided that all recoveries (including those in respect of losses greater than \$50,000) may be adjusted by the Company, subject, in the case of the recovery in respect of a loss greater than \$50,000, to the approval of the Trustee, which approval shall not be unreasonably or arbitrarily withheld or delayed. The insurance required by clause (c) of the preceding paragraph shall cover the liability, in the several respects indicated, both of the City and of the Company. All policies evidencing the insurance required to be carried by this section 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 or cancellation 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 the Lease. 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 City and the Trustee.

Section 6.6 Performance by City or Trustee of Certain Obligations of the Company. Reimbursement of Expenses. In the event the Company fails to take out or maintain the full insurance coverage required by the Lease, fails to pay the taxes and other charges herein required to be paid at or prior to the time they are so required to be paid, or fails to keep the Project in as reasonably safe condition as its operations permit and in good repair and operating condition, the City or the Trustee, after first notifying the Company of any such failure on its part and after the subsequent failure by the Company to perform the obligation with respect to which it is delinquent, may (but shall not be obligated to) perform any such obligation on behalf of the Company. Any expense incurred by the City or the Trustee in performing any of such obligations of the Company shall become an additional obligation of the Company to the City or to the Trustee, as the case may be, and shall be repaid by the Company together with interest thereon, from the date such amount was paid by the City or the Trustee, as the case may be, until the date of its repayment by the Company, at a per annum rate equal to two percent (2%) in excess of the Prime Rate until such amount is repaid or at the maximum applicable non-usurious per annum rate of interest then permitted by the laws of the State of Alabama, whichever of the foregoing rates of interest is the lesser. Any remedy herein vested in the City or the Trustee for the collection of rental payments shall also be available to the City or the Trustee for the collection of all amounts so paid by the City or the Trustee in performing any of such obligations of the Company.

ARTICLE VII

PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

003 BOOK 034 PAGE 334
Section 7.1 **Damage and Destruction Provisions.** If, prior to full payment of the Indenture Indebtedness, the Project is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Project resulting therefrom is not greater than \$50,000, the Company will continue to pay the rent required to be paid hereunder and will promptly repair, replace or restore the property destroyed or damaged to substantially the same condition as prior to the event causing such damage or destruction with such changes, alterations or modifications (including the substitution and addition of other property) as will not significantly impair the operating utility of the Project or change the character thereof to such extent that it will not constitute a "project" within the meaning of the Act. the Company will apply so much as may be necessary of any Net Insurance Proceeds referable to such damage or destruction to the payment of the costs of such repair, replacement or restoration, and if such costs exceed the available Net Insurance Proceeds, the Company will provide any additional moneys required for the payment of such costs. In the event that the total costs of such repair, replacement and restoration are less than such Net Insurance Proceeds, the Company will pay into the Bond Fund the amount by which such proceeds exceed said total costs. Any preceding provision of this paragraph to the contrary notwithstanding, the Company may, if as a result of such damage or destruction it is entitled to do so under the provisions of Section 11.2 hereof, exercise the option to purchase the Project there granted upon the terms there provided, in which event it need not repair, replace or restore the property damaged or destroyed.

BOOK 034 PAGE 334
If, prior to full payment of the Indenture Indebtedness, the Project is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Project resulting therefrom is greater than \$50,000, the Company will promptly so notify the City and the Trustee in writing. All obligations of the Company and the City under the Lease which are still capable of performance (including, without limitation, the obligation of the Company to pay the Basic Rent and all other rent due hereunder) shall continue in full force and effect. If, in such event, the Company is not entitled to exercise the option to purchase the Project granted in Section 11.2 hereof or if, in such event, being entitled to, it does not exercise such option, the Net Insurance Proceeds recovered by the City, the Company and the Trustee on account of such damage or destruction shall be paid to and held by the Trustee. Pursuant to directions to be given the City and the Trustee by the Company in a written statement to be forwarded to the City and the Trustee not more than sixty (60) days following the event causing such damage or destruction, such proceeds shall be applied by the Trustee in one or both of the following ways (the amount, if any, to be applied in each such way to be specified in such written statement):

- (a) payment of the costs of repairing, replacing or restoring the property damaged or destroyed to the extent necessary for it to have

substantially the same operating utility that it had (or would have had if the Company had theretofore complied with all its obligations hereunder) 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 change the character thereof to such extent that it will not constitute a "project" within the meaning of the Act;

(b) the redemption of Bonds prior to maturity in accordance with the terms of the Indenture and on the earliest practicable date permitted thereby or the purchase of Bonds for retirement, in which case such portion of the Net Insurance Proceeds to be used therefor shall be deposited in the Redemption Fund; provided however, that no part of any such portion of the Net Insurance Proceeds shall be so deposited in the Redemption Fund and so applied for the redemption or purchase of Bonds unless

(i) provision has theretofore been made, or is made simultaneously with such redemption or purchase, for the retirement, in accordance with the terms of the Indenture, of all the Bonds (including premium, if any, and the interest that will mature thereon until and on the date or dates they are retired), either by redemption prior to their maturity or by payment thereof at their maturity, or

(ii) in the absence of such provision for the retirement of all the Bonds, the following conditions shall be satisfied: (1) the condition of the Project, as repaired, restored or modified after the event causing such damage or destruction, shall be such that the Project will constitute a "project" within the meaning of the Act; and (2) the Company shall furnish to the City and the Trustee one of the following:

(A) a certificate of an Independent Engineer acceptable to the Trustee stating either (x) that the property damaged or destroyed is not essential to the Company's use and occupancy of the Project and is not necessary to maintain substantially the same operating utility that it had (or would have had if the Company had theretofore complied with all its obligations hereunder) prior to the event causing such damage or destruction, or (y) that the Project has been repaired, restored or modified to the extent necessary for it to have substantially the same operating utility that it had (or would have had if the Company had theretofore complied with all its obligations hereunder) prior to the event causing such damage or destruction; or

(B) an appraisal made by an Independent Appraiser acceptable to the Trustee stating that the Project, as repaired, restored or modified to the extent deemed necessary by the Company, has a market value not less than one hundred twenty-five percent (125%) of the principal amount of all Bonds that will be outstanding after the retirement of those of the Bonds that

BOOK 003 PAGE 935

)

are to be redeemed or purchased with the portion of the Net Insurance Proceeds proposed to be deposited in the Redemption Fund.

In the event that the Company does not comply with all of the conditions of either clause (i) or clause (ii) of this subparagraph (b), then the Net Insurance Proceeds shall be applied in accordance with the provisions of subparagraph (a) of this paragraph.

BOOK 003 PAGE 936

In the event that the Net Insurance Proceeds held by the Trustee (or any specified portion thereof) are to be applied for payment of the costs of repairing, replacing or restoring the property damaged or destroyed, the Construction Fund shall be reestablished and such proceeds (or specified portion thereof) shall be deposited therein, and the City will cause disbursements to be made from such fund to pay such costs in the same manner (with the necessary changes in detail) as provided in the Indenture for the disbursement of proceeds from the sale of the Series 1984 Bonds originally deposited in the Construction Fund. Any balance of the Net Insurance Proceeds (or any balance of the portion thereof specified for the payment of such costs) remaining after the payment of all such costs shall be paid into the Bond Fund or, if the Indenture Indebtedness has been paid in full and no Event of Default shall have occurred and be continuing, to the Company. In the event that the Net Insurance Proceeds (or the portion thereof specified for the payment of such costs) are not sufficient to pay in full the costs of such repair, replacement or restoration, the Company (i) will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the Net Insurance Proceeds (or specified portion thereof) available for the payment of such costs, or (ii) will pay to the Trustee, for the account of the City, the moneys necessary to complete such work, in which case the City will cause such work to be so completed, and the City and the Trustee will, upon completion of such work and payment in full of the costs thereof, return to the Company any portion of such payment that is not needed therefor. The Company shall not, by reason of the payment of such excess costs (whether by direct payment thereof or payment to the Trustee therefor), be entitled to any reimbursement from the City or to any abatement or diminution of the rent provided for herein.

In no event shall any of the Net Insurance Proceeds held by the Trustee be applied for payment of any costs of repair, replacement or restoration unless and until (i) the City and the Trustee have 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 the Project granted in Section 11.2 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 or not the loss resulting therefrom is greater than \$50,000), the Company is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 11.2, then neither the Company nor the City shall have any obligation to repair, replace or restore the property damaged or destroyed, in which case so much (which may be all) of such Net Insurance Proceeds then held by the Trustee as shall be

necessary to provide for full retirement of the Series 1984 Bonds (as specified in Section 11.2 hereof) shall be paid or credited by the Trustee into the Bond Fund and so much of the excess thereafter remaining (if any) as shall be necessary for the payment of any other Indenture Indebtedness shall be applied by the Trustee to the payment of such other Indenture Indebtedness. Any portion of such Net Insurance Proceeds remaining after payment in full of the entire Indenture Indebtedness shall be paid to the Company after or simultaneously with the exercise by the Company of such option.

