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LEASE AGREEMENT
BETWEEN
COMMUNITY COLLEGE DEVELOPMENT CO., INC.,
LANDLORD
AND
JEFFERSON STATE COMMUNITY COLLEGE,
TENANT
DATED AS OF JANUARY 1, 1992

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This instrument prepared by:
Howard Donovan
1 Independence Plaza
Suite 510
Birmingham, Alabama 35209

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered as of the 15th day of January, 1992, by and between **COMMUNITY COLLEGE DEVELOPMENT CO., INC.**, a corporation created and existing under the laws of the State of Alabama (hereinafter sometimes referred to as "Landlord") and **JEFFERSON STATE COMMUNITY COLLEGE**, on behalf of The State of Alabama Board of Education, created and operating pursuant to §16-60-110, et seq., Code of Alabama (1975) (hereinafter referred to as "Tenant").

RECITALS:

WHEREAS, Landlord is the owner of certain unimproved real property located on Valleydale Road in Shelby County, Alabama, and more particularly described as Lot 1 of Shelby Development Park, recorded at Map Book 14, Page 21, in the Probate Office of Shelby County, Alabama (the "Property"); and

WHEREAS, Tenant and Landlord have agreed that Landlord will construct on the Property an 18,000 \pm square foot classroom/laboratory facility (the "Project"); and

WHEREAS, upon completion of all construction, Tenant will occupy the Project Building as its Southern campus and make payments for the use and occupation of said Project in the amount, in the matter, and at the times agreed to in this Lease Agreement.

NOW, THEREFORE, in consideration of the premises, and the mutual undertakings and obligations of the parties hereto, be it agreed as follows:

WITNESSETH:

SECTION 1

DEFINITIONS AND USE OF PHRASES

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:

"Building Construction Fund" means the Building Construction Fund established pursuant to Section 3.04 of the Indenture.

"Fiscal Year" means the Tenant's fiscal year, which runs from October 1 to September 30 of the next year.

"Indenture" means the Trust Indenture dated as of January 1, 1992 among the Tenant, the Landlord and SouthTrust Bank of Alabama, National Association.

"Landlord" means Community College Development Co., Inc., an Alabama corporation, and its successors and assigns.

"Lease" or "Lease Agreement" shall mean and refer to this agreement and any modifications, extensions, or renewals of same.

"Monthly Rental Payment Date" means the first day of each calendar month beginning with the first day of the first month following execution of the Lease, except if such day be a Sunday or legal holiday, in which event the "Monthly Rental Payment Date" shall be the next day which is not a Sunday or legal holiday.

"Pledged Revenues" shall mean the gross amount of all student fees and all tuition payments received by the Tenant from all students receiving instruction at any campus of the Tenant. Also, the term "Pledged Revenues" shall include any amount received as liquidated damages pursuant to any contract for construction of the Project.

"Project Building" means the 18,000 \pm square foot classroom/educational facility and which will be constructed upon the Project Site.

"Project" means the Project Site, the Project Building and all other property and rights of every kind that are subject to the demise of this Lease Agreement.

"Project Site" means the Property.

"Rent" means (i) the money payable by the Tenant pursuant to the provisions in Section 5.2 hereof, (ii) any other moneys payable by the Tenant pursuant to this Lease Agreement.

"Tenant" means Jefferson State Community College, on behalf of The State of Alabama Board of Education, created and operating pursuant to §16-60-110, et seq., Code of Alabama (1975).

"Term" shall mean the initial period of time and all renewal periods of time for the duration of this Lease Agreement.

SECTION 2

DEMISE, DESCRIPTION AND USE

2.1 **Demise.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Project Site and Project Building and all improvements, now or hereafter constructed thereon, situated in Shelby County, State of Alabama and described as Lot 1 of Shelby ^{Development} Commercial Park.

2.2 **Effective Date.** All of the representations and warranties of Landlord and Tenant contained herein are effective only upon recordation of the Lease.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 **Representations and Warranties by the Landlord.** Landlord makes the following representations and warranties as the basis for the undertaking on its part herein contained:

(a) **Organization.** The Landlord is a for-profit corporation duly organized and validly existing under the laws of Alabama.

(b) **Litigation.** There are no actions, suits or proceedings currently pending (nor, to the knowledge of the Landlord, are any actions, suits or proceedings threatened), 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 Landlord is or is to be a party relating to the transaction contemplated by this Lease Agreement.

(c) **Lease and Other Transactions are Legal and Authorized.** The execution and delivery of this Lease Agreement and the compliance with all the provisions thereof by the Landlord (i) are within the power and authority of the Landlord, (ii) will not conflict with or result in a breach of any of the provisions of or constitute a default under any agreement to which the Landlord is a party or any judgment, decree, statute, ordinance or governmental regulation by which it is bound, and (iii) have been duly authorized by all necessary action on the part of the directors of the Landlord.

(d) **Governmental Consents.** There is no filing or registration with any governmental body required in connection with approving the Landlord's execution of this Lease Agreement.

(e) **Title.** The Landlord has good and marketable title to the Project Site, free and clear of all liens, charges and encumbrances except those disclosed on the Warranty Deed conveying the Project Site to the Landlord.

(f) **Zoning.** The Project Site is zoned A-1, which permits the construction of a community college facility not including residential buildings.

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

(a) **Organization and Qualification of Tenant.** The Tenant has the authority to lease real and personal property.

(b) **Authorization and Validity of this Lease Agreement.** The Tenant has obtained all necessary approvals and has obtained a resolution from the State of Alabama Board of Education duly authorizing the execution, delivery and performance of this Lease Agreement, and when duly executed and

delivered on behalf of the Landlord, this Lease Agreement will constitute a legal, valid and binding obligation of the Tenant.

