
LEASE AGREEMENT

Dated as of November 1, 1993

By and between

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE TOWN OF PELHAM

and

PELTOWN REALTY COMPANY

The interest of The Industrial Development Board of the Town of Pelham in any rents, revenues and receipts derived by it under this Lease Agreement has been assigned to First Commercial Bank under the Mortgage, Security Agreement and Assignment of Rents and Leases dated as of November 1, 1993, and to First Commercial Bank, as Trustee under the Mortgage and Indenture of Trust dated as of November 1, 1993.

This Lease Agreement was prepared by R. H. Walston of Walston, Stabler, Wells, Anderson & Bains, 505 5th Avenue North, Suite 500, Birmingham, Alabama 35203.

01/24/1994-02578
04:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
049 MCD 128.50

Inst # 1994-02578

LEASE AGREEMENT

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STATE OF ALABAMA

SHELBY COUNTY

LEASE AGREEMENT dated as of November 1, 1993, between The Industrial Development Board of the Town of Pelham, a public corporation and instrumentality under the laws of the State of Alabama, party of the first part, and Peltown Realty Company, an Alabama general partnership, party of the second part,

W I T N E S S E T H:

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby covenant, agree and bind themselves as follows, to-wit:

ARTICLE I

DEFINITIONS, REPRESENTATIONS AND DEMISE CLAUSE

Section 1.1 Definitions. The following words, terms or phrases, when used in this Lease Agreement, have the following meanings, unless the context clearly indicates a different meaning:

"Authorized Investments" shall have the meaning ascribed in the Indenture.

"Bank" means First Commercial Bank, a state banking corporation with its principal office in the City of Birmingham, Alabama, in its capacity as issuer of the Letter of Credit.

"Bank Mortgage" means the Mortgage, Security Agreement and Assignment of Rents and Leases dated as of November 1, 1993, from the Lessee, the Sublessee, and the Lessor to the Bank, which will be recorded in the office of the Judge of Probate of Shelby County, Alabama, at the same time this Lease Agreement is so filed in said office.

"Basic Rent" means that portion of the rent payable under Section 3.2(a) hereof.

"Bonds" means the Industrial Development Revenue Bonds (Peltown-Vulcan Second Project) of the Lessor dated November 1, 1993 issued pursuant to the Indenture in the aggregate principal amount of \$1,450,000.

"Bond Counsel" means Walston, Stabler, Wells, Anderson & Bains, Birmingham, Alabama, or such other firm of attorneys experienced in the field of municipal finance as shall be designated by the Lessor and approved by the Trustee.

"Bond Fund" means the fund established under Section 4.1 of the Indenture.

"Bondholder" or "holder" or "Owner" of a Bond means the registered owner of any outstanding Bond.

"Buildings" means all buildings, structures and fixtures now or hereafter located on the Leased Realty, as they may at any time exist.

"City" means the City of Pelham, Alabama.

"Code" means the Internal Revenue Code of 1986, as amended.

"Enabling Law" means Division 1 of Article 4 of Chapter 54 of Title 11 of the CODE OF ALABAMA 1975 (Section 11-54-80 et seq.).

"Equipment" means the machinery, equipment and personal property acquired with the proceeds of the Bonds and installed or located in or about the Buildings or on the Leased Realty, including without limitation the machinery, equipment and personal property described or referred to in Exhibit B attached hereto and made a part hereof, and any machinery, equipment or personal property acquired in substitution therefor or as a renewal or replacement thereof pursuant to the provisions hereof.

"Guaranty Agreement" means the Bond Guaranty Agreement dated as of November 1, 1993 from the Sublessee and W. D. Upton, Jr., to the Trustee.

"Indenture" means the Mortgage and Indenture of Trust (including any indenture supplemental thereto) between the Lessor and the Trustee, of even date, which will be filed for record in the office of the Judge of Probate of Shelby County, Alabama, at the same time this Lease Agreement is so filed in said office.

"Independent Architect" means a person registered and qualified to practice as an architect under the laws of the State, not unsatisfactory to the Trustee, and not in the full-time employment of either the Lessor, the Sublessee or the Lessee.

"Independent Engineer" means a person registered and qualified to practice as an engineer under the laws of the State, not unsatisfactory to the Trustee, and not in the full-time employment of either the Lessor, the Sublessee or the Lessee.

"Inducement Agreement" means the agreement between the Lessor and the Lessee dated October 5, 1993, pursuant to which the Lessor expressed its intent to issue the Bonds for the 1993 Improvements.

"Lease Agreement" means these presents as supplemented and amended by the Lessor and the Lessee pursuant to Article IX of the Indenture.

"Lease Term" means the duration of the leasehold estate granted in Section 3.1 of this Lease Agreement.

"Leased Realty" means the real estate referred to in Section 1.4 hereof less any such real estate, interests in real estate and other rights as may be released from this Lease Agreement pursuant to the provisions hereof or taken by the exercise of the power of eminent domain.

"Lessee" means the party of the second part hereto and its successors and assigns.

"Lessor" means (i) the party of the first part hereto and its successors and assigns, and (ii) any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party as permitted in Section 6.3 hereof.

"Letter of Credit" means the Irrevocable Direct Pay Letter of Credit dated as of November 1, 1993, issued by the Bank to the Trustee with respect to the Bonds.

"Net Proceeds" when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses (including reasonable attorneys' fees and any extraordinary fee of the Trustee) incurred in the collection of such gross proceeds.

"1986 Mortgages" means the Mortgage and Security Agreement dated as of October 1, 1986 from the Lessee and the Lessor to First National Bank of Jasper and the Mortgage and Indenture of Trust from the Lessor to First Commercial Bank dated as of October 1, 1986, both recorded in the office of the Judge of Probate of Shelby County, Alabama.