If the Project is destroyed, in whole or in part, or is damaged after the Indenture Indebtedness has been paid in full, neither the Company nor the City shall be obligated to repair, replace or restore the property damaged or destroyed, and any Net Insurance Proceeds referable to such damage or destruction shall be paid to the Company; provided however, that the City will, to the extent and in the manner provided in Section 7.6 hereof, cooperate fully with the Company in carrying out such repair, replacement and restoration as the Company may, in its sole discretion, decide to undertake.

All property acquired in connection with the repair, replacement or restoration of any part of the Project pursuant to the provisions of this Section 7.1 shall be and become part of the Project subject to the demise hereof and the lien of the Indenture and shall be held by the Company on the same terms and conditions as the property originally constituting the Project.

Section 7.2 Condemnation Provisions. If title to the Project or any part thereof is taken under the exercise of the power of eminent domain, the entire condemnation award in respect of such taking [including, without limitation, (i) all amounts received as the result of any settlement of compensation claims negotiated with the condemning authority, and (ii) any amount 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 not including any condemnation award belonging to the Company pursuant to the provisions of Section 7.4 hereof] shall be paid to the Trustee [or, if the Indenture Indebtedness has been fully paid, to the Company], whereupon such award shall be applied and certain related actions shall be taken in accordance with the succeeding provisions of this Section 7.2:

(a) Taking of All or Substantially All the Project Prior to Full Payment of the Indenture Indebtedness. If all or substantially all the Project is so taken by such exercise of the power of eminent domain, prior to full payment of the Indenture Indebtedness, the Lease shall terminate [except as to the provisions of this subsection (a) and Section 5.5 hereof] as of the forty-fifth (45th) day after the receipt by the Trustee of the final installment of the entire condemnation award in respect of such taking, unless the Company has theretofore exercised the option to purchase the Project granted in Section 11.2 hereof. The City will cause the Company to be notified in writing, as promptly as practicable

following such receipt by the Trustee of such final installment of the entire condemnation award, of the date on which such final installment was so received by the Trustee and the amount of the Net Condemnation Award in respect of such taking then held by the Trustee. On or before the close of business on the business day next preceding the date on which the Lease shall terminate pursuant to this subsection (a), the Company will pay to the Trustee, for the account of the City, such additional Basic Rent as, when added to the total of the amounts then held in the Bond Fund (exclusive of any amount held therein for payment of matured but unpaid Bonds, Bonds called for redemption but not yet redeemed and matured but unpaid interest), the Construction Fund and the Redemption Fund plus the full amount of the Net Condemnation Award then held by the Trustee, will be sufficient to pay, redeem and retire all the then outstanding Bonds on the aforesaid date on which the Lease shall terminate, including, without limitation, principal, premium (if any), interest to maturity or earliest practicable redemption date, as the case may be, expenses of redemption and all other Indenture Indebtedness. Any portion of the Net Condemnation Award not needed for payment of the Indenture Indebtedness shall be paid to the Company simultaneously with or promptly after the termination of the Lease.

(b) Taking of Less Than Substantially All the Project Prior to Full Payment of the Indenture Indebtedness. If less than substantially all the Project is so taken by such exercise of the power of eminent domain, prior to full payment of the Indenture Indebtedness, all obligations of the Company under the Lease which are still capable of performance (including, without limitation, the obligation of the Company to pay the Basic Rent and all other rent due hereunder) shall continue in full force and effect, but with the consequences specified in the succeeding provisions of this subsection (b):

(1) If no part of any structure located on the Project Site, or any part of the Project Equipment is either taken or damaged and if in the Company's opinion, expressed in a written statement delivered to the City and the Trustee, such taking does not significantly impair the operating utility of the Project, the Net Condemnation Award in respect of the part of the Project so taken shall be paid into the Bond Fund.

(2) If any part of any structure located on the Project Site, or any part of the Project Equipment is taken or damaged, or if in the Company's opinion, expressed in a written statement delivered to the City and the Trustee, such taking significantly impairs the operating utility of the Project, and if, in the event of such taking, the Company is not entitled to exercise the option to purchase the Project granted in Section 11.2 hereof or if, in such event, being entitled to, it does not exercise such option, the Net Condemnation Award in respect of such taking shall, pursuant to directions to be

given the City and the Trustee by the Company in a written statement to be forwarded to the City and the Trustee not more than sixty (60) days following such taking, be applied by the Trustee in one or more of the following ways (the amount, if any, to be applied in each such way to be specified in such written statement):

(I) payment of the costs of repairing, restoring, modifying, relocating or rearranging any portions of the Project not taken but damaged or adversely affected by such taking, all to the extent necessary for the Project to have substantially the same operating utility that it had (or would have had if the Company had theretofore complied with all its obligations hereunder) prior to such taking and to the extent necessary for the Project to constitute a "project" under the Act and all under such circumstances and upon such terms as shall be specified by the Company;

(II) payment of the costs of purchasing such additional land and of acquiring (by construction or otherwise) such additional facilities and equipment as the Company may direct, which land, facilities and equipment (i) shall be of such nature as to constitute a "project" under the Act, (ii) shall be acquired by the City and made subject to the demise of the Lease and to the lien of the Indenture free of liens and encumbrances other than Permitted Encumbrances and (iii) shall be deemed a part of the Project and made available for use by the Company, without the payment of additional rent hereunder, to the same extent as if such land, facilities and equipment had originally constituted part of the Project and has been specifically demised hereby;

(III) the redemption of Bonds prior to maturity in accordance with the terms of the Indenture and on the earliest practicable date permitted thereby or the purchase of Bonds for retirement, in which case such portion of the Net Condemnation Award to be used therefor shall be deposited in the Redemption Fund; provided however, that no part of any such portion of the Net Condemnation Award shall be so deposited in the Redemption Fund and so applied for the redemption or purchase of Bonds unless

(i) provision has theretofore been made, or is to be made simultaneously with such redemption or purchase, for the retirement in accordance with the terms of the Indenture of all the Bonds, either by redemption prior to their maturity or by payment thereof at their maturity, or

(ii) in the absence of such provision for the retirement of all the Bonds, the following conditions shall be

BOOK 003 PAGE 339

)

satisfied: (1) the condition of the Project, as repaired, replaced, modified or rearranged after such taking, shall be such that the Project will constitute a "project" under the Act; and (2) the Company shall furnish to the City and the Trustee one of the following:

(A) a certificate of an Independent Engineer acceptable to the Trustee stating either (x) that the property so taken is not essential to the Company's use and occupancy of the Project and is not necessary to maintain substantially the operating utility that the Project had (or would have had if the Company had theretofore complied with all its obligations hereunder) prior to such taking, or (y) that the Project has been repaired, replaced, restored, modified or rearranged to the extent necessary for it to have substantially the same operating utility that it had (or would have had if the Company had theretofore complied with all its obligations hereunder) prior to such taking, or

(B) an appraisal made by an Independent Appraiser acceptable to the Trustee stating that the Project, as repaired, replaced, restored, modified or rearranged to the extent deemed necessary by the Company, has a market value not less than one hundred twenty-five percent (125%) of the principal amount of all Bonds that will be outstanding after the retirement of those of the Bonds that are to be redeemed or purchased with the portion of the Net Condemnation Award proposed to be deposited in the Redemption Fund.

In the event that the Company does not comply with the conditions of either clause (i) or clause (ii) of this subparagraph (III), then the Net Condemnation Award shall be applied in accordance with the provisions of one or both of subparagraphs (I) and (II) of this subsection (b)(2).

In the event that the Net Condemnation Award held by the Trustee (or any specified portion thereof) is to be applied, pursuant to the provisions of subparagraphs (I) or (II) of this subsection (b)(2), for payment of the costs of repairing, restoring, modifying, relocating or rearranging any part of the Project or for payment of the costs of acquiring additional property to become part of the Project, as the case may be, the Construction Fund shall be reestablished and such award (or specified portion thereof) shall be deposited therein, and the City will cause disbursements to be made from such fund to pay such costs in the same manner (with the necessary changes in detail) as provided in the Indenture for the disbursement of proceeds from the sale of the Series 1984 Bonds originally deposited in the

Construction Fund. Any balance of the Net Condemnation Award (or any balance of the portion thereof specified for the payment of such costs) remaining after payment of all such costs shall be paid into the Bond Fund or, if the Indenture Indebtedness has been paid in full and no Event of Default shall have occurred and be continuing, to the Company. In the event that the Net Condemnation Award (or the portion thereof specified for the payment of such costs) is not sufficient to pay in full the costs of such repair, restoration, modification, relocation or rearrangement, or the costs of acquiring such additional property, as the case may be, the Company (i) will nonetheless complete such repair, restoration, modification, relocation or rearrangement or the acquisition of such additional property, as the case may be, and will pay that portion of the costs thereof in excess of the amount of the Net Condemnation Award (or specified portion thereof) available for the payment of such costs, or (ii) will pay to the Trustee for the account of the City the moneys necessary to complete such repair, restoration, modification, relocation or rearrangement or the acquisition of such additional property, as the case may be, in which case the City will cause such undertakings to be so completed, and the Trustee will, upon completion of such undertakings and payment in full of the costs thereof, return to the Company any portion of such payment by the Company that is not needed therefor. the Company shall not, by reason of the payment of such excess costs (whether by direct payment thereof or payments to the Trustee therefor), be entitled to any reimbursement from the City or to any abatement or diminution of the rent provided for herein.