(c) Burdensome and Conflicting Agreements and Charter Provisions.

Neither the execution and delivery of this Lease Agreement, nor the fulfillment of or compliance with the terms and provisions hereof by the Tenant conflicts with, or results in a breach of, or constitutes a default under, any statute, law, governmental regulation, or any agreement, judgment or order by which the Tenant is bound or to which the Tenant is subject.

(d) Governmental Consents. The Tenant has obtained or will obtain the consent or approval of all other governmental entities who are required by law to approve a transaction of the type contemplated by this Lease Agreement or the construction and lease of the Project Building. In the event that such approval is rescinded, denied, or otherwise made unavailable, this Lease Agreement shall be null and void and of no effect.

(e) Litigation. To the best knowledge of Tenant, there is no action or proceeding pending or threatened against or affecting the Tenant which might materially or adversely affect the prospects, operations, properties or assets or the condition (financial or otherwise) of the Tenant or the transactions contemplated by this Lease Agreement, or which might impair the ability of the Tenant to comply with its obligations hereunder.

(f) Licenses, Permits, Etc. All licenses, permits, or other approvals required in connection with the operation of the Project Building or the Project Site by the Tenant have been duly obtained and are in full force and effect except for such licenses, permits or other approvals (i) which are not yet required and which will be duly obtained no later than the time required or (ii) the failure to obtain will not materially and adversely affect the operation of the Project.

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SECTION 4

CONSTRUCTION

4.1 Landlord's Construction Duties. (a) The Landlord, solely from moneys in the Building Construction Fund and moneys made available by Tenant, shall cause the construction of the Project. The Project shall consist of the Project Building, together with all sidewalks, streets, entranceways, parking areas, service drives, driveways and related improvements (the "Project Grounds"), located within the Project Site. The Project shall include grading and surfacing all paved portions of the Project Grounds, and provisions for adequate water drainage and lighting system and operations therefor all in accordance with the plans and specifications for the classroom/educational facility by KPS Group, Inc., Architects (the "Project Plans"). Preliminary Project Plans have been heretofore approved in writing by the Landlord and Tenant and, as subsequently approved in writing by the Landlord and Tenant, shall constitute a part of this Lease Agreement as if the same were part hereof. No change, modification, addition or deletion to the Project Plans shall be effective unless approved in writing by Landlord and Tenant.

(b) At its expense, Landlord shall (i) supervise the construction and development of the Project, (ii) supervise draws and advances from the Building Construction Fund, and (iii) advise Tenant with respect to the development and construction of the Project and dealings with the general contractor.

(c) Landlord makes no covenants, representations or warranties, express or implied, regarding cost or quality of construction, utility availability, permitting and plans approval, the suitability of the Project for Tenant's purposes, or the ability of the general contractor to complete the Project on time or on budget ("Construction Items"). Tenant bears the sole risk of cost overruns, construction delays or inadequacies in the design, construction, installation or development of the Project or its components. If moneys in the Building Construction Fund are inadequate to complete the Project, Tenant will provide additional funds to complete the Project, provided, however, Tenant shall be a party to the construction contract, and no change order (or other changes in the work) may be entered into or approved by Landlord without the written permission of an authorized official of Tenant and Tenant shall not be liable for any

work performed or monies expended in violation of this provision of the Lease. At conclusion of construction, Landlord will assign all of its rights with respect to building warranties and all other warranties in the construction contract to the Tenant and, subject to other provisions of this Lease outlining Landlord's obligations under this Lease, Tenant shall look solely to the general contractor with respect to the construction of the Project Building. Notwithstanding anything herein to the contrary, Landlord will, however, cooperate with the Tenant and the general contractor to satisfy the Construction Items delineated above and nothing herein shall be deemed to relieve Landlord from its responsibilities to Tenant under Section 4.1(b) hereof or from any other obligations of Landlord to Tenant under this Lease. Tenant shall provide for the Project Building its own trade fixtures, furnishings and equipment which shall be connected and installed by Tenant at its expense. All equipment and fixtures provided by Tenant shall remain the property of Tenant and may be removed by Tenant from the Project Building at any time provided Tenant repairs any damage occasioned by such removal.

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4.2 Completion Date. The parties anticipate that construction of the Project Building, Project Grounds and Access Road, as hereinabove referred to, shall be completed not later than twelve (12) months after the last to occur of the following (the "Completion Date"): (1) signing of a construction contract; (2) issuance of a Notice to Proceed; or (3) completion of construction documents for Project. If the same shall not be completed by said date, the Tenant, at its option, may, in such event, cancel and terminate this Lease or may extend the Landlord additional time for the completion of construction; provided, however, that if the Landlord's failure to complete said improvements within the stipulated time shall be due to acts of God, strikes, riots, fire, flood, war, delay of carriers, material shortages, embargoes or inclement weather, or other similar happenings which are beyond the control of Landlord, and provided, further, the improvements shall be completed with all due diligence commensurate with such delay said option to terminate shall not arise.

4.3 Construction Risks. It is understood and agreed that nothing contained herein shall constitute the Landlord as the agent in any sense of the Tenant in construction of any of said improvements, and the Tenant shall have no control or authority over the construction of said

improvements. The Tenant shall not in any manner be answerable or accountable for any loss or damage arising from the negligence or the carelessness of Landlord's contractor or of any of their subcontractors, employees, agents or servants by reason of Landlord's construction of said improvements called for under the terms of this Lease. Builder's risk insurance and other types of liability coverage during the construction period will be provided at the Landlord's expense, provided the "cap" of \$15,000 provided for in the Development Agreement of December 20, 1991 is not exceeded.