"1993 Improvements" means those described in Exhibit C attached hereto and made a part hereof by this reference.

"Permitted Encumbrances" shall have the meaning ascribed in the Indenture.

"Prime Rate" means the rate of interest established (whether or not charged) from time to time by First Commercial Bank as its general reference rate of interest, after taking into account such factors as First Commercial Bank may from time to time deem appropriate in its sole discretion (it being understood, however, that First Commercial Bank may from time

to time make various loans at rates of interest having no relationship to such general reference rate of interest).

"Project" means the Leased Realty, the Buildings and the Equipment, as they may at any time exist, and all other property and rights referred to, or intended so to be, in the demising clauses hereof.

"Project Costs" means all costs of acquiring, constructing and installing the 1993 Improvements and includes the expenses (subject to the applicable limitation thereon) of issuance of the Bonds.

"Qualified Deposits" means the following amounts on deposit in the Bond Fund: (i) amounts drawn by the Trustee under the Letter of Credit; (ii) the accrued interest on the Bonds originally deposited in the Bond Fund from the proceeds of the sale of the Bonds; (iii) amounts from payments by the Lessee under the Lease Agreement or otherwise, in each case deposited in the Bond Fund by the Trustee for a period of not less than 91 days, provided no proceedings under the United States Bankruptcy Code are instituted with respect to the Lessee during the 91-day period following the date of such deposit; and (iv) any investment income on any of the amounts specified in the foregoing clauses (i) through (iii).

"Redemption Fund" means the fund established under Section 4.6 of the Indenture.

"Reimbursement Agreement" means the Reimbursement Agreement dated as of November 1, 1993, between the Lessee and the Bank, pursuant to which the Letter of Credit has been issued.

"State" means the State of Alabama.

"Sublessee" means Vulcan Threaded Products, Inc., an Alabama corporation.

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

"Unimproved" when used with reference to the Leased Realty means any part or parts of the Leased Realty upon the surface of which no part of a building or other structure rests.

Section 1.2 Representations by the Lessor. The Lessor makes the following representations:

(a) The Lessor is duly incorporated under the provisions of the Enabling Law and has the power to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder. The Lessor is not in default under any of the provisions contained in its certificate of

incorporation, its by-laws, or the laws of the State. By proper corporate action the Lessor has duly authorized the execution and delivery of this Lease Agreement.

(b) The Lessor has determined that the issuance of the Bonds will enable the Lessor to acquire, construct and equip the Project.

(c) The Bonds will be issued and delivered contemporaneously with the delivery of this Lease Agreement.

Section 1.3 Representations by the Lessee. The Lessee makes the following representations:

(a) The Lessee is duly organized and validly existing under the laws of the State as a general partnership, is not in violation of any provisions of its partnership agreement or the laws of the State, has power to enter into this Lease Agreement, and by proper action of its general partners has duly authorized the execution and delivery of this Lease Agreement.

(b) The Lessee intends to sublease the Project to the Sublessee for a term at least equal to the Lease Term, so that the Sublessee can operate the Project for manufacturing, processing, assembling, storing, and distributing of threaded rods, fasteners and related products, and such other products of agriculture, mining and industry as the Lessee may deem appropriate.

(c) Of the proceeds of the Bonds, not more than a de minimis amount will be expended for office facilities in which the functions to be performed are not directly related to the day-to-day operations of the manufacturing facility financed by the Bonds. No facilities will be constructed other than those which constitute a "manufacturing facility" as defined in Section 144(A)(12) of the Code and those which are directly related and ancillary to such manufacturing facility, all of which are located on the same site as the manufacturing facility. Not more than 25% of the net proceeds of the Bonds will be used to provide such directly related and ancillary facilities, including office facilities and any areas devoted to storage, warehousing or distribution as distinguished from manufacturing.

Section 1.4 Demise of the Project. The Lessor, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Lessee to be paid, kept and performed, does hereby demise and lease to the Lessee, and the Lessee does hereby lease, take and hire from the Lessor, the real property described on Exhibit A attached hereto and made a part hereof, located in Shelby County, Alabama, subject to Permitted Encumbrances,

together with the Buildings and the Equipment, as they may at any time exist, and all other properties which, under the terms hereof, are or subsequently become a part of the Project.

ARTICLE II

ACQUISITION OF THE 1993 IMPROVEMENTS

Section 2.1 Agreement to Acquire. From the principal proceeds derived from the sale of the Bonds, the Lessor will pay the costs of acquiring and constructing and installing the 1993 Improvements on the Leased Realty in accordance with plans and specifications therefor furnished to the Lessor by the Lessee.

Pursuant to the Inducement Agreement the Lessor agreed to issue the Bonds to finance the cost of the 1993 Improvements, to proceed, or permit the Lessee to proceed, pending the issuance of the Bonds, with the acquisition, construction, installation, improvement and equipping of the 1993 Improvements with funds advanced by the Lessee, and to reimburse the Lessee for funds so advanced from the proceeds of the Bonds when issued. In accordance with the Inducement Agreement, the Lessee has proceeded with the acquisition, construction, improvement and equipping of the 1993 Improvements. The Lessor (i) shall cause withdrawals to be made from the Construction Fund to reimburse the Lessee for funds advanced to the Lessor or expended by the Lessee for such purpose, subject to the requirements of the Indenture with respect to withdrawals from the Construction Fund, and (ii) will assume or accept the assignment of such contracts and purchase orders entered into by the Lessee prior to the execution and delivery of this Lease Agreement for the acquisition, installation and construction of the 1993 Improvements as the Lessee may request.

The Lessor will continue such acquisition, installation, construction, improvement and equipping with all reasonable dispatch and due diligence and will cause the 1993 Improvements to be completed as promptly as practicable. The Lessee will promptly give its written instructions with respect to, and will request the Lessor to enter into, such construction contracts and purchase orders for material, supplies, and equipment, and will take whatever other action may be provided for in this Lease Agreement, as shall be necessary to complete the 1993 Improvements. The Lessor will not execute any construction contract or purchase orders for the 1993 Improvements without the prior written consent of the Lessee.