(c) Taking of All or Substantially All the Project After Full Payment of the Indenture Indebtedness. If, after the full payment of the Indenture Indebtedness, title to all or substantially all the Project is taken by such exercise of the power of eminent domain, the Net Condemnation Award referable to such taking shall be paid and belong to the Company. The Lease shall terminate as of the date on which the final condemnation award is received by the Company, and the City and the Company shall have no further rights or obligations hereunder except those which may theretofore have vested.

(d) Taking of Less Than Substantially All the Project After Full Payment of Indenture Indebtedness. If, after full payment of the Indenture Indebtedness, title to less than substantially all the Project is taken by such exercise of the power of eminent domain, the Lease shall continue in full force and effect, but neither the Company nor the City shall be obligated to correct or ameliorate in any way the condition of the Project caused by such taking, and the Net Condemnation Award referable to such taking shall be paid to the Company; provided however, that the City will, to the extent and in the manner provided in Section 7.6 hereof, cooperate fully with the Company in carrying out such work of repairing, restoring, modifying, relocating or rearranging property to form part of the Project as the Company may, in its sole discretion, deem necessary or desirable.

In no event shall any of the Net Condemnation Award held by the Trustee be applied for payment of any costs described in subparagraphs (I) and (II) of subsection (b)(2) of this Section 7.2 unless and until (i) the City and the Trustee have been notified in writing by the Company that the Company irrevocably relinquishes any right it may have, on account of such taking, to exercise the option to purchase the Project granted in Section 11.2 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 taking, the Company is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 11.2, then neither the Company nor the City shall be obligated to correct or ameliorate in any way the condition of the Project caused by such taking, in which event so much (which may be all) of such Net Condemnation Award then held by the Trustee as shall be necessary to provide for full retirement of the Series 1984 Bonds (as specified in Section 11.2 hereof) shall be paid or credited by the Trustee into the Bond Fund and so much of the excess thereafter remaining (if any) as shall be necessary for the payment of any other Indenture Indebtedness shall be applied by the Trustee to the payment of such other Indenture Indebtedness. Any portion of such Net Condemnation Award remaining after payment in full of the entire Indenture Indebtedness shall be paid to the Company after or simultaneously with the exercise by the Company of such option.

BOOK 003 PAGE 942
Section 7.3 **Condemnation of Right to Use of the Project for Limited Period.** If the use, for a limited period, of all or part of the Project is taken under the exercise of the power of eminent domain, the Lease (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 the Project granted in Section 11.2 hereof and duly does so in accordance with the provisions of said Section 11.2, continue in full force and effect, but with the consequences specified in the succeeding provisions of this section. If the period of such taking expires on or before the expiration of the Lease 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 to substantially the same condition as prior to such taking, with such changes, alterations and modifications as will not significantly impair the operating utility of the Project, or change the character thereof to such extent that it will not constitute a "project" within the meaning of the Act. If such taking occurs during the Lease Term but the period of such taking expires after the expiration of the Lease Term, the Company shall be entitled to receive that portion of the award allocable to the period from the date of such taking to the end of the Lease Term, and the City shall be entitled to the remainder thereof; provided that if prior to the end of the Lease Term, the Company shall, pursuant to any agreement with the City, (rather than the City) shall be entitled to receive the remainder of such award.

Section 7.4 **Condemnation of Property Owned by the Company.** The Company shall be entitled to any condemnation award or portion thereof made for damages to or the taking of its own property or property rights not included in the Project, but any condemnation award resulting from damages to or the taking of all or any part of the leasehold estate or other interest of the Company in the Project created by the Lease shall be applied in accordance with the provisions of Section 7.2

or 7.3 hereof, whichever may be applicable. In the event of any taking which involves both the Project and property of the Company, the Company shall be responsible for all attorneys' fees and other expenses properly allocable to the taking of its own property.

Section 7.5 Cooperation of the City in the Conduct of Condemnation Proceedings. The City 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 City 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 7.6 Cooperation of the City with Respect to Restoration of the Project in the Event of Casualty or Condemnation. If, as a result of the taking of title to less than substantially all the Project or the taking of the temporary use of all or any part of the Project through the exercise of the power of eminent domain, or if, as a result of any event causing destruction or damage to the Project or any part thereof, the Company determines, in accordance with any applicable provision of this Article VII, to acquire (by purchase, construction or otherwise) any additional property to replace any part of the Project so taken, or to have the Project repaired, replaced, restored, modified, relocated or rearranged in order to correct or ameliorate any condition caused by such taking, damage or destruction, as the case may be, then the City will execute and deliver, or cause to be executed and delivered, all contracts, orders, requisitions, instructions and other written instruments and do, or cause to be done, all other acts that may be necessary or proper in carrying out all such undertakings with respect to the Project. In no event, however, will the City hereafter enter into any contract with respect to any part of such undertakings unless there is endorsed thereon a legend indicating that the Company has approved both the form and substance of such contract and such legend is signed by or on behalf of the Company. Any obligation for the payment of money incurred or assumed by the City in connection with such undertakings shall be payable solely out of any Net Condemnation Award or Net Insurance Proceeds held by the Trustee or from any other moneys made available to the City by the Company under the provisions of the Lease.

Section 7.7 Provisions Relating to the Incurring of Certain Expenses after Indenture Indebtedness Paid. The City will not, at any time after full payment of the Indenture Indebtedness, incur any expenses in connection with the collection of any insurance proceeds or any condemnation award with respect to the Project, or any part thereof, without the prior written consent of the Company.

ARTICLE VIII

PARTICULAR COVENANTS OF THE COMPANY

Section 8.1 **General Covenants.** The Company will not do or permit anything to be done in or about or with respect to the Project that will affect, impair or contravene any policies of insurance that may be carried on the Project against loss or damage by fire, casualty or otherwise. The Company will, in its use of the Project and the public ways abutting the Project Site, comply in all material respects with all valid and applicable laws, ordinances, rules, regulations and orders of all governmental authorities or agencies; provided however, that the Company may in good faith contest the validity of any such laws, ordinances, rules, regulations and orders or the application thereof to the Project and in the event of any such contest defer compliance therewith during the period of such contest and the pendency of any appeal in connection therewith, unless by such action the rights or interests of the City or the Trustee with respect to the Project or any part thereof shall be materially endangered or impaired.

BOOK 003 PAGE 344
Section 8.2 **Release and Indemnification Covenants.** The Company releases the City (and each officer and employee thereof) and the Trustee from, and will indemnify and hold the City (and each officer and employee thereof) and the Trustee harmless against, any and all claims and liabilities of any character or nature whatsoever, regardless of by whom asserted or imposed, and losses of every conceivable kind, character and nature whatsoever claimed by or on behalf of any person, firm, corporation or governmental authority, arising out of, resulting from, or in any way connected with the Project, including, without limiting the generality of the foregoing, (i) any actions relating to the acquisition, construction, equipping and installation of the Project or any part thereof and (ii) the leasing of the Project to the Company and the condition, use, possession or management of the Project during the Lease Term; provided however, that the Company shall not be obligated to indemnify any director, officer or employee of the City against any claim, liability or loss in any way connected with the Project unless such claim, liability or loss arises out of or results from official action taken in the name and behalf of the City by such officer or employee.

The Company acknowledges that it has furnished to prospective purchasers of the Series 1984 Bonds, or has caused to be so furnished, the Financial Statements, as well as certain other information concerning the business and financial condition of the Company, and the Company further acknowledges that it has sought and received the assistance and cooperation of the City in connection with the offering and sale of the Series 1984 Bonds. The Company will indemnify, hold harmless and defend the City (and each officer and employee thereof) against

(a) any claim or liability whatsoever arising out of or based upon any untrue or misleading statement or alleged untrue or misleading statement of any material fact contained in any of the aforesaid information furnished, or caused to be furnished, by the Company to any

prospective purchaser of the Series 1984 Bonds, or the omission or alleged omission to state in any such information any material fact necessary to make the statements contained therein not misleading in the light of the circumstances under which such statements were made, and

(b) any claim or liability arising out of any action taken by the City at the request of the Company (or any other person authorized to act on behalf of the Company (or any other person authorized to act on behalf of the Company) in connection with the offering and sale of the Series 1984 Bonds.

The Company will pay or reimburse all legal or other expenses reasonably incurred by the City (and each, officer and employee thereof), or the Trustee, as the case may be, in connection with the investigation or defense of any action or proceeding, whether or not resulting in liability, with respect to any claim, liability or loss in respect of which indemnity may be sought against the Company under the provisions of this section.