4.4 Failure to Finalize Construction Contract. (a) It was originally envisioned by the parties that this Lease would not be executed until the Lessor had negotiated and executed a contract for construction of the Project. At the Tenant's request, Landlord has agreed to execute this Lease and close the transactions relating hereto without execution of a construction contract or issuance of building and access permits.

(b) In consideration of Landlord's agreement to close these transactions without execution of a construction contract or building contract, either party has the option to terminate this Lease if a construction contract reasonably satisfactory to Landlord and Tenant is not executed by April 10, 1992. It is contemplated that a reasonably satisfactory contract will be for a fixed price and will provide liquidated damages if construction is not completed by the Completion Date. The parties agree that Brasfield & Gorrie, Inc. is a satisfactory general contractor.

(c) Tenant releases Landlord and its affiliates, and the agents, employees, officers and directors of any thereof, together, "Covered Persons" from all liability arising out of or relating to the failure to execute a satisfactory construction contract or obtain the appropriate building or access permits, failure to complete the Project within budget, or by the Completion Date, any defect in the design, construction, or installation of the Project or its components ("Covered Events"), unless the occurrence or non-occurrence of the Covered Events results from a breach of Landlord's obligations under Section 4.1(b) or from any other breach by Landlord of any of its obligations under this Lease, in which event the Covered Persons shall not be released from liability hereunder.

SECTION 5

TERM AND RENT

5.1 **Term and Renewal Option.** The "Term" of this Lease shall run for an initial term beginning on the date of execution hereof and ending on September 30, 1992. Thereafter, Tenant shall have the option to renew this Lease for nineteen (19) successive renewal Terms of twelve (12) months, each on October 1 of each year and ending on September 30 of the following year. Each of such renewal Terms shall be upon the same terms, covenants, and conditions hereof. In the event that the Tenant shall intend not to renew the Lease upon the expiration of any term hereof, the Tenant shall give Landlord thirty (30) days written notice of its intention not to renew the Lease, in which event this Lease shall terminate at the end of the then current Term.

5.2 **Rent.** Tenant shall pay Rent to the Landlord for the Term at the address set forth in Section 13.4 or at such other place as the Landlord shall designate from time to time in writing. Rent for the Project shall be in the amounts set forth on Exhibit "A" hereof and shall be payable without demand and without set off or reduction, except as expressly provided herein. Each monthly rental payment shall be paid in advance of the first day of each calendar month commencing on the first day of the month following the day of execution of this Lease.

5.3 **Triple Net Lease.** Tenant shall pay in addition to the Rent all sums necessary to pay the costs of Insurance for the Project (Section 6.6), Governmental Charges (Section 6.4) and the costs of Utilities (Section 6.5), it being the intention of the parties hereto that this Lease as to the Landlord is "triple net."

5.4 **Tenant Obligations.** The obligation on the part of the Tenant to pay the Rent herein required to be paid, and to perform the other agreements on the part of the Tenant herein required to be performed, for any period during which this Lease is in effect shall constitute an obligation of the Tenant payable solely out of Pledged Revenues of the Tenant during each Fiscal Year of the Tenant in which this Lease is in effect. Tenant hereby further pledges so much of the Pledged Revenues during each such Fiscal Year as may be necessary during this Lease Agreement for the payment of such Rent and the

performance of such agreements, it being understood and agreed, however, that such Rent and such agreements by Tenant shall never create a debt of the Tenant or of the State of Alabama within the meaning of Section 213 of the Constitution of Alabama of 1901, as amended.

5.5 Option to Purchase. Tenant shall have the option to purchase the Project on any Monthly Rental Payment Date upon payment of the purchase price shown on Exhibit "A" hereto. To exercise this purchase option, the Tenant shall notify Landlord in writing and within thirty (30) days of such notification, tender the purchase price to the Landlord in cash, whereupon the Landlord will, by general warranty deed, transfer and convey the Project (in its then physical condition) to the Tenant. Nothing herein contained shall be construed to give the Tenant any right to any rebate or refund of any Rent paid by it hereunder prior to the exercise of the purchase option herein granted.

SECTION 6

PROVISIONS CONCERNING MAINTENANCE, ADDITIONS, INSURANCE AND TAXES

6.1 Tenant's Duty to Repair and Maintain. Tenant agrees at its sole cost and expense to keep and maintain the Project Building and Project Grounds in good order and repair, reasonable wear and tear, damage by accident, fire or other casualty not resulting from Tenant's negligence excepted. Tenant further agrees to keep the Project clean, and to repair or replace all broken or damaged doors, windows, plumbing fixtures and pipes, floors, stairways, railings, paving or other portions of the Project. Tenant also agrees to maintain the curbs and pavements in and around the Project. Tenant shall keep the said pavements and appurtenances free of ice, snow and trash.

6.2 Fixtures and Interior Alterations. The Tenant, at its own expense, and without approval of Landlord, may from time to time during the term of this Lease make any interior alterations, additions and improvements in and to the Project Building which it may deem necessary or desirable and which do not adversely affect the structural integrity thereof. Tenant shall perform such work in a good workmanlike manner and in accordance with all valid requirements of municipal or other governmental

authorities. All permanent structural improvements shall belong to the Landlord and become a part of the premises upon termination or expiration of this Lease. Tenant may construct and build or install in said premises any and all trade fixtures, floor coverings, interior lighting and other fixtures and equipment of every kind and nature as may be necessary or desirable in the Tenant's business, which trade fixtures, floor coverings, interior lighting and other fixtures and equipment shall at all times be and remain the property of the Tenant; and Tenant may remove all or any part of the same from said premises at any time; provided, Tenant shall repair or reimburse Landlord for the cost of repairing any damage to said premises resulting from the installation or removal of such items.