Compliance with laws and regulations necessary to realize any sales and use tax exemption with respect to the acquisition and construction of the 1993 Improvements shall be the sole responsibility of the Lessee and neither the Lessor nor Bond

Counsel assumes any responsibility or gives any assurance with respect to any possible exemption from sales and use taxes.

The Lessee may cause changes or amendments to be made in the plans and specifications for the 1993 Improvements; provided (i) such changes or amendments will not change the nature of the Project to the extent that it would not constitute a "project" as authorized by the Enabling Law, and (ii) such changes or amendments will not materially affect the utility of the Project for its intended use. The Lessor will make only such changes or amendments in the plans and specifications for the 1993 Improvements as may be requested in writing by the Lessee.

If after the exercise of due diligence by the Lessor, it is impossible for the Lessor to acquire, construct or install any part of the 1993 Improvements which the Lessee requests the Lessor so to acquire, construct or install, the Lessor will notify the Lessee and the Trustee in writing and the Lessee (a) will withdraw the request in question, or (b) will itself effect the acquisition, construction, or installation so requested, for and in the name and on behalf of the Lessor, in which case the Lessee shall be entitled to reimbursement from the Construction Fund for the costs incurred by it in effecting such acquisition, construction, or installation.

The Lessor and the Lessee shall from time to time each appoint by written instrument an agent or agents authorized to act for each respectively in any or all matters relating to the acquisition, construction, improvement and installation of the 1993 Improvements and payments to be made out of the Construction Fund. One of the agents appointed by the Lessee shall be designated its Project Supervisor. Either the Lessor or the Lessee may from time to time, by written notice also filed with the Trustee, revoke, amend or otherwise limit the authorization of any agent appointed by it to act on its behalf or designate another agent or agents to act on its behalf, provided that there shall be at all times at least one agent authorized to act on behalf of the Lessor, and at least one agent (who shall be the Project Supervisor) authorized to act on behalf of the Lessee, with reference to all the foregoing matters.

The Lessor shall cause withdrawals to be made from the Construction Fund for the payment of the Project Costs (including reimbursement to the Lessee for Project Costs), but only upon the written approval of the Lessee and subject to the requirements of the Indenture with respect to withdrawals from the Construction Fund. In the event that, after reasonable request made to the Lessor by the Lessee, the Lessor fails or refuses to issue or execute a payment requisition from the Construction Fund for payment of any Project Costs, the Project Supervisor then designated by the Lessee, who is hereby irrevocably appointed as agent for the Lessor for such

purposes, may issue and execute, also for and in the name and behalf of the Lessor and without any approval of any officer, employee or other agent thereof, a payment requisition on the Construction Fund.

Section 2.2 No Warranty of Suitability by Lessor; Lessee Required to Complete 1993 Improvements in Certain Events. The Lessee recognizes that since the plans, specifications and directions for acquiring, constructing, improving, and installing the 1993 Improvements are furnished by it, THE LESSOR MAKES NO WARRANTY, WITHER EXPRESS OR IMPLIED, NOR OFFERS ANY ASSURANCES THAT THE PROJECT OR THE 1993 IMPROVEMENTS WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS OR THAT THE PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY IN FULL ALL PROJECT COSTS. In the event the proceeds derived from the sale of the Bonds are insufficient to pay in full all Project Costs, the Lessee shall be obligated to complete the acquisition, construction, improvement and installation of the 1993 Improvements at its own expense and the Lessee shall pay any such deficiency and shall save the Lessor whole and harmless from any obligation to pay such deficiency. The Lessee shall not by reason of the payment of such deficiency from its own funds be entitled to any diminution in the payment of the rents hereunder.

Section 2.3 Lessor to Pursue Remedies Against Vendors, Contractors and Subcontractors and Their Sureties. In the event of default of any vendor, contractor or subcontractor under any contract or purchase order made by it for acquisition, construction, improvement or installation of the 1993 Improvements, the Lessor will promptly proceed (subject to the Lessee's advice to the contrary), either separately or in conjunction with others, to exhaust the remedies of the Lessor against the vendor, contractor or subcontractor so in default and against his surety (if any) for the performance of such contract or purchase order. The Lessor will advise the Lessee of the steps it intends to take in connection with any such default and the Lessee will pay all costs, fees and expenses incurred which are not paid from the Construction Fund. If the Lessee shall so notify the Lessor, the Lessee may, in its own name or in the name of the Lessor, prosecute or defend any action or proceeding or take any other action involving any such vendor, contractor, subcontractor or surety which the Lessee deems reasonably necessary, and in such event the Lessor will cooperate fully with the Lessee and will take all action necessary to effect the substitution of the Lessee for the Lessor in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid into the Construction Fund.

Section 2.4 Investment of Construction Fund, Bond Fund and Redemption Fund Moneys. The Lessor shall cause any moneys held as a part of the Construction Fund, the Bond Fund and the

Redemption Fund to be invested or reinvested by the Trustee in Authorized Investments at the request of, and as directed by, the Lessee. Any interest bearing deposits, including certificates of deposit, issued by or deposited with the Trustee shall be deemed to be investments and not trust deposits. The Trustee may make any and all such investments through its own bond department. No investment shall be made which may result in any Bond being considered an "arbitrage bond" within the meaning of Section 148 of the Code.