BOOK 003 PAGE 945
In the event that any action or proceeding is brought against any indemnifiable party (whether the City, or any of the City's, officers or employees, or the Trustee), in respect of which indemnity may be sought against the Company under the provisions of this section, such indemnifiable party shall, as a condition of the Company's liability under the provisions of this section, be obligated to notify promptly the Company in writing of the commencement of such action or proceeding and shall thereafter forward to the Company a copy of every summons, complaint, pleading, motion or other process received with respect to such action or proceeding. the Company may (and if so requested by such indemnifiable party, shall) at any time assume the defense of such indemnifiable party in connection with any such action or proceeding, and in such case the Company shall pay all expenses of such defense and shall have full and complete control of the conduct on the part of such party of any such action or proceeding, including, without limitation, the right to settle or compromise any claim giving rise to such action or proceeding upon such terms and conditions as the Company, in its sole discretion, shall determine and the right to select Counsel for such party; provided however, that any Counsel selected by the Company for the City shall be subject to the approval of the City. Any other provision of this section to the contrary notwithstanding, the Company shall not be obligated to indemnify any such indemnifiable party for any liability resulting from the settlement of any action or proceeding, or for any legal or other expenses incurred in connection with the investigation or defense of any action or proceeding, if such settlement was made without the Company's consent, irrespective of whether the Company had, prior to such settlement, exercised its right to assume the defense of such indemnifiable party in connection with such action or proceeding.

Nothing contained in this section shall be construed to indemnify the City, or any of the City's officers or employees, or the Trustee, against, or to release any of such parties from liability for, any claim, liability or loss that may result from willful misconduct or gross negligence on the part of such parties.

Anything to the contrary herein contained notwithstanding, the covenants of the Company contained in this section shall, with respect to any claim, liability or loss for which the Company is obligated to provide indemnity, remain in full force and effect after the termination of the Lease until (i) any cause of action brought in respect of such claim, liability or loss shall be barred by the applicable statute of limitation or (ii) the payment in full or the satisfaction of such claim, liability or loss, including all reasonable expenses incurred by the indemnifiable party or parties in defending against such claim, liability or loss; provided however, that in the event any action or proceeding arguably barred by the applicable statute of limitation is brought against any indemnifiable party hereunder, the Company shall be obligated to defend such indemnifiable party with respect to such action or proceeding, all to the end that the bar of the statute of limitation may be asserted by the Company against the party bringing such action or proceeding but may not be asserted by the Company against the indemnifiable party in order to avoid performing any of its obligations under this section.

Section 8.3 Inspection of Project. The Company will permit the City, the Trustee and their duly authorized agents at all reasonable times to examine and inspect the Project or any part thereof. So long as any of the Indenture Indebtedness shall be 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 reasonably good repair and operating condition, all as and to the extent provided in Sections 6.1 and 6.6 hereof. So long as no Event of Default shall have occurred and be continuing, the rights of access hereby reserved to the City and the Trustee may be exercised only after the authorized agents of either thereof shall have executed such release of liability and secrecy agreements as the Company then regularly requires to be executed by independent contractors or other persons as a condition permitting such contractors or other persons access to the Project.

Section 8.4 Agreement to Maintain Corporate Existence. So long as any of the Indenture Indebtedness shall be outstanding and unpaid, the Company will maintain its corporate existence, will not dissolve or sell, lease, transfer 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 it may, with the consent of the Trustee, which consent shall not be arbitrarily or unreasonably withheld, and therefore without violating the agreements contained in this section, consolidate with or merge into another United States Corporation, permit one or more other United States Corporations to consolidate with or merge into it, or sell, lease, transfer or otherwise dispose of all or substantially all its assets to another United States Corporation, but if and only if the following conditions are met:

- (a) the corporation surviving or resulting from such consolidation or merger (if it be one other than the Company) or the corporation to which such sale, lease, transfer or other disposition shall be made, as the case may be (the "Successor Corporation"), (i) expressly assumes in

writing all the obligations of the Company contained in the Lease, with the same effect as if the Successor Corporation had been named herein as a party hereto in lieu of the original Company, (ii) furnishes to the City and the Trustee, promptly following such consolidation or merger or such sale, lease, transfer or other disposition, appropriately certified or fully executed copies of the writing by which the Successor Corporation so assumes such obligations and (iii) furnishes to the City and the Trustee the opinions of one or more Counsel (who, although selected by the Company, shall be satisfactory to the Trustee) which, taken together, state in substance that the Successor Corporation is a duly organized and existing United States Corporation and has by such writing duly and validly assumed, and is bound by, all the obligations of the Company contained in the Lease;

(b) the Successor Corporation (irrespective of whether or not it is the original Company) will not have (either immediately following such consolidation or merger or such sale, lease, transfer or other disposition or as the result of the subsequent implementation of any transaction of which such consolidation or merger or such sale, lease, transfer or other disposition forms a part) a Tangible Net Worth (as hereinafter defined) less than the Tangible Net Worth which the Company had at the end of the fiscal year (as shown on the audited balance sheet of the Company for such fiscal year) next preceding the implementation of any transaction (including, without limitation, such consolidation or merger or such sale, lease, transfer or other disposition itself) or series of related transactions of which such consolidation or merger or such sale, lease, transfer or other disposition forms a part;

(c) at the time of such consolidation or merger or such sale, lease, transfer or other disposition and immediately upon giving effect thereto, the Successor Corporation shall be in compliance with all financial covenants contained in any agreement for the borrowing of money which have been assumed by the Company;

(d) immediately after and giving effect to such merger, consolidation or such sale, lease, transfer or other disposition, no event which constitutes an Event of Default, or which would become an Event of Default with the passage of time or the giving of notice or both, shall have occurred and be continuing; and

(e) there shall have been delivered to the City and to the Trustee a certificate signed by the President or any Vice President of the Company or the Successor Corporation, as the case may be, and stating that such merger, consolidation, sale, lease, transfer or other disposition complies with the provisions of this section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any merger, consolidation or any sale, lease, transfer or other disposition complying with the provisions of this section, the Successor Corporation shall succeed to, and be substituted for, the Company for all purposes under the Lease, with the same effect as if the Successor Corporation had been named as the Company herein. If, after a sale or transfer by the Company of all or substantially all its assets to another United States Corporation under the circumstances described in the preceding provisions of this section, the Company does not thereafter dissolve, it shall not have any further rights or obligations hereunder.

The term "United States Corporation" as used in this Lease Agreement means a corporation organized under the laws of the United States of America, one of the states thereof or the District of Columbia. The term "Tangible Net Worth" as used in this Lease Agreement means, as of the date of any determination thereof, the amount by which the sum of the amounts then appearing on the consolidated balance sheet of the Company and its consolidated subsidiaries (if any) as (i) the par value or stated value of all outstanding capital stock and (ii) capital, paid-in and earned surplus plus earnings retained in the business shall exceed the sum, without duplication, of (A) any deficit in any surplus account, plus (B) the aggregate amount of all assets then appearing on such balance sheet which under generally accepted accounting principles would be classified as intangibles, including, without limitation, good will, trademarks, trade names, patents and similar assets, all as determined in accordance with generally accepted accounting principles.

Section 8.5 Covenants with Respect to Exemption of Interest on Series 1984 Bonds from Federal Income Taxation. The Series 1984 Bonds are being issued by the City in compliance with the conditions necessary for the interest income on the Series 1984 Bonds to be exempt from federal income taxation pursuant to the provisions of Section 103(b)(6) of the Code relating to "industrial development bonds" substantially all the proceeds of which are to be used for the acquisition, construction, reconstruction or improvement of land or property subject to the allowance for depreciation. The City and the Company covenant with each other and with the Trustee for the benefit of the holders of any Series 1984 Bonds, present and future, that neither of them will cause or permit the proceeds of the Series 1984 Bonds to be used in a manner which would cause the interest on the Series 1984 Bonds to lose the exemption from federal income taxation conferred by Section 103(b)(6) of the Code and the applicable regulations thereunder.

Section 8.6 No-Arbitrage Covenants. Neither the City nor the Company will take any action, or omit to take any action, with respect to the investment of any of the proceeds from the sale of the Series 1984 Bonds, or any revenues from the Project accumulated by the City, if, as a result of such action by the City or the Company, or the omission of the City or the Company to take such action, as the case may be, such proceeds or revenues would be invested in a manner causing the Series 1984 Bonds to be "arbitrage bonds" within the meaning of Section 103(c) of the Code and the applicable regulations thereunder.