6.3 Mechanic's and Materialman's Liens. The Tenant will not permit any mechanic's or other liens to stand against the Project for labor, materials, equipment or supplies furnished in connection with the original fitting and equipment of the Project or in connection with any additions, alterations, improvements, modifications, repairs or renewals that may subsequently be made thereto. The Tenant may, however, at its own expense and in good faith, contest any such mechanic's 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 any appeal therefrom.

6.4 Governmental Charges. All assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project shall be paid by Tenant; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Tenant shall be obligated to pay only such installments as are required to be paid during the period while the Lease shall be in effect. The Landlord will promptly forward to the Tenant any bills, statements, assessments, notices or other instruments asserting or otherwise relating to any such taxes, assessments or charges. The Tenant may, at its own expense and in its own name and behalf of in the name and behalf of the Landlord, 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 such contest and any appeal therefrom.

6.5 Utilities. The Tenant will also pay, as the same respectively becomes due, all utility, (gas, electricity, sewage, water) and other similar charges incurred in the operation, maintenance, use and upkeep of the Project. Tenant further agrees to pay all charges for repairs to water meters on the Project Site whether necessitated by ordinary wear and tear, temperature extremes, accident or any other causes. Such payments shall be made immediately on becoming due.

6.6 Insurance Matters. (a) Tenant covenants to provide on the date of execution of this Lease and keep in force (at Tenant's cost and expense) during the Terms of this Lease, the following insurance coverage with respect to the Project:

- (i) Comprehensive General Liability Insurance, with a contractual liability endorsement, relating to the Project and its appurtenances on an occurrence basis with a minimum single limit of One Million Dollars (\$1,000,000.00).
- (ii) Fire and Lightning, Extended Coverage, Vandalism and Malicious Mischief, Flood (if required by Landlord, any mortgagee or governmental authority) and War Risk (if obtainable) Insurance in an amount adequate to cover the replacement cost of the Project Building, Project Site, and other improvements provided by Landlord.
- (iii) Boiler or Machinery Insurance covering all pressure vessels, boilers, air conditioning equipment, or similar equipment, if any, in, on, adjoining, above or beneath the Project, in an amount of One Million Dollars (\$1,000,000.00)
- (iv) Rent Insurance covering those risks referred to in (ii) in an amount equal to all Rents and other sums payable under this Lease for a period of twenty-four (24) months commencing with the date of loss.
- (v) Worker's Compensation Insurance covering all persons employed, directly or indirectly, in connection with any finish work performed by Tenant or any repair or alteration authorized by this Lease or consented to by Landlord, and all employees or agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant, as required by Alabama law.

(vi) Plate Glass Insurance.

(b) Named Parties. The comprehensive general liability insurance shall name Landlord and Landlord's agents as an additional insured party. All of the aforesaid insurance shall be written by one or more responsible insurance companies satisfactory to Landlord and in a form satisfactory to Landlord. All such insurance may be carried under a blanket policy covering the Project; all such insurance shall contain endorsements that such insurance may not be canceled or amended with respect to Landlord (or its designees) except upon ten (10) days prior written notice to Landlord (and any such designees) by the insurance company. Tenant shall be solely responsible for payment of premiums and Landlord (or its designees) shall not be required to pay any premium for such insurance. In the event of payment of any loss covered by such policy, Landlord (or its designees) shall be paid first by the insurance company for Landlord's loss. Tenant shall deliver to Landlord at least fifteen (15) days prior to the time such insurance is first required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of such policy, either a duplicate original or a certificate of insurance on all policies procured by Tenant in compliance with its obligations hereunder, together with evidence satisfactory to Landlord, of the payment of the premiums therefor. If Tenant fails to obtain and provide any or all of the aforesaid insurance, then Landlord may, but shall not be required to, purchase such insurance on behalf of Tenant and add the cost of such insurance as additional Rent due and payable.

(c) The minimum limits of the comprehensive general liability policy of insurance shall be subject to increase at any time, and from time to time, if Landlord shall reasonably deem same necessary for adequate protection. Within thirty (30) days after demand therefor by Landlord, Tenant shall furnish Landlord with evidence of Tenant's compliance with such demand.

6.7 Performance by Landlord of Certain Tenant Obligations and Reimbursement of Expenses. In the event the Tenant fails to pay the assessments, or pay the insurance expense, or the 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 Landlord, after first giving the Tenant thirty (30) days notice of any such failure and after the subsequent failure by the Tenant 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 Tenant. An expense incurred by the Landlord in performing any of such obligations of the Tenant shall become an additional Rent obligation of the Tenant to the Landlord, as the case may be, and shall be paid by the Tenant, together with interest thereon, from the date such amount was paid by the Landlord, until the date of its repayment by the Tenant, at a per annum rate equal to the rate borne on the Certificate of Participation. Any remedy herein vested in the Landlord for the collection of Rent payments shall also be available to the Landlord for the collection of all amounts so paid by the Landlord in performing any of such obligations of the Tenant.

6.8 Tenant's Services. All services required by the Tenant for the Project Building are the exclusive responsibility and obligation of the Tenant in accordance with the pervasive "net" terms and conditions hereof.