Section 2.5 Completion of the 1993 Improvements. The completion of the 1993 Improvements shall be evidenced to the Trustee by a certificate signed by the Lessor and by the Project Supervisor on behalf of the Lessee stating that (i) acquisition, construction and improvement of the buildings, structures and fixtures has been completed in accordance with the plans and specifications approved by the Lessee, (ii) all machinery, equipment and other personal property has been acquired and installed in accordance with the Lessee's instructions, (iii) all labor, services, materials and supplies in connection with such acquisition, construction, improvement and installation have been paid for, and (iv) all facilities necessary in connection with the 1993 Improvements have been constructed, acquired and installed and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against any vendor, contractor, subcontractor or other person not a party to this Lease Agreement which exist at the date of such certificate or which may subsequently come into being. The Lessor and the Lessee will cooperate with each other in causing such certificate to be furnished to the Trustee.

After the delivery of the aforesaid certificate to the Trustee, any moneys then remaining in the Construction Fund shall be applied as provided in Section 3.4 of the Indenture.

ARTICLE III

DURATION OF LEASE TERM AND RENTAL PROVISIONS

Section 3.1 Duration of Term. Relationship of Leases. The term of this Lease Agreement and of the lease herein made shall begin on the date of the delivery of this Lease Agreement and, subject to the provisions of this Lease Agreement, shall continue until midnight of November 1, 2008. The Lessee has possession of the Project on the commencement date of the Lease Term, subject to the inspection and other rights reserved in this Lease Agreement; provided, however, the Lessor will be permitted such possession of the Project as shall be necessary and convenient for it to construct or install any additions or improvements and to make any repairs or restorations required or permitted to be constructed, installed or made by the Lessor

pursuant to the provisions hereof. The Lessor has previously leased a substantial amount of the Project to the Lessee pursuant to a Lease Agreement dated as of October 1, 1986. That Lease Agreement terminates October 1, 2001. Until that date, the provisions of that lease will be prior and superior to the provisions of this Lease Agreement except those provisions requiring the Lessor to construct the 1993 Improvements and the provisions for payment of Basic Rent. From and after October 1, 2001, the provisions of this Lease Agreement shall control the relationship between the Lessor and the Lessee with respect to the Project. During the period when both leases are in effect, all provisions of this Lease Agreement which are in addition to or supplement the requirements of the 1986 Lease shall also be complied with by the Lessee and only those provisions as to which there is a conflict between the two agreements will be controlled by the 1986 Lease.

Section 3.2 Rental Provisions.

(a) Basic Rent. The Lessee does hereby covenant and agree to pay to the Lessor as Basic Rent such amounts as shall be required to pay the principal of, premium, if any, and interest on the Bonds when and as the same shall become due and payable, and each payment of Basic Rent shall be made in immediately available funds not later than the date on which the corresponding payment of principal of the Bonds, premium, if any, or interest on the Bonds, is due and payable. There shall be credited against Basic Rent required to be paid by the Lessee on any rental payment date (i) all amounts which have been paid to the Trustee pursuant to the Letter of Credit with respect to the payment of principal of, premium, if any, and interest on the Bonds that shall become due and payable on such rental payment date, and (ii) any amount held by the Trustee in the Bond Fund on a rental payment date which is a Qualified Deposit, to the extent needed, provided that such amount shall only be so credited to the extent it is in excess of any amount required for payment of the principal of and interest and premium (if any) on Bonds theretofore matured or due or called for redemption.

All Basic Rent payments shall be made directly to the Trustee for the account of the Lessor and shall be deposited in the Bond Fund and applied solely as provided in the Indenture. The Lessor shall cause all moneys deposited in the Bond Fund to be applied to the payment of principal of or interest on the Bonds within thirteen months from the date of such deposit and shall cause all amounts received from the investment of moneys in the Bond Fund to be applied to the payment of principal of or interest on the Bonds within twelve months from the date of receipt of such investment income.

If on any principal or interest payment date the balance in the Bond Fund is insufficient to pay the principal of,

premium, if any, and interest on the Bonds due and payable on such date, the Lessee will forthwith pay any such deficiency. Any installment of Basic Rent not paid on the due date thereof shall bear interest until paid at the Prime Rate plus 2% per annum or the maximum rate of interest allowed by law, whichever is less. If at any time the amount held by the Trustee in the Bond Fund shall be sufficient to pay at the times required all of the principal of, interest due and to become due and premium (if any) on the Bonds then remaining unpaid, the Lessee shall not be obligated to make any further Basic Rent payments under the provisions of this Section, but this provision shall not affect the other obligations of the Lessee under this Lease Agreement.

(b) Additional Rent; Indemnity of Trustee. The Lessee shall pay as additional rent to the Trustee (i) an amount equal to the annual fee of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, as and when the same becomes due, (ii) the reasonable fees and charges of the Trustee as bond registrar and paying agent as provided in the Indenture, as and when the same become due, and (iii) the reasonable fees, charges and expenses of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, as and when the same become due; provided, that the Lessee may, without creating a default hereunder, contest in good faith the necessity for any such extraordinary services and extraordinary expenses and the reasonableness of any such fees, charges or expenses.

The Lessee further agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts under the Indenture, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers and duties under the Indenture.

(c) Payment of Lessor's Expenses. The Lessee further agrees to pay the reasonable and necessary expenses (including attorneys' fees) not otherwise provided for in this Lease Agreement which may be incurred by the Lessor or for which the Lessor may in any way become liable as the result of issuing any of the Bonds and leasing the Project to the Lessee, or being a party to this Lease Agreement or the Indenture.