Section 8.7 Financial Statements, etc. The Company will maintain proper books of record and account in which it will make full and correct entries of all its business activities in accordance with sound accounting practice. For so long as any of the Indenture Indebtedness shall be outstanding, the Company will furnish to the Trustee and upon request, to the City, the following:

(a) as soon as available and in any event within sixty (60) days after the end of each quarterly accounting period in each fiscal year of the Company, and only if not contained in the reports furnished pursuant to clause (c) of this section, copies of an unaudited consolidated balance sheet of the Company and its consolidated subsidiaries as of the end of such accounting period and copies of the related consolidated statement of income and retained earnings and consolidated statement of changes in financial position of the Company and its consolidated subsidiaries for the portion of the fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating, beginning with the fiscal year of the Company that began on January 1, 1984, in comparative form the respective consolidated figures for the corresponding date and period in the previous fiscal year; and all such financial statements furnished pursuant to this clause (a) shall be certified by the President of the Company to present fairly the information contained therein, subject to year-end audit adjustments;

(b) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, copies of the balance sheet of the Company and its consolidated subsidiaries as of the end of such fiscal year and copies of the related statement of income and statement of changes in financial position of the Company for such fiscal year, all in reasonable detail and stating in comparative form the respective figures for the previous fiscal year of the Company and all accompanied by a report and an opinion of a firm of independent certified public accountants selected by the Company and reasonably acceptable to the Trustee, which report shall contain a statement to the effect that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in accordance with generally accepted accounting principles with which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances or to such other effect as shall, under the rules and practices then current in the accounting profession, be the equivalent of the foregoing and which opinion shall state that such balance sheet, income statement and changes in financial position fairly present the financial position of the Company and its consolidated subsidiaries as of the end of such fiscal year;

BOOK 003 PAGE 949

(c) such information relating to the performance or observance of the terms of the Lease, the Series 1984 Bond Guaranty and the financial condition of the Company as the Trustee may from time to time reasonably request;

(d) immediately upon becoming aware of the existence of any default by the Company in the performance or observance of any of the covenants set forth in the Lease, a written notice specifying the nature and existence thereof and what action the Company is taking and proposes to take with respect thereto; and

(e) immediately upon becoming aware of any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency which, if adversely determined, might impair the ability of the Company to perform its obligations under the Lease or to carry on its business substantially as now conducted, or materially and adversely affect the business, operations, properties, assets or condition (financial or otherwise) of the Company a written notice describing such action, suit or proceeding and what action the Company is taking or proposes to take with respect thereto.

BOOK 003 PAGE 350
Section 8.8 **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 City and the Trustee, or either, in and to the Project and the revenues therefrom pledged and assigned in the Indenture, 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 reasonable judgment of the City or the Trustee are necessary for the perfection, preservation, protection and securing of such interests.

ARTICLE IX

CERTAIN PROVISIONS RELATING TO ASSIGNMENT, SUBLEASING AND MORTGAGING AND TO THE SERIES 1984 BONDS

Section 9.1 **Provisions Relating to Assignment and Subleasing by the Company.** The Company may assign the Lease and the leasehold interest created thereby and may sublease the Project or any part thereof but only with the prior consent of the Trustee, which consent shall not be unreasonably or arbitrarily withheld; provided however that the Company shall not assign the Lease or the leasehold interest created thereby or so sublease the Project or any part thereof if such assignment or subleasing would change the character of the Project to such an extent that any part thereof would not constitute part of a "project" within the

meaning of the Act; provided further, that no assignee of the Lease or any sublessee of the Project or any part thereof or anyone claiming by, through or under any such assignment or sublease shall acquire by virtue thereof any greater rights in the Project than the Company then has under the Lease, nor shall any such assignment or subleasing or any dealings or transactions between the City 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 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 9.2 Mortgaging of the Project by City. It is understood and agreed that the City will mortgage the Project to the Trustee as security for the payment of the Series 1984 Bonds, subject to the Lease (which Lease and the estate of the Company hereunder shall be prior and superior to the lien of the Indenture), and will assign its interest (other than its right to require the Company to pay certain expenses as provided in Sections 5.4 and 10.4 hereof, the indemnification rights contained in Section 8.2 hereof and certain other rights which are herein expressly provided to be exercised by the City) in the Lease and pledge any moneys receivable hereunder to the Trustee as security for payment of the principal of and the interest and premium (if any) on the Series 1984 Bonds. It is further understood and agreed that in the Indenture the City will obligate itself to follow the instructions of the Trustee or the holders of the Series 1984 Bonds or a certain percentage of the latter in the election or pursuit of any remedies herein vested in it. Upon the assignment and pledge to the Trustee of the City's interest in the Lease, the Trustee shall have all rights and remedies herein accorded the City (other than the aforesaid rights reserved to the City), and any reference herein to the City shall be deemed, with the necessary changes in detail, to include the Trustee; and the Trustee and the holders of the Series 1984 Bonds shall be deemed to be third party beneficiaries of the covenants and agreements on the part of the Company contained in the Lease and shall, to the extent provided in the Indenture, be entitled to enforce performance and observance of the agreements and covenants on the part of the Company contained in the Lease to the same extent as if they were parties hereto. Subsequent to the issuance of the Series 1984 Bonds and prior to the payment of the Indenture Indebtedness in full, the City and the Company shall have no power to modify, alter, amend or (except as specifically authorized herein) terminate the Lease without the prior written consent of the Trustee and then only as provided in the Indenture. The City will not, so long as no Event of Default shall have occurred and be continuing, amend the Indenture or any indenture supplemental thereto without the prior written consent of the Company.

Without the prior written request or consent of the Company, the City will not, so long as no Event of Default shall have occurred and be continuing, hereafter issue any bonds or other securities (including refunding securities), other than the Series 1984 Bonds, that are payable out of or secured by a pledge of the revenues and receipts derived by the City from the leasing or sale of the Project, nor, without such consent, will the City, so long as no Event of Default shall have occurred and be continuing, hereafter place any mortgage or other encumbrance

(other than the Indenture and supplemental indentures contemplated thereby) on the Project or any part thereof.

Section 9.3 References to Series 1984 Bonds Ineffective after Indenture Indebtedness Paid. Upon full payment of the Indenture Indebtedness and cancellation, satisfaction and discharge of the Indenture in accordance with the provisions of Section 16.1 thereof, all references in the Lease to the Series 1984 Bonds and the Trustee shall be ineffective and neither the Trustee, nor the holders of any of the Series 1984 Bonds shall thereafter have any rights hereunder, saving and excepting any that shall have theretofore vested. For purposes of the Lease, any of the Series 1984 Bonds shall be deemed fully paid if there exists, with respect thereto, the applicable conditions specified in Section 16.1 of the Indenture.

If the Indenture Indebtedness is fully paid prior to the end of the Lease Term, the Company shall be entitled to use of the Project for the remainder of the Lease Term without the payment of any further Basic Rent but otherwise on all the same terms and conditions hereof.

Section 9.4 Concerning Issuance of Additional Parity Bonds. The City and the Company recognize that the City is authorized to issue under the Indenture, upon compliance with the conditions precedent specified therein, one or more series of Additional Bonds for any one or more of the purposes specified in the Indenture. If no Event of Default shall have occurred and be continuing, the City will, on the written request of the Company and upon compliance with the applicable conditions contained in Article VIII of the Indenture, take such actions as are necessary to authorize the issuance and sale of Additional Bonds in such principal amount and for such purpose or purposes as are specified in such request and will use its best efforts to effect the sale thereof. To the extent consistent with all applicable provisions of the Indenture and the Lease, all terms and conditions of such Additional Bonds (including, without limitation, those relating to the maturity dates of the principal of such Additional Bonds, the interest rate or rates thereof and the provisions for redemption thereof prior to their respective maturities) and the purchase price to be paid therefor shall be subject to the approval of the Company.

Section 9.5 Disposition of Trust Fund Moneys after Full Payment of Indenture Indebtedness. The City hereby assigns to the Company all surplus moneys (if any) that may remain in the Bond Fund, the Construction Fund and the Redemption Fund or that may otherwise be held by the Trustee after the Indenture Indebtedness has been fully paid, such assignment to be subject to the condition that the Lease shall not have been terminated prior to full payment of the Indenture Indebtedness as a result of the occurrence of an Event of Default. The City will provide in the Indenture for such surplus moneys to be paid to the Company in accordance with such assignment. It is understood and agreed that surplus moneys remaining in the Bond Fund or otherwise held by the Trustee shall not include (i) any amounts so held for payment of matured but unpaid Bonds, Bonds called for redemption but not yet redeemed and matured but unpaid interest and (ii) any amounts held therein which are referable to unmatured Bonds if such Bonds are

considered fully paid pursuant to the provisions of Section 16.1 of the Indenture by reason of the fact that such amounts are so held by the Trustee. The provisions of this section shall survive the expiration or prior termination of the Lease.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. The following shall be "Events of Default" under the Lease, and the term "Event of Default" shall mean, whenever it is used in the Lease, any one or more of the following events:

(a) failure by the Company to pay any installment of Basic Rent or to make any other payment required under the terms hereof [other than any payment referred to in clause (b) of this section] on the date that such installment or such payment shall become due and payable by the terms of the Lease;

(b) failure by the Company to pay any amount due the Trustee for its reasonable fees, charges and disbursements within thirty (30) days after written demand for such payment by the Trustee, which demand shall not be made earlier than the date on which such amount is due and payable;