SECTION 7

PROVISIONS RESPECTING DAMAGE AND DESTRUCTION

7.1 Substantial Casualty. If the Project is materially damaged or rendered materially untenable (such that they cannot be used by Tenant for their intended purposes) by fire or other casualty, or if the Project is so damaged or so rendered untenable by fire or other casualty that the repair, restoration, or rebuilding of such damages would require more than one hundred twenty (120) days for completion, Tenant shall have the option, exercisable by written notice given to Landlord within thirty (30) days after the occurrence of such fire or other casualty, to terminate this Lease upon a date specified

in said notice, which date shall not be less than five (5) nor more than ten (10) days after the giving of said notice, and in such event the term hereof shall expire in the same manner as if the date specified in said notice were the date herein originally specified for the expiration of the Term; provided, however, that if the proceeds of any casualty insurance as provided in Section 6.6 hereof shall be insufficient to effect a redemption of all Certificates of Participation issued by Landlord in connection with the financing of the Project pursuant to the Indenture, then Tenant shall not have the option described in this Section 7.1. If Tenant shall not give such notice, Tenant shall forthwith proceed to repair, restore, and rebuild the Project to its former condition at Tenant's cost and expense only to the extent reimbursed by Tenant's insurance, and complete the same with reasonable promptness; and the annual Rent and additional rent shall abate from the date of such fire or other casualty until the repairs, restoration, and rebuilding shall be completed. If this Lease shall be terminated pursuant to notice as hereinabove provided, no Rent shall be payable by Tenant for any period after the date of such fire or other casualty. Anything to the contrary contained herein notwithstanding, if the Tenant exercises the option herein contained and the Project is not rebuilt, all such insurance proceeds shall be applied to the redemption of the Certificates of Participation.

7.2 Tenant Responsibilities During Restoration. Tenant agrees upon notice from Landlord, to remove such fixtures and other property from the Project as shall be required by Landlord for such restoration work and agrees to permit Landlord, its agents, servants, employees and contractors to enter upon the Project and remain thereon without molestation for the purpose of restoring the affected portion of the Project.

SECTION 8

QUIET POSSESSION

8.1 Covenant of Quiet Possession. Landlord shall, subject to performance of its construction responsibilities set forth in Section 4.1 hereof, place Tenant in quiet possession of the Project and shall secure it in the quiet possession thereof against all persons claiming the same during the entire Term.

SECTION 9

CONDEMNATION

9.1 Total. If the whole of the Project shall be taken by condemnation or other proceedings for any public or quasi-public use or purpose then this Lease and the term hereof shall terminate as of the date Tenant is required to yield possession of the Project pursuant to such taking.

9.2 Partial. If any part of the Project shall be taken as aforesaid, and such partial taking shall render the remaining portion unsuitable for the business of Tenant, then this Lease shall terminate as aforesaid. If such partial taking is not sufficiently extensive to render the Project unsuitable for Tenant, then this Lease shall continue in effect except that the Rent shall be reduced only if some part of the Project Building is taken and the reduction shall be equal to the same proportion that the floor area of the Project Building taken bears to the original floor area and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations so as to constitute the Project Building a complete architectural unit but in no event shall Landlord be required to spend for such work an amount in excess of the net amount received free and clear by Landlord as damages for the part of the Project Building so taken.

9.3 Rent Abatement. If this Lease is terminated as provided for in this Section, Rents shall be paid to the day that possession is so taken by public authority and Landlord shall make an equitable refund of any Rents paid by Tenant in advance.

9.4 **Award.** Tenant shall not be entitled to and expressly waives all claim to any condemnation or other award for any such taking, whether whole or partial, and whether for diminution in value of the leasehold or the fee, or otherwise, except the Tenant shall have the right, to the extent permitted by law and provided that the same shall not reduce Landlord's award, to claim from the condemnor, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damage to Tenant's business and trade fixtures.

SECTION 10

DEFAULT

10.1 **Events of Default.** Upon the happening of one or more of the events as expressed in this paragraph, the Landlord shall have the right, at the option of the Landlord, to either annul and terminate this Lease upon fifteen (15) days written notice to Lessee and thereupon re-enter and take possession of the Project; or the right upon fifteen (15) days written notice to the Tenant to re-enter and relet said Project, from time to time, as agents of the Tenant, and such re-entry or reletting or both, shall not discharge the Tenant from any liability or obligation hereunder, except that rents (That is, gross rents less the expense of collecting and handling, and less commissions) collected as a result of such reletting shall be credited on the Tenant's liability up to the amount due under the terms of this Lease and the balance, if any, credited to the Landlord. Nothing herein, however, shall be construed to require the Landlord to re-enter and relet, nor shall anything herein be construed to postpone the right of the Landlord to sue for Rent and Additional Rent, whether matured by acceleration or otherwise, but on the contrary, the Landlord is hereby given the right to sue therefor at any time after default. The events or default referred to herein are: failure of the Tenant to pay any one or more of the installments of Rent, or Additional Rent, provided for in this Lease as and when the same become due; the filing of a Petition in Bankruptcy, a Petition for an Arraignment or reorganization by or against the Tenant; the appointment of a receiver or trustee, or other court officer, for the assets of the Tenant; the execution of an assignment for the benefit of creditors of the Tenant; the vacation or abandonment by the Tenant of the Project or