Section 3.3 Obligations of Lessee Unconditional. The obligation of the Lessee to pay Basic Rent and additional 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 setoff, recoupment or counterclaim it might otherwise have against the Lessor or the

Bank. The Lessee will not suspend or discontinue any such payment or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration or commercial frustration of purpose, failure to construct or complete the 1993 Improvements, the invalidity of any provision of the Lease Agreement, any damage to or destruction of the Project or any part thereof, the taking by eminent domain of title to or the right to temporary use of all or any part of the Project, any failure of the Bank to make a payment pursuant to the Letter of Credit or to reinstate the appropriate amount thereof, any change in the tax or other laws or administrative rulings, actions or regulations of the United States of America or of the State or any political or taxing subdivision of either thereof, or any failure of the Lessor to perform and observe any agreement or covenant, whether express or implied, any duty, liability or obligation arising out of or in connection with this Lease Agreement. Notwithstanding the foregoing, the Lessee may, at its own cost and expense and in its own name or in the name of the Lessor, prosecute or defend any action or proceeding, or take any other action involving third persons which the Lessee deems reasonably necessary in order to secure or protect its rights of use and occupancy and the other rights hereunder. The provisions of the first and second sentences of this Section shall apply only so long as any part of the principal of and the interest on the Bonds remains outstanding and unpaid.

Section 3.4 Title Insurance. The Lessee shall pay the cost of obtaining a title insurance policy in an amount equal to the maximum amount available to be drawn under the Letter of Credit on the date of issuance of the Bonds, insuring the mortgages on the Leased Realty created by the Bank Mortgage and the Indenture. Such policy of insurance shall be taken out in a generally recognized responsible insurance company, qualified under the laws of the State of Alabama to assume the risks undertaken and shall expressly ensure the Bank and the Trustee that the mortgages of the Project pursuant to the Bank Mortgage and the Indenture shall be a priority lien over any and all labor and/or mechanic's and materialmen's lien claims against the Leased Realty and the Mortgaged Property. Such policy shall name as the insureds the Bank and the Trustee as their interests may appear. Any proceeds of such title insurance shall be held and applied as provided in the Indenture and the Bank Mortgage, as the case may be. The Lessor and Lessee hereby covenant and agree that, pending such application, the proceeds of such title insurance shall not be invested to produce a yield in excess of the yield on the Bonds, computed in accordance with Section 148 of the Code.

ARTICLE IV

MAINTENANCE, ALTERATIONS, REPLACEMENTS, TAXES AND INSURANCE

Section 4.1 Maintenance and Repairs, Alterations and Improvements to Buildings, Party Walls and Liens.

(a) The Lessee shall, at its own expense, (i) keep the Project in as reasonably safe condition as its operation permits, (ii) from time to time make all necessary and proper repairs, renewals and replacements thereto, including external and structural repairs, renewals and replacements, and (iii) pay all gas, electric, water, sewer and other charges for the operation, maintenance, use and upkeep of the Project.

(b) The Lessee may, at its own expense, make structural changes, additions, improvements, alterations or replacements to the Buildings that it may deem desirable, provided such structural changes, additions, improvements, alterations or replacements do not change the character of the Project as a "project" under the Enabling Law, and provided further that the Lessee files with the Lessor, the Bank and the Trustee a certificate of an Independent Engineer or an Independent Architect that such additions, improvements, alterations or replacements will not adversely affect the utility of the Project or substantially reduce its value. In lieu of making such additions, improvements or alterations itself, the Lessee may, if it so desires, furnish to the Lessor the funds necessary therefor, in which case the Lessor will proceed to make such changes, additions, improvements, alterations or replacements. All such changes, additions, improvements, alterations and replacements, whether made by the Lessee or the Lessor, shall become a part of the Project and shall be covered by this Lease Agreement and the Indenture.

(c) The Lessee may connect or "tie-in" walls of the Buildings and utility and other facilities located on the Leased Realty to other structures and facilities owned or leased by it on real property adjacent to the Leased Realty. The Lessee may use as a party wall any wall of the Buildings which is on or contiguous to the boundary line of real property owned or leased by it, and in the event of such use, each party hereto hereby grants to the other a ten-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying in of new construction. If the Lessee utilizes any wall of the Buildings as a party wall for the purpose of tying in new construction that will be utilized under common control with the Project, the Lessee may also remove any non-loadbearing wall panel in the party wall; provided, however, if the adjacent property ceases to be operated under common control with the Project, the Lessee shall, at its own expense, install wall panels similar in quality to those that have been removed.

Prior to the exercise of any one or more of the rights granted by this subsection (c), the Lessee shall furnish the Lessor, the Bank and Trustee a certificate of an Independent Engineer or an Independent Architect that the operation of the Project will not be adversely affected by the exercise of such rights.

(d) The Lessor shall also, upon request of the Lessee, grant such utility and other similar easements over, across or under the Leased Realty as shall be necessary or convenient for the furnishing of utility and other similar services to the Project or to real property adjacent to or near the Leased Realty and owned or leased by the Lessee; provided that such easements shall not adversely affect the operation of the facilities forming a part of the Project.

(e) The Lessee shall not permit any mechanics' or other liens to stand against the Project for labor or material furnished it. The Lessee may, however, in good faith contest any such mechanics' or other liens and in such event 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 on the Project or any part thereof, or the Project or any part thereof shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall be promptly satisfied.

Section 4.2 Removal of, Substitution and Replacement for Equipment. The Lessor and the Lessee recognize that portions of the Equipment may from time to time become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project, but the Lessor shall not be under any obligation to renew, repair or replace any such Equipment. If the Lessee in its sole discretion determines that any item of Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project, the Lessee may remove such Equipment from the Buildings or the Leased Realty and (on behalf of the Lessor) sell, trade in, exchange or otherwise dispose of it without any responsibility or accountability to the Lessor or the Trustee therefor, provided that (i) the Lessee shall substitute and install in the Buildings or on the Leased Realty (either by direct payment of the costs thereof or by advancing to the Lessor the funds necessary therefor) other machinery, equipment or personal property having equal or greater value and utility (but not necessarily the same function) in the operation of the Project, which such substituted machinery, equipment or personal property shall be free of all liens and encumbrances, shall be the sole property of the Lessor, shall be and become a part of the Equipment subject to the demise hereof and to the lien of the Indenture, and shall be held by the Lessee on the same terms and conditions as the items originally comprising the Equipment, and (ii) such removal and substitution shall not impair the operating unity of the Project, and (iii) such

removal and substitution shall not change the nature of the Project as a "project" under the Enabling Law.