(c) failure by the Company to perform or observe any agreement, covenant or condition required by the Lease to be performed or observed by it [other than the agreements and covenants referred to in the preceding clauses (a) and (b), of this section], which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring the Company to perform or observe the agreement, covenant or condition with respect to which it is delinquent shall have been given to the Company by the City or the Trustee, unless (i) the City and the Trustee shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) 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, covenant or condition with respect to which it is delinquent;

(d) any warranty, representation or other statement by or on behalf of the Company contained in the Lease, in the Financial Statements or in any other document furnished by the Company in connection with the issuance or sale of any of the Series 1984 Bonds, being false or misleading in any material respect at the time made;

BOOK 003 PAGE 954

(e) institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or consent by the Company to the filing of a bankruptcy or insolvency proceeding against it, or the filing by the Company of a petition or answer or consent seeking relief under the United States Bankruptcy Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by the Company to the institution of proceedings thereunder or to the filing of any such petition, or consent by the Company to the appointment of, or the taking of possession of any of its property by, a receiver, liquidator, trustee, custodian or assignee in bankruptcy or insolvency for the Company or for all or a major part of its property, or an assignment by the Company for the benefit of its creditors, or a written admission by the Company of its inability to pay its debts generally as they become due, or the taking of any action by the Company in furtherance of any of the foregoing events or actions; or

(f) the entry of a decree or order by a court of competent jurisdiction for relief in respect of the Company or adjudging the Company to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under the United States Bankruptcy Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, liquidator, trustee, custodian or assignee in bankruptcy or insolvency for the Company or for all or a major part of its property, or for the winding up or liquidation of its affairs, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days.

The term "force majeure" as used herein means acts of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivisions or officials of the United States of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, or any other condition or event beyond the reasonable control of the Company. The Company will, to the extent that it may lawfully do so, use its best efforts to remedy, alleviate or circumvent any cause or causes preventing it from performing its agreements and covenants hereunder.

Section 10.2 Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the City and the Trustee, or the Trustee on behalf of the City, may take any one or more of the following remedial actions:

(a) 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 of all rent and other amounts due under the Lease;

(b) terminate the Lease, take possession of the Project, exclude the Company from possession thereof and lease the same for the account of the City and the Trustee, holding the Company liable for all rent due and other amounts due under the Lease until the date such other lease is made for the account of the City and the Trustee;

(c) declare immediately due and payable Basic Rent in an amount equal to the principal amount of all outstanding Bonds plus interest accrued on such Bonds to the date of such declaration, whereupon such Basic Rent shall become immediately due and payable, but only if, concurrently with such declaration, the principal of and accrued interest on the Bonds are also declared due and payable pursuant to subsection (a) of Section 13.2 of the Indenture;

(d) 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) take whatever legal proceedings may appear necessary or desirable to collect the rent then due, whether by declaration or otherwise, or to enforce any obligation, covenant or agreement of the Company under the Lease or any obligation of the Company imposed by any applicable law.

Section 10.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City 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 the Lease 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 Event of 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 City or the Trustee to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

Section 10.4 Agreement to Pay Attorneys' Fees. In the event that, as a result of an Event of Default or a threatened Event of Default by the Company, the City or the Trustee should in good faith 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 the Lease, the Company will, whether or not the City or the Trustee is successful in such efforts and whether or not final judgment for either is rendered by a court of competent jurisdiction, pay to the City or to the Trustee or both, as the case may be, reasonable attorneys' fees and other reasonable expenses so incurred by the City and the Trustee in good faith.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in the Lease 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. Further, neither the receipt nor the acceptance of any rent hereunder by the City, or by the Trustee on its behalf, shall be deemed to be a waiver of any breach of any covenant, condition or obligation herein contained or a waiver of any Event of Default even though at the time of such receipt or acceptance there has been a breach of one or more covenants, conditions or obligations on the part of the Company herein contained or an Event of Default (or both) and the City or the Trustee (or both) have knowledge thereof.

Section 10.6 Notice and Right to Cure. If an event of default hereunder shall occur, notice shall be sent by the City (or by the Trustee on behalf of the City) to the Company specifying the nature of any such default. The Company shall have the right to remedy such default within thirty (30) days of the receipt of such notice and if any such person shall remedy any such default within said period of thirty (30) days, no default may be declared and no remedy may be exercised hereunder.

ARTICLE XI

OPTIONS

Section 11.1 Options to Terminate the Lease During the Lease Term. the Company shall have the right, exercisable at its option, to cancel or terminate the Lease during the Lease Term upon compliance with the conditions specified in the succeeding provisions of this Section 11.1:

(a) At any time prior to full payment of the entire Indenture Indebtedness, the Company may cancel or terminate the Lease by (i) giving the City and the Trustee written notice of such termination and specifying in such notice the date on which such termination is to be effective and (ii) paying to the Trustee for the account of the City, on or before the effective date of such termination, an amount which, when added to the total of the amounts then held in the Bond Fund (exclusive of any amount held therein for payment of matured but unpaid Bonds, Bonds called for redemption but not yet redeemed and matured but unpaid interest), the Construction Fund and the Redemption Fund, will be sufficient to pay, redeem and retire all the outstanding Bonds on the earliest practicable date next succeeding the effective date of such

termination on which under their terms and the terms of the Indenture they may be paid or redeemed, including, without limitation, principal, premium (if any), all interest to mature until and on such payment or redemption date, the expenses of redemption and all other Indenture Indebtedness then owed and that will accrue until the payment, redemption and retirement of all the outstanding Bonds.

(b) At any time after the entire Indenture Indebtedness has been fully paid, the Company may cancel or terminate the Lease by giving the City written notice of such termination not less than ten (10) days prior to the date on which such termination is to be effective.

Any cancellation or termination of the Lease as aforesaid notwithstanding, any obligations or liabilities of the Company hereunder, actual or contingent, which have arisen on or before the effective date of such cancellation or termination shall remain in full force and effect.

Section 11.2 Option to Purchase - Casualties. While any of the Indenture Indebtedness is outstanding and unpaid, the Company shall have the right and option, hereby granted by the City, to purchase the Project if

(a) any part of the Project is damaged or destroyed, by fire or other casualty, to such extent that, in the opinion of the Company expressed in a written statement filed with the City and the Trustee, the restoration or repair of the property damaged or destroyed to the condition thereof immediately preceding such damage or destruction would not be economically practicable or desirable, or

(b) under the exercise of the power of eminent domain, (i) title to all or substantially all the Project is taken, or (ii) the temporary use of all or part of the Project, or title to part of the Project, is taken to such extent that, in the opinion of the Company expressed in a written statement filed with the City and the Trustee, the Company will thereby be prevented, or is likely to be thereby prevented, from making normal use of the Project for a period of not less than four (4) consecutive months, or

(c) as a result of (i) any changes in the Constitution of the State of Alabama or the Constitution of the United States of America, (ii) any legislative or administrative action (whether state or federal) or (iii) any 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, the Lease becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties thereto as expressed herein or unreasonable burdens or

))

excessive liabilities are imposed on the City, or the Company, including (without limiting the generality of the foregoing) any changes in federal or state tax laws that will render the use and occupancy of the Project significantly less economically advantageous to the Company, or

(d) the use and occupancy of the Project by the Company is legally curtailed for any reason other than circumstances or conditions described in the preceding clauses (a), (b) and (c), or

(e) as a result of change in technology or in the cost or availability of labor, energy or materials, the continued use and occupancy of the Project by the Company is, in the Company's opinion expressed in a written statement filed with the City and the Trustee, rendered impracticable or significantly less economically desirable in relation to the previous use and occupancy of the Project.

To exercise such option, the Company

(1) shall, within ninety (90) days following the event authorizing the exercise of such option, give to the City and the Trustee written notice, which shall contain a description of such event and shall state the reason why it authorizes the execution of such option,

(2) shall specify in such notice the date of purchase, which (subject to the provisions of the last paragraph of this Section 11.2) shall be not less than forty-five (45) nor more than ninety (90) days after the date such notice is mailed or otherwise delivered,

(3) shall direct the Trustee in such notice to call for redemption all the outstanding Bonds on the business day next succeeding the date of purchase specified by the Company in such notice,

(4) in the case of an authorizing event described in any of the preceding clauses (a), (b), (d) or (e), shall certify in such notice that the Company will discontinue at the earliest practicable date, its use and occupancy of the Project, and

(5) shall on the date of purchase pay to the Trustee (for the account of the City), as and for the purchase price of the Project, an amount which, when added to the total of the amounts then held in the Bond Fund (exclusive of any amount held therein for payment of matured but unpaid Bonds, Bonds called for redemption but not yet redeemed and matured but unpaid interest), the Construction Fund and the Redemption

Fund, plus the amount of any Net Insurance Proceeds or Net Condemnation Award then held by the Trustee and referable to any damage, destruction or condemnation authorizing the exercise of such option, will be sufficient to pay, redeem and retire all the outstanding Bonds on the business day next succeeding the date of purchase, including, without limitation, principal, premium (if any), all interest to mature until and on such payment or redemption date, expenses of redemption and all other Indenture Indebtedness; provided however, that if on the date of purchase the entire Indenture Indebtedness has 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 Insurance Proceeds or Net Condemnation Award referable to any damage, destruction or condemnation authorizing the exercise of such option shall be paid to the Company simultaneously with or promptly after the exercise of such option.