the use thereof for any purpose other than the purpose for which the same are hereby let; the assignment by Tenant of this Lease or the reletting or subletting by the Tenant of the Project or any part thereof without the written consent of the Landlord first had and obtained; the violation by the Tenant of any other of the terms, conditions or covenants not set out in this paragraph on the part of the Tenant herein contained and failure of the Tenant to remedy such violation within ten (10) days after written notice thereof is given by the Landlord to the Tenant. Upon termination or breach of this Lease or re-entry upon said Project for any one or more of the causes set forth above, or upon termination of this Lease or re-entry of said Project, the Rent and Additional Rent provided for in this Lease for the balance of the Lease Term, or any renewal term or other extended term, and all other indebtedness, including, without limitation, the Additional Rent, to the Landlord owed by the Tenant, shall be and become immediately due and payable at the option of the Landlord and without regard to whether or not possession of the Project shall have been surrendered to or taken by the Landlord. The Tenant agrees to pay Landlord, or on Landlord's behalf, a reasonable attorney's fee in the event Landlord employs an attorney to collect any sums due hereunder by Tenant, or to protect the interest of Landlord in the event the Tenant is adjudged a bankrupt, or legal process is levied upon the goods, furniture, effects or personal property of the Tenant upon the said Project, or upon the interest of the Tenant in this Lease or in said Project, or in the event the Tenant violates any of the terms, conditions, or covenants on the part of the Tenant herein contained. In order to further secure the prompt payments of the said Rent and Additional Rent, as and when the same mature, and the faithful performance by the Tenant of all and singular the terms, conditions and covenants on the part of the Tenant herein contained, and all damages, and costs that the Landlord may sustain by reason of the violation of said terms, conditions and covenants, or any of them, the Tenant hereby waives any and all rights to claim personal property as exempt from levy and sale, under the laws of any State or the United States.

10.2 Abandonment as Event of Default. In the event the Tenant abandons the Project before the expiration of the Lease Term, or any renewal term, whether voluntarily or involuntarily, or violates any of the terms, conditions, or covenants hereof, the Landlord shall have the privilege at

Landlord's option of re-entering and taking possession of said Project and leasing all or any portion of said Project for such term and for such use deemed satisfactory to the Landlord, applying each month the net proceeds obtained from said leasing to the credit of the Tenant herein, up to the amount due under the terms of this Lease and the balance to the Landlord and said leasing shall not release the Tenant from liability hereunder for the Rent reserved for the residue of the term hereof, but Tenant shall be responsible each month for the difference, if any, between the net rent obtained from such leasing and the monthly Rent and Additional Rent, reserved hereunder, and said difference shall be payable to the Landlord on the first day of each month for the residue of the term hereof.

10.3 Re-entry Not a Bar. No re-entry hereunder shall bar the recovery of Rent or Additional Rent or damages for the breach of any of the terms, conditions, or covenants on the part of the Tenant herein contained. The receipt of Rent and Additional Rent after breach or condition broken, or delay on the part of Landlord to enforce any right hereunder, shall not be deemed a waiver of forfeiture, or a waiver of the right of the Landlord to annul the Lease or to re-enter said Project or to relet the same, or to accelerate the maturity of the Rent or Additional Rent hereunder.

SECTION 11

TERMINATION

The Tenant will yield up the Project and all additions thereto (except signs, equipment and trade fixtures installed by Tenant at its expense) at the termination of the tenancy in as good and tenantable condition as the same are at the beginning of Tenant's occupancy, less reasonable wear and tear, damage by fire and other casualties, and condemnation proceedings by eminent domain excepted, and also excepting any damage, disrepair or other condition that the Landlord is obligated hereunder to repair or correct; provided, however, any provision hereinabove in this paragraph to the contrary notwithstanding, Tenant shall not be required to restore, remove, renovate, reconstruct or rebuild any walls, partitions, windows, doors or other openings or other facilities in the Project Building to the same condition as at the beginning of Tenant's occupancy, but, on the contrary, all improvements then located in the Project and

all machinery and equipment located thereon, including, but not limited to, heating and air-conditioning, will be delivered to landlord in their "as is" condition at such time, it being understood and agreed that Tenant shall not be responsible for repairing, renovating, restoring or replacing any part of the improvements caused by ordinary and usual wear during the occupancy of the Project by Tenant.

SECTION 12

ASSIGNMENT AND SUBLEASING

Tenant shall not assign, mortgage or encumber this Lease, in whole or part, or sublet all or any part of the Project without the prior written consent of Landlord. The Landlord's decision to withhold such consent, for whatever reason, if any, shall be absolute and binding on Tenant. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall not be construed to include a prohibition against any assignment or subletting by operation of law. Notwithstanding any assignment or sublease, Tenant shall remain duly liable and shall not be released from any of Tenant's obligations or liabilities under this Lease.

SECTION 13

MISCELLANEOUS

13.1 Waiver by Landlord. If any action or proceeding hereunder is instituted or if other steps are taken by Landlord, and a compromise, part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord of any right, covenant or provision of or under this Lease or of any subsequent breach or breaches thereof not of the Lease itself. No waiver of any default under or breach or violation of any provision or covenant of this Lease shall constitute or operate as a waiver of such provision or covenant or of any subsequent default thereunder or breach or violation thereof, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment

thereof or prohibit or prevent any election under or enforcement or exercise of any provision, right, privilege, or option herein contained or granted. No waiver of any provision hereof by Landlord shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord. The receipt by Landlord of Rent with knowledge of any breach or violation of or default under this Lease shall not constitute or operate as a waiver of such breach, violation or default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated Rent or other sums due Landlord shall operate only as a payment on account of said Rent or other sums; no endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall as a compromise or accord and satisfaction unless the same is approved in writing by Landlord; and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of said Rent or other sums due by Tenant and pursue any other remedy allowable by law or under this Lease.

13.2 Nonmerger of Estates. If Landlord shall become the holder of a mortgage or other security instrument on the leasehold estate created hereby, the fee simple title to the Project and said leasehold estate shall not merge but shall always be kept separate and distinct unless Landlord shall elect to merge title to such estates as evidenced by written instrument executed by Landlord and filed in the Probate Office of Shelby County, Alabama.