Section 4.3 Installation By Lessee or Sublessee of Its Own Machinery and Equipment. The Lessee may, at its own expense, or may permit the Sublessee to, at its own expense, install in the Buildings or on the Leased Realty any machinery, equipment or personal property which in the judgment of the Lessee or the Sublessee will facilitate the operation of the Project. Any such machinery, equipment or personal property which is installed at the expense of the Lessee or the Sublessee and does not constitute a substitution or replacement for the Equipment pursuant to Section 4.2 hereof shall be and remain the property of the Lessee or the Sublessee, as the case may be, and may be removed by the Lessee or the Sublessee at any time and from time to time there is no default under the terms of this Lease Agreement; provided, however, that any damage to the Project occasioned by such removal shall be repaired by the Lessee or the Sublessee at its own expense. At the time of the installation by the Lessee or the Sublessee of any items of its own machinery, equipment or personal property in the Buildings or on the Leased Realty, the Lessee or the Sublessee shall plainly, distinctly, permanently and conspicuously identify the item as the property of the Lessee or the Sublessee, as appropriate. In case any such plate shall at any time be removed, defaced or destroyed, the Lessee or the Sublessee shall immediately cause the same to be restored or replaced.

Section 4.4 Taxes, Other Governmental Charges and Utility Charges. The Lessor and the Lessee acknowledge (a) that under present law parts of the Project will be subject to ad valorem taxation in part and that such taxes will be abated in part by the Lessor, and that under present law the income and profits (if any) of the Lessor from the Project are not subject to either Federal or State taxation, and (b) that these factors, among others, have induced the Lessee to enter into this Lease Agreement. The Lessee will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any other property installed or brought by the Lessee on the Leased Realty, including without limitation any taxes levied on or with respect to the revenues, income or profits of the Lessor from the Project and any other taxes levied upon or with respect to the Project which, if not paid, will 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 from the Project prior to or on a parity with the charge thereon and pledge or assignment thereof created and made in the Indenture and including any ad valorem taxes assessed upon the Lessee's interest in the Project, and (ii) 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 Lessee shall be obligated to pay only such installments as are required to be paid during the Lease Term. The foregoing provisions of this Section shall be effective only so long as any part of the principal of or the interest on the Bonds remains outstanding and unpaid.

The Lessee may, at its own expense and in its own name and behalf or in the name and behalf of the Lessor, 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, provided that during such period enforcement of such contested items shall be effectively stayed. The Lessor, at the expense of the Lessee, will cooperate fully with the Lessee in any such contest.

Section 4.5 Insurance Required. The Lessee will take out and continuously maintain in effect not less than the following insurance with respect to the Project, paying as the same become due all premiums with respect thereto:

(a) Insurance to the extent of the full insurable value of the Project against loss or damage by fire, windstorm, tornado, and other perils, 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;

(b) Insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project or in any way related to the condition or operation of the Project, in the minimum amounts of \$500,000 for death of or bodily injury to any one person, \$1,000,000 for all death and bodily injury claims resulting from any one accident, and \$100,000 for property damage; and

(c) Flood insurance under the national flood insurance program established by the Flood Disaster Protection Act of 1973, as at any time amended, at all times while the Project is eligible under such program, in an amount at least equal to the principal amount of the Bonds outstanding or to the maximum limit of coverage made available with respect to the Project under said Act, whichever is less.

All policies evidencing the insurance required by the terms of this Section shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State to assume the respective risks undertaken; provided that any policy or policies evidencing the insurance required in clause (c) of the preceding paragraph may be taken out from and maintained in the United States of America or an agency thereof. All such insurance policies

shall name as insureds the Bank under the Bank Mortgage, the Lessor, the Trustee and the Lessee (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder in excess of \$25,000 to be paid (subject to the Bank Mortgage and the 1986 Mortgages) to the Trustee; provided that all losses (including those in excess of \$25,000) may be adjusted by the Lessee, subject, in the case of any single loss in excess of \$25,000, to the approval of the Bank and the Trustee. The Lessee may insure under a blanket policy or policies.

Each insurance policy required to be carried by this Section shall contain, to the extent obtainable, an agreement by the insurer that (i) the Lessee may not, without the consent of the Bank, the Lessor and Trustee, cancel such insurance or sell, assign or dispose of any interest in such insurance policy or any proceeds thereof, (ii) such insurer shall notify the Bank, the Lessor and the Trustee if any premium is not paid when due or if any such policy is not renewed prior to the expiration thereof, and (iii) such insurer shall not cancel any such policy except on thirty days' prior written notice to the Bank, the Lessor and the Trustee.

All policies evidencing the insurance required to be carried by this Section shall be deposited with the Bank and the Trustee; provided, however, that in lieu thereof the Lessee may deposit with the Bank and the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the Lessee shall furnish to the Bank and the Trustee evidence reasonably satisfactory to the Bank and the Trustee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease Agreement.

Section 4.6 Advances by Lessor or Trustee. In the event that the Lessee fails to take out or maintain the full insurance coverage required by this Lease Agreement, fails to pay the taxes or other charges required to be paid by the Lessee at or prior to the time they are required to be paid, or fails to keep the Project in good order and repair and in as reasonably safe condition as its operations permit, the Lessor or the Trustee or the Bank, after first notifying the Lessee of any such failure on its part, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same, pay such taxes or other charges, or make such repairs, renewals or replacements as may be necessary to maintain the Project in as reasonably safe condition as the Lessee's operations permit and to keep the Project in good order and repair. All amounts so advanced therefor by the Lessor or the Trustee or the Bank, together with interest thereon from the date of advancement at the Prime Rate plus 2% per annum or the maximum rate of interest allowed by law, whichever is less, shall become an additional obligation payable by the Lessee to the Lessor or to the Trustee or to the

Bank, as the case may be. Any remedy herein vested in the Lessor or the Trustee or the Bank for the collection of the rental payments shall also be available to the Lessor and the Trustee and the Bank for the collection of all such additional obligations for amounts so advanced.