Upon receipt of the amount required by this Section 11.2 to be paid by the Company as the purchase price of the Project (if payment of any such amount is required), and if at such time the Company is not in default in payment of the rent or any other amounts due hereunder, the City will, by deed or other appropriate instrument complying with the provisions of Section 11.5 hereof, transfer and convey the Project (or such portion thereof - which may be none - as is then in existence and is owned by the City) in its then condition, whatever that may be, to the Company.

BOOK 003 PAGE 353
In the event that the option granted by this Section 11.2 is exercised by the Company as a result of the taking of all or substantially all the Project under the exercise of the power of eminent domain, the date of purchase of the Project pursuant to such option shall not, irrespective of the date specified therefor pursuant to clause (2) of the first paragraph of this Section 11.2, be later than the date on which the Lease terminates in accordance with the provisions of Section 7.2(a) hereof, which date of termination is the forty-fifth (45th) day after the receipt by the Trustee of the final installment of the entire condemnation award in respect of such taking.

Section 11.3 Option to Renew. The Company shall have the right and option herein granted by the City, to renew the term of this Lease for the period commencing at 12:01 o'clock, A.M., on July 1, 1999, and continuing until 12:01 A.M. o'clock, A.M., on July 1, 2004; provided, however, that such option shall not be exercisable at any time prior to full payment of the Series 1984 Bonds unless the Company is not in default hereunder. To exercise such option to renew, the Company shall so notify the City in writing (a) not less than ninety (90) days prior to the expiration of the primary term of this Lease, 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 aforesaid primary term, within the applicable period specified in Section 7.3 hereof but in any event prior to the expiration of the said primary term. The cash rental due by the Company during such renewal term shall be the sum of \$5,000 per year, payable yearly in advance, but otherwise all the terms and conditions herein contained shall, with the necessary

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

Section 11.4 Option to Purchase Unimproved Parts of Project Site. The Company shall have the right and option, hereby granted by the City, to purchase from the City, at any time and from time to time and on the terms and conditions hereafter specified in this section, any unimproved part of the Project Site. In order to exercise such option the Company shall furnish to the City and the Trustee the following:

(a) a notice in writing containing (i) an adequate legal description of that part of the Project 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 part of the Project 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 part of the Project Site will be consistent with the continued promotion of industry or development of trade of the City and the State of Alabama and will further the use and development of the natural and human resources of the City and said state;

(b) a certificate signed by an Independent Engineer stating (i) that no part of the Project Building or the Project Equipment, nor any other improvement (except for roads, walkways, ground level parking improvements, water, gas, electric and communication lines and the like, which shall be specified in such certificate) is located on the part of the Project Site with respect to which such option is to be exercised, and (ii) that the severance of such part of the Project Site from the Project will not impair the operating utility of the Project or unduly restrict ingress or egress to or from the Project;

(c) an amount, in cash or bankable funds, equal to (i) if any of the Indenture Indebtedness is then outstanding and unpaid, \$20,000 per acre (prorated for fractional parts of an acre) of that part of the Project Site with respect to which such option is to be exercised, or (ii) if the Indenture Indebtedness has been fully paid, \$10 per acre (prorated for fractional parts of an acre) of the part of the Project Site with respect to which such option is to be exercised; and

(d) an instrument or instruments in writing, signed by the holders of not less than seventy-five percent (75%) in principal amount of the

BOOK 003 PAGE 960

then outstanding Bonds, consenting to the sale of any such portion of the Project Site to the Company.

The option granted by this section shall not be exercisable at any time prior to full payment of the Indenture Indebtedness if an Event of Default shall have occurred and be continuing. Upon the receipt by the City and the Trustee of the appropriate purchase price and the notice and certificate complying with the provisions of the preceding clauses (a) and (b), respectively, the City will execute and deliver to the Company a statutory warranty deed complying with the provisions of Section 11.5 hereof, conveying to the Company the part of the Project Site with respect to which such option was exercised. If, at the time of any such purchase, any of the Indenture Indebtedness is outstanding and unpaid, the City will take all actions required by Section 12.2 of the Indenture to release such part of the Project Site from the lien of the Indenture and will pay into the Redemption 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 Project Site shall be deemed to refer to the land that immediately prior thereto constituted the Project 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 rent payable hereunder.

Section 11.5 Options - In General. Except to the extent otherwise specifically provided in Section 11.4 hereof, each of the options herein granted to the Company may be exercised by it even though an Event of Default shall have occurred and be continuing, it being understood and agreed, however, that all other applicable conditions specified herein to the exercise of such option (including payment of any amounts of money herein required to be paid by the Company) are met.

In the event of the exercise by the Company of any of the options to purchase the Project or any part thereof granted in Sections 11.2 and 11.4 hereof, the City will convey to the Company, after compliance by the Company with the conditions to purchase specified in the respectively applicable sections hereof, the property with respect to which such option was exercised by statutory warranty deed, bill of sale (in the case of personal property) or other appropriate instrument, subject only to Permitted Encumbrances, such liens, encumbrances and exceptions to which title to such property was subject when this Lease Agreement was delivered or such property was acquired by the City (whichever occurred last), 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.

In case that, at the time of the exercise by the Company of either of the options to purchase the Project granted in Sections 11.2 and 11.4 hereof, there shall

not have been collected by the City, the Trustee or the Company the entire insurance proceeds or condemnation award referable to any damage, destruction or condemnation with respect to the Project which may have theretofore occurred, then in such case 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 City will take all actions necessary to cause the amount of any such proceeds or awards to be paid to the Company. The provisions of this paragraph shall survive the expiration of the term of the Lease or any prior termination of the Lease unless at the time of such expiration or termination the Company is in default in the payment of any amounts of money herein required to be paid by it.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Covenant of Quiet Enjoyment. Surrender. So long as the Company performs and observes all the covenants and agrees on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term, subject to all the terms and provisions hereof. At the end of the Lease Term, or upon any prior termination of the Lease, the Company will surrender to the City possession of all property then subject to the demise of the Lease (unless it is simultaneously purchasing such property from the City), in its then condition, whatever that may be.

Section 12.2 Retention of Title to Project by City. Granting of Easements. Without the prior written consent of the Company, the City will not itself, so long as no Event of Default shall have occurred and be continuing, (i) sell, convey or otherwise dispose of all or any part of the Project (except as provided in Section 11.6 of the Indenture or to the Company as provided in Article XI hereof), (ii) mortgage or otherwise encumber the Project or any part thereof (except as provided in Section 9.2 hereof), or (iii) dissolve or do anything that will result in the termination of its corporate existence (except as provided in Section 11.6 of the Indenture). The City will, however, grant such utility, access and other similar easements, permits and rights-of-way over, across or under the Project Site as shall be requested in writing by the Company, provided that in connection with the grant of each such easement, permit or right-of-way the Company furnishes to the City and the Trustee a certificate signed by the Company stating that such easement, permit or right-of-way is, or will be, useful or necessary in the operation of the Project and will not materially interfere with or impair the use of the Project for the purpose for which it was acquired or is held by the City. the Company will pay all reasonable expenses incurred by the City in connection with the granting of all such easements, permits and rights-of-way.

Section 12.3 Exemption from Taxation. As provided in the Act, as now existing, the Bonds and the income therefrom, as well as the Project and any revenues derived by the City from the leasing or sale thereof, shall be exempt from all taxation in the State of Alabama.

Section 12.4 **This Lease a Net Lease.** The Company recognizes and understands that it is the intention hereof that the lease herein made shall be a net lease and that until the Bonds are fully paid all Basic Rent shall be available for payment of the principal and the interest and premium (if any) on the Bonds. The Lease shall be construed to effectuate such intent.

Section 12.5 **Statement of Intention Regarding Certain Tax Matters.** The City and the Company acknowledge and agree that it is their mutual intention that the Company, for federal and state income tax purposes, will be entitled to all deductions and credits with respect to the Project (including, but not limited to, depreciation and investment credits) and that for such purposes the Lease will be deemed to be a financing of the Project.

Section 12.6 **Notices.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or received by certified or registered mail, postage prepaid with return receipt requested, at such addresses:

(a) If to the City:

City of Pelham
City Hall
Pelham, Alabama 35124
Attention: Mayor

(b) If to the Company:

Homecrafters Warehouse, Inc.
1 Perimeter Park South
Suite 420
Birmingham, Alabama 35243
Attention: President

(c) If to the Trustee:

AmSouth Bank N.A.
Post Office Box 11426
Birmingham, Alabama 35202
Attention: Corporate Trust Department

Any of the above mentioned parties 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 City, the Company or the Trustee pursuant to the provisions of the Lease shall also be given to any of the foregoing three parties to whom notice is not herein required to be given, but the failure to give a copy of such notice to any party claiming the right to receive it pursuant to this sentence shall not invalidate such notice or render it ineffective unless notice to such party is otherwise herein

))

expressly required. Any notice hereunder signed on behalf of the notifying party 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.