13.3 Covenants Run With Land. All covenants, agreements and conditions contained in this Lease are and shall be deemed to be covenants running with the land and the reversion and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and also the successors and assigns of all subsequent Landlords and Tenants respectively hereunder.

13.4 Notices and Limitations of Landlord's Liability. Except as otherwise provided hereunder, any notice or communication from one party to the other may be delivered by hand or mailed by certified United States mail, return receipt requested, postage prepaid. Notices or communications shall be addressed to Landlord at P. O. Box 10367, Birmingham, Alabama 35202, or such other address as Landlord from time to time may designate by notice in writing to Tenant. Notices or communications shall

be addressed to Tenant at 2601 Carson Road, Birmingham, Alabama 35215-3098, or such other address as Tenant shall from time to time designate by notice in writing to Landlord, or when no address is known to, or has been received by, Landlord or its designated agent, then a copy of the notice or communication shall be posted on the front of the Project or on the front of any buildings then situated thereon. Any notice mailed in the manner above set forth shall be deemed to have been given when delivered to the United States post office. If Landlord conveys its rights, title and interest in and to the Project and this Lease, it shall notify Tenant promptly after recordation of the deed of such transfer and the name and address of the grantee. The term "Landlord," as used in this Lease, so far as any covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the Project, and in the event of any transfer or transfers of the title to such fee the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be turned over to the grantee and any amount then due and payable to landlord by landlord or the then grantor under any provision of this Lease shall be paid to Tenant; and provided, further, that upon any such transfer, the grantee or transferee shall expressly assume, subject to the limitations of this Section, all of the terms, covenants and conditions on this Lease contained to be performed on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Landlord shall, subject as aforesaid, be binding on each Landlord, its successors and assigns, only during and in respect of its respective period of ownership.

13.5 Grammatical Matters. All references in this Lease to "Landlord" or "Tenant" shall be deemed to refer to and include the successors and assigns of Landlord or Tenant, respectively, without specific mention of such successors or assigns. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a

partnership, a corporation, a trust or other entity, or a group of two or more of them. The necessary grammatical changes required to make the provisions of the Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, tenants or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

13.6 Estoppel Certificates. Landlord or Tenant, as the case may be, will execute, acknowledge and deliver to the other, promptly upon request, its certificate certifying (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (ii) the dates, if any, to which any Rent has been paid, (iii) whether there are then existing offsets or defenses against the enforcement of any term hereof on the part of Tenant to be performed or complied with (and, if so, specifying the same), and (iv) that no notice has been given to Tenant of any default which has not been cured. Any such certificate may be relied upon by any prospective purchaser, sublessee or Lender with respect to the leasehold estate hereunder or the Project or any part thereof.

13.7 Partial Invalidity. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be constructed as if such invalid, illegal or unenforceable provisions had not been contained herein. The specified remedies to which the Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. Whenever in this Lease the consent or approval of either Landlord or Tenant is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.

13.8 Subordination. The Tenant agrees that this Lease shall at all times be subject and subordinate to the lien of any mortgage (which term shall include all security instruments) that may be placed on the Project by the Landlord; and Tenant agrees, upon demand, without cost, to execute any instrument as may be required to effectuate such subordination; provided, however, as a condition to this

subordination provision, the Landlord shall obtain from any such mortgagee an agreement in writing, which shall be delivered to Tenant, providing in substance that, so long as Tenant shall faithfully discharge the obligations on its part to be kept and performed under the terms of this Lease, its tenancy shall be undisturbed, nor shall this Lease be affected by any default under such mortgage; and in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive, and this Lease shall in all respects continue in full force and effect.

13.9 Tenant Defenses. The Tenant, notwithstanding any provision(s) of the Lease Agreement, and/or incorporations or amendments hereto, does not waive or otherwise relinquish, expressly or impliedly, its right to assert sovereign immunity or any other affirmative defense or avoidance it may have at law or equity in defense of any action or lawsuit or administrative claim which may be brought concerning any term(s) of this Lease or the Tenant's occupation and use of the premises leased through this Lease Agreement.

13.10 Environmental Matters. Landlord represents that none of the demised premises contains (a) any underground storage tanks; (b) asbestos in any form; (c) urea formaldehyde foam insulation; or (d) any chemical, material, or substance the exposure to which is prohibited, limited or regulated by any Federal, State, county, regional, or local authority, or which, even if not so regulated, may pose a hazard to the health and safety of the occupants of the demised premises. Landlord further represents and warrants that: (a) upon the initial occupancy by Tenant the demised premises will comply in all respects with applicable environmental laws, regulations, and court or administrative orders; (b) there are no pending claims or threats of claims by private parties or governmental or administrative authorities relating to environmental impairment or regulatory requirements; and (c) there are no areas on the demised premises where hazardous substances have been disposed of, released or found. Landlord hereby agrees to indemnify and hold harmless Tenant from all loss, cost, damage, claim, and expense incurred by Tenant as a result of any misrepresentation, or the violation of any warranty or representation set forth in this paragraph with respect to environmental matters. Landlord further agrees that in the event of such misrepresentation or violation of warranty, Tenant shall have the right to terminate this Lease

Agreement by providing Landlord with sixty (60) days written prior notice of such termination. In addition, Landlord agrees that in the event of such misrepresentation or violation of warranty with regard to any real property purchased pursuant to the Tenant Purchase Option contained herein, the Landlord, as Seller, shall be liable for such environmental clean-up or other actions or penalties as may be required or assessed by applicable Federal and State environmental laws and regulations. Provided, however, that if the Tenant shall purchase any or all of the demised premises with the knowledge, or sufficient notice, of any adverse environmental condition, the Tenant shall be liable for such environmental clean-up or regulation with respect to that particular adverse environmental condition.