Section 4.7 Indemnity of Lessor. The Lessee agrees to pay, and to indemnify and hold the Lessor harmless against, any and all liabilities, losses, damages, claims or actions (including all reasonable attorneys' fees and expenses of the Lessor), of any nature whatsoever incurred by the Lessor without gross negligence on its part arising from or in connection with its performance or observance of any covenant or condition on its part to be observed or performed under this Lease Agreement or the Indenture, including without limitation, (i) any injury to, or the death of, any person or any damage to property at the Project, or in any manner growing out of or connected with the use, nonuse, condition or occupation of the Project or any part thereof, (ii) any damage, injury, loss or destruction of the Project, (iii) any other act or event occurring upon, or affecting, any part of the Project, (iv) violation by the Lessee of any contract, agreement or restriction affecting the Project or the use thereof of which the Lessee has notice and which shall have existed at the commencement of the term hereof or shall have been approved by the Lessee, or of any law, ordinance or regulation affecting the Project or any part thereof or the ownership, occupancy or use thereof, and (v) liabilities, losses, damages, claims or actions arising out of the offer and sale of the Bonds or a subsequent sale or distribution of any of the Bonds, unless the same resulted from a representation or warranty of the Lessor in the Lease Agreement or any certificate delivered by the Lessor pursuant thereto being false or misleading in a material respect and such representation or warranty was not based upon a similar representation or warranty of the Lessee furnished to the Lessor in connection therewith. The Lessee shall defend, indemnify and save harmless the Lessor from and against any and all claims, causes of action, judgments, damages, fines, penalties, and other losses, costs and expense, including reasonable attorneys' fees and costs of investigation and litigation, asserted against or suffered by the Lessor that are related to or arise out of or result from the presence of Hazardous Substances now or hereafter on or under or included in the Project Site, and any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or under or included in the Project, or any part thereof, that may be required by any Environmental Law or Governmental Authority.

The covenants of indemnity by the Lessee contained in this Section shall survive the termination of this Lease Agreement.

The Lessee hereby agrees that the Lessor shall not incur any liability to the Lessee, and shall be indemnified against all liabilities, in exercising or refraining from asserting, maintaining or exercising any right, privilege or power of the Lessor under the Indenture if the Lessor is acting in good faith and without gross negligence or in reliance upon a written request by the Lessee.

For purposes of this Section 4.7, the following terms shall have the following meanings:

Environmental Law shall mean and include all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority applicable to the Lessee or the Project (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.) relating to pollution or protection of human health or the environment, including any relating to Hazardous Substances.

Governmental Authority shall mean any federal, state, county, municipal, or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

Hazardous Substances shall mean and include all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde, foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by an Environmental Law, or, even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

ARTICLE V

PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage and Destruction. If the Project is destroyed or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is not greater than \$25,000, the Lessee shall continue to pay the rent required to be paid hereunder and the Lessee, or the Lessor at the Lessee's direction and expense, (i) shall promptly repair, rebuild or restore the property

damaged or destroyed to substantially the same condition in which it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair the operating unity or productive capacity of the Project or its character as a "project" under the Enabling Law, and (ii) shall, subject to the Bank Mortgage and the 1986 Mortgages, apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses, as well as any additional moneys of the Lessee necessary therefor. If the cost of such repairs, rebuilding and restoration is less than the amount of Net Proceeds of the insurance referable thereto, the Lessee may retain the amount by which such insurance proceeds exceed said total cost. The Lessee hereby covenants and agrees that, pending such application, the Net Proceeds shall not be invested to produce a yield in excess of the yield on the Bonds, computed in accordance with Section 148 of the Code.

If the Project is destroyed (in whole or in part) or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is in excess of \$25,000, the Lessee shall continue to pay the rent required to be paid hereunder and will promptly give written notice of such damage and destruction to the Trustee and the Lessor and the Bank. All Net Proceeds of insurance resulting from claims for such losses shall, subject to the provisions of the Bank Mortgage and the 1986 Mortgages, be paid to the Trustee and deposited in the Construction Fund, whereupon (i) the Lessee, or the Lessor at the Lessee's direction, shall proceed promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition in which it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair the operating unity or productive capacity of the Project or its character as a "project" under the Enabling Law, and (ii) the Lessor shall, subject to Article XI of the Indenture and Section 10.3 of this Lease Agreement, cause withdrawals to be made from said Fund to pay the costs of such repair, rebuilding or restoration, either on completion thereof or as the work progresses. The balance (if any) of Net Proceeds remaining after the payment of all of the costs of such repair, rebuilding or restoration shall be deposited in the Redemption Fund or, if the Bonds are fully paid, shall be paid to the Bank to the extent of any amounts owing thereto under the Reimbursement Agreement, the Bank Mortgage or the Credit Guaranty Agreement, and if all such amounts owing to the Bank have been paid in full, then such excess Net Proceeds shall be paid to the Lessee.

In the event the Net Proceeds of insurance are not sufficient to pay in full the costs of repairing, rebuilding and restoring the Project as provided in this Section, the Lessee shall nonetheless complete the work thereof and shall pay that portion of the costs thereof in excess of the amount of said proceeds or shall pay to the Trustee for the account of the Lessor the moneys necessary to complete said work. The Lessee 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 Lessor or any abatement or diminution of the rents payable hereunder.