Whenever, under the provisions hereof, any request, consent or approval of the City or the Company is required or authorized, such request, consent or approval shall (unless otherwise expressly provided herein) be signed on behalf of the City by an Authorized City Representative and by the Company; and each of the parties and the Trustee are authorized to act and rely upon any such requests, consents or approvals so signed.

Section 12.7 Certain Prior and Contemporaneous Agreements Cancelled. The Lease shall completely and fully supersede all other prior or contemporaneous agreements, both written and oral, between the City and the Company relating to the Project Development Work and the leasing of the Project. If any provision of any such prior or contemporaneous agreement (including, but without limitation, the Inducement Agreement) is in conflict with any provision of the Lease, such provision shall be deemed amended or modified to the extent necessary to avoid such conflict, all to the end that the City and the Company shall look to the Lease for ultimate definition and determination of their respective rights, liabilities and responsibilities respecting the Project Development Work and the Project. The Company and the City 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 the Lease, other than those options to purchase the Project contained in Article XI hereof.

Section 12.8 Limited Liability of City. The City is entering into this Lease Agreement pursuant to the authority conferred upon it by the Act. No provision hereof shall be construed to impose a charge against the general credit of the City or any personal or pecuniary liability upon the City except with respect to the proper application of the proceeds to be derived from the sale of the Bonds, moneys made available by the Company to the City pursuant to the provisions hereof, and the revenues and receipts to be derived from any leasing or sale of the Project, including insurance proceeds and condemnation awards. Further, none of the officers, employees or agents of the City shall have any personal or pecuniary liability whatever hereunder or any liability for the breach by the City of any of the agreements on its part herein contained. Nothing contained in this section, however, shall relieve the City from the observance and performance of the several covenants and agreements on its part herein contained or relieve any director, officer, employee or agent of the City from performing all duties of their respective offices that may be necessary to enable the City to perform the covenants and agreements on its part herein contained.

Section 12.9 Binding Effect. The Lease shall inure to the benefit of, and shall be binding upon, the City, the Company and their respective successors and assigns. To the extent provided herein and in the Indenture, the Trustee and the

holders of the Bonds shall be deemed to be third party beneficiaries hereof, but nothing herein contained shall be deemed to create any right in, or to be for the benefit of, any other person who is not a party hereto.

Section 12.10 Severability. In the event any provision of the Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. Without in any way limiting the generality of the foregoing, the Company specifically acknowledges and agrees that the several purchase options granted it in Article XI hereof are fully severable from and independent of the other provisions hereof and that neither the invalidity or unenforceability of any of such purchase options shall invalidate or render unenforceable any other provision hereof nor excuse the Company from fully performing and observing any of the agreements and covenants on its part herein contained.

Section 12.11 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.

Section 12.12 Governing Law. The Lease shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

BOOK 003 PAGE 965

IN WITNESS WHEREOF, the City and the Company have caused this Lease Agreement to be executed in their respective names, have caused their respective seals to be hereunder affixed, and have caused this Lease Agreement to be

attested, all by their duly authorized officers, in six (6) counterparts, each of which shall be deemed an original, and the parties hereto have caused this Lease Agreement to be dated August 31, 1984.

CITY OF PELHAM, ALABAMA

[SEAL]

Attest:

Helen Oran Dennis
City Clerk

By [Signature]
Its Mayor

HEMOCRAFTERS WAREHOUSE, INC.

[SEAL]

Attest:

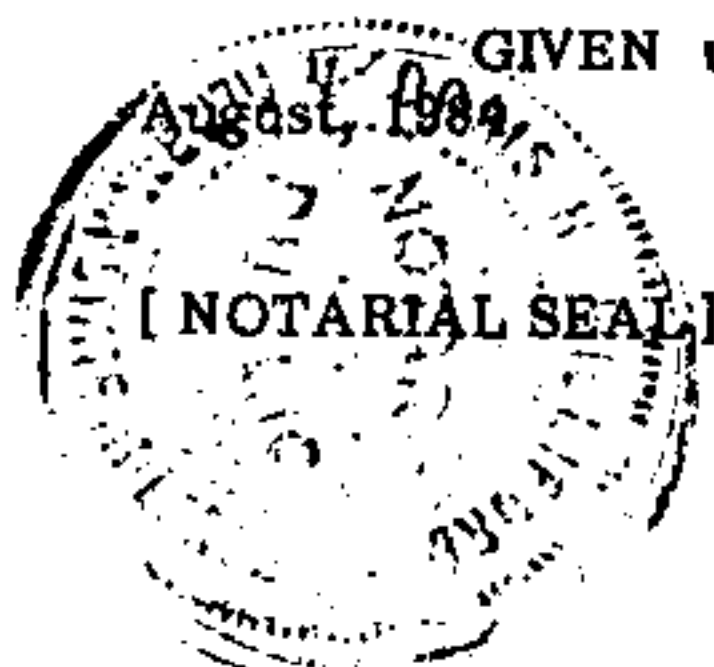
[Signature]
Its Secretary
Director of Planning

By [Signature]
Its President
Spec Vice President

BOOK 003 PAGE 966

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Burk Duxaway, whose name as Mayor of the CITY OF PELHAM, a municipal corporation under the laws of the State 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 said instrument, he, as such officer 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 31st day of August, 1984

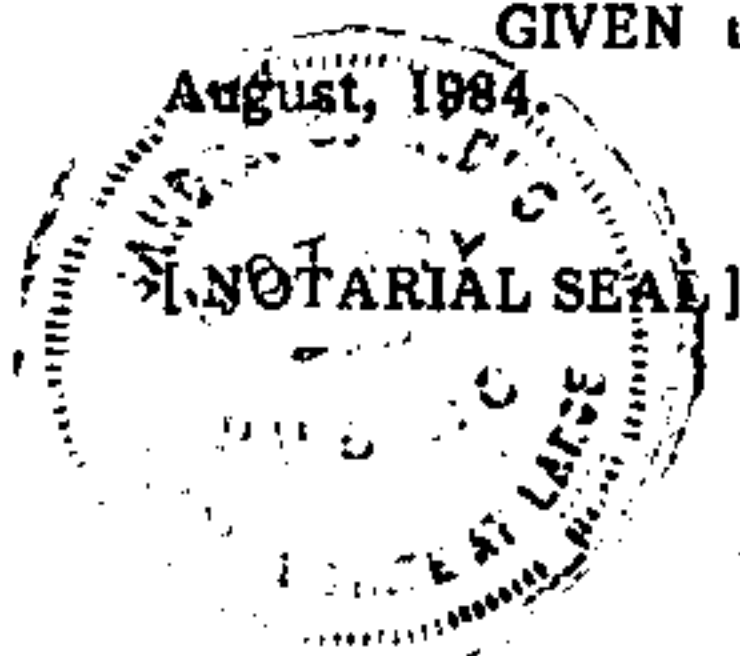
Daria S. Woodward
Notary Public

My Commission Expires: My Commission Expires April 9, 1985

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Stephen L. Wiley, whose name as President of EXECUTIVE VAN TRAILERS, a corporation under the laws of the State of Delaware, 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 said instrument, he executed the same voluntarily as of the day the same bears date and as the act of said corporation.

BOOK 003 PAGE 967



GIVEN under my hand and official seal of office, this 31st day of August, 1984

Sandra B. Jacobs
Notary Public

My Commission Expires: 9-8-84

EXHIBIT A
to
LEASE AGREEMENT
between
CITY OF PELHAM, ALABAMA
and
HOMECRAFTERS WAREHOUSE, INC.
dated August 31, 1984

The Project Equipment referred to in the Lease Agreement of which this Exhibit A forms a part initially consists of the following:

| <u>Quantity</u> | <u>Description</u> |
|-----------------|---|
| | Steel shelving as follows: |
| 147 | 42" x 156" frames |
| 27 | 60" x 156" frames |
| 12 | 42" x 120" frames |
| 548 | 3 3/4" x 108" step beams |
| 120 | 3" x 108" step beams |
| 72 | 48" material separators |
| 88 | 42" fork entry bars |
| 49 | 6" row spacer bars |
| 280 | 3/8" x 3/4" bolts & nuts |
| 21 | 10" row spacers |
| 1 | Alscan Intercom/Paging system |
| 96 | Sections 24" x 48" x 87" steel shelving |
| 11 | Folding tables |
| 74 | Stacking chairs |
| 3 | 48" x 96" upright frames |
| 134 | 24" x 96" upright frames |
| 600 | 96 1/2" beams |
| 78 | 48 1/2" beams |
| 1 | Pipe machine with stand |
| 20 | 10-button phones |

BOOK 003 PAGE 968

STATE OF ALABAMA COUNTY OF...
I CERTIFY THAT
INSTRUMENT NO. 19000

1984 OCT -1 PM 3:13

Rec. 19000
Ind. 100
19100