13.11 Covenant to Use. The Tenant hereby agrees and covenants to use the Project Building for educational and instruction purposes.

13.12 Internal Revenue Code. The parties hereto recognize that the Landlord is selling its tax exempt certificates of participation to finance the construction of the Project on the basis that the interest component payable under this Lease Agreement is excludable from gross income of the holder of such certificates under Section 108 of the Internal Revenue Code of 1986, as amended (the "Code"). The Landlord and Tenant each hereby covenant and agree for the benefit of the certificate holders that (a) the proceeds from the sale of the certificates of participation will be used solely for the governmental purposes for which they were issued; (b) the proceeds of the certificates shall not be used or applied, nor the Pledged Revenues accumulated, nor any investment of any thereof be made, nor shall any other action be taken or omitted which would cause the certificates to be or become an "arbitrage bond" as that term is defined in Section 148 of the Code; (c) no part of the proceeds of the certificates shall be used (directly or indirectly) (i) in a trade of business carried on by any person other than a governmental unit or (ii) to make or finance loans to any persons and the Tenant will not enter into any agreement or contract with any person, firm or corporation with respect to the management and operation of the Project, or sale, leasing or other disposition of the Project, or of any other nature, the result of which would be that the interest portion on the certificates of participation would be or become includable in the gross income of the registered owner thereof for purposes of federal taxation; (d) the Tenant will make full and timely

payment of all rebate payments to the United States of America and the Landlord and the Tenant will maintain all records with respect thereto that may be required by Section 148(f) of the Code and any applicable regulations thereunder; (e) neither the certificates of participation nor any proceeds thereof shall ever be deemed "federally guaranteed" as that term is defined in Section 149(b) of the Code, except as expressly permitted in said Section 149(b) of the Code; and (f) the Tenant will not take any action, or omit to take any action, with respect to the certificates of participation that would cause the interest on such certificates of participation to be or become includable in the gross income of the registered owner thereof for purposes of federal income taxation under Section 108 of the Code.

13.13 Essential Function. The securing and leasing of the Project and the use by the Tenant for the purposes set forth herein are hereby declared to constitute an essential function of the Tenant. The rents payable hereunder are and shall constitute necessary operating expenses of Tenant. The Tenant agrees that in the event it exercises its right not to renew the Term of this Lease as allowed by Section 5.1, the Tenant will not purchase, lease or rent other facilities for the purpose of performing the functions and projects which were previously performed by the Project for a period of ten (10) years from the date of termination of this Lease.

13.14 Force Majeure. In the event that either party hereto is rendered unable to carry out any obligations under this Lease either wholly or in part, because of force majeure, then such obligations shall be suspended during the continuance of any such inability and such cause shall, so far as possible, be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, insurrections, riots, epidemics, lightning, earthquakes, storms, flood, washouts, arrest and restrains of rules and peoples, civil disturbances, explosions, breakage or accidents to machinery, failure to obtain materials and supplied due to governmental regulations, and causes of like or similar kind, whether herein enumerated or not, and not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to overcome; provided, however, notwithstanding any contrary provisions contained

in this Section, no obligation of either party hereto shall be suspended where such obligation is for, or relates to, the payment of money.

13.15 No Construction Against Preparer. This Lease has been prepared by Landlord and its professional advisors and reviewed by Tenant and its professional advisors. Landlord, Tenant and their separate advisors believe that this Lease is the product of their joint efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in its preparation.

IN WITNESS WHEREOF, Landlord and Tenant have each caused this Lease to be executed,
ALL IN TRIPLICATE, on this 28th day of January, 1992.

"LANDLORD"

COMMUNITY COLLEGE DEVELOPMENT CO.,
INC., an Alabama corporation

By: *Michael D. Thompson*
Its *President*
Date of Execution: 1/28/92

ATTEST:

By: *James H. McLaughlin*
Its *Sec. Treas.*

[SEAL]

BOOK 393 PAGE 958

"TENANT"

JEFFERSON STATE COMMUNITY COLLEGE, on behalf of The State of Alabama Board of Education pursuant to §16-60-110, et seq., Code of Alabama (1975)

By: [Signature]
Its President

Date of Execution: 1/28/92

ATTEST:

By: [Signature]
Its Treasurer

[SEAL]

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned authority in and for said County in said State, hereby certify that Michael Thompson, whose name as President of **COMMUNITY COLLEGE DEVELOPMENT CO., INC.**, an Alabama corporation, 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 corporation.

GIVEN under my hand and seal, this 24th day of Jan., 1992.

[NOTARIAL SEAL]

[Signature]
Notary Public

My Commission Expires: _____

BOOK 393 PAGE 959

STATE OF ALABAMA)
)
Jefferson COUNTY)

I, the undersigned authority in and for said County in said State, hereby certify that Judy Merritt, whose name as President of JEFFERSON STATE COMMUNITY COLLEGE, on behalf of The State of Alabama Board of Education pursuant to §16-60-110, et seq., Code of Alabama (1975), 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 Board.

GIVEN under my hand and seal, this 24th day of January, 1992.

[NOTARIAL SEAL]

[Signature]
Notary Public

My Commission Expires: _____

APPROVED:

Fred Gainous
Fred Gainous, Chancellor

Date: January 29, 1992

NO TAX COLLECTED
1. Deed Tax _____
2. Mtg. Tax _____
3. Recording Fee \$ 72.00
4. Indexing Fee \$ 3.00
5. No Tax Fee _____
6. Certified Fee \$ 1.00
Total \$ 76.00

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

92 MAR 11 PM 3:33

CLERK OF PROBATE