Anything in this Section to the contrary notwithstanding, if, as a result of such damage or destruction (irrespective of whether the loss resulting therefrom is greater than \$25,000 or not), the Lessee is entitled to exercise an option to purchase the Project and duly does so in accordance with the applicable provisions of Section 9.2 hereof, then neither the Lessee nor the Lessor shall be required to repair, rebuild or restore the property damaged or destroyed, and subject to the Bank Mortgage, the 1986 Mortgages and Article XI of the Indenture and Section 10.3 of this Lease Agreement, so much (which may be all) of any Net Proceeds referable to such damage or destruction as shall be necessary to provide for full payment of the Bonds (as specified in Section 6.4 hereof) shall be paid to the Trustee and the excess thereafter remaining (if any) shall be paid to the Bank to the extent of any amounts owing thereto under the Reimbursement Agreement, the Bank Mortgage or the Credit Guaranty Agreement, and if all such amounts owing to the Bank have been paid in full, then such excess Net Proceeds shall be paid to the Lessee.

Section 5.2 Condemnation. In the event that title to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain and as a result thereof the Lessee is entitled to exercise an option to purchase the Project and duly does so in accordance with the applicable provisions of Section 9.2 hereof, then in such event, and subject to the Bank Mortgage, the 1986 Mortgages and Article XI of the Indenture and Section 10.3 of this Lease Agreement, so much (which may be all) of the Net Proceeds referable to such taking, including the amounts awarded to the Lessor and the Trustee and the amount awarded to the Lessee for the taking of all or any part of the leasehold estate of the Lessee in the Project created by this Lease Agreement, as shall be necessary to provide for full payment of the Bonds (as specified in Section 6.4 hereof) shall be paid to the Trustee and the excess of such Net Proceeds remaining (if any) shall be paid to the Bank to the extent of any amounts owing thereto under the Reimbursement Agreement, the Bank Mortgage or the Credit Guaranty Agreement, and if all such amounts owing to the

Bank have been paid in full, then such excess Net Proceeds shall be paid to the Lessee.

If as a result of such taking, the Lessee is not entitled to exercise an option to purchase the Project under Section 9.2 hereof, or, having such option, fails to exercise the same in accordance with the terms thereof or notifies the Lessor and the Trustee in writing that it does not propose to exercise such option, the Lessee shall be obligated to continue to make the rental payments required to be paid under this Lease Agreement, and the entire Net Proceeds hereinabove referred to shall, subject to the provisions of the Bank Mortgage, the 1986 Mortgages and to Article XI of the Indenture and Section 10.3 of the Lease Agreement, be paid to the Trustee and applied in one or more of the following ways as shall be directed in writing by the Lessee:

(a) To the restoration of the remaining improvements located on the Leased Realty to substantially the same condition in which they existed prior to the exercise of the power of eminent domain;

(b) To the acquisition, by construction or otherwise, by the Lessor of other lands or improvements suitable for the Lessee's or the Sublessee's operations at the Project, which land or improvements shall be deemed a part of the Project and available for use and occupancy by the Lessee without the payment of any rent other than that herein provided to the same extent as if such land or other improvements were specifically described herein and demised hereby, and which land or improvements shall be acquired by the Lessor subject to no liens or encumbrances prior to the lien of the Indenture;

(c) To the redemption of Bonds, including accrued interest thereon to the date of redemption and the applicable premium (if any), provided, that no part of any such Net Proceeds (other than the Net Proceeds awarded to the Lessee for the taking of all or any part of the leasehold estate of the Lessee in the Project created by this Lease Agreement) may be applied to the redemption of Bonds unless (1) all of the Bonds are to be redeemed, or (2) in the event that less than all of the Bonds are to be redeemed, the Lessee has furnished to the Lessor and the Trustee a certificate of an Independent Engineer or of an Independent Architect stating (i) that the part of the Project that was taken by such condemnation proceedings is not essential to the Lessee's or the Sublessee's use or occupancy of the Project, or (ii) that the Project has been restored to a condition substantially equivalent to its condition prior to the taking by such condemnation proceedings, or (iii) that land or other improvements have been acquired which are suitable for the Lessee's or the Sublessee's operations at the Project as contemplated by the foregoing subsection (b) of this Section.

Any balance of such Net Proceeds remaining after the application thereof as provided in subsections (a), (b) and (c) of this Section shall be deposited in the Redemption Fund or, if the Bonds are fully paid, shall be paid to the Bank to the extent of any amounts owing thereto under the Reimbursement Agreement, the Bank Mortgage or the Credit Guaranty Agreement, and if all such amounts owing to the Bank have been paid in full, then such excess Net Proceeds shall be paid to the Lessee.

The Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and shall, to the extent it may lawfully do so, permit the Lessee to litigate in any such proceeding in the name and behalf of the Lessor. In no event shall the Lessor settle, or consent to the settlement of, any prospective or pending condemnation proceeding without the prior written consent of the Lessee.

Section 5.3 Condemnation of Lessee-Owned Property. The Lessee shall be entitled to the Net Proceeds of any award or portion thereof made for damage to or taking of its own property not included in the Project, provided that any Net Proceeds resulting from the taking of all or any part of the leasehold estate of the Lessee in the Project created by the Lease Agreement shall be paid and applied in the manner provided in the foregoing Section of this Lease Agreement.

ARTICLE VI

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

Section 6.1 Provisions Relating to Assignment and Subleasing. The Lessee may assign this Lease Agreement and the leasehold interest created hereby and may sublet the Project or any part thereof, including to the Sublessee, subject, however, to the following conditions:

(a) No such assignment or subleasing and no dealings or transactions between the Lessor or the Trustee and any assignee or sublessee shall in any way relieve the Lessee from primary liability for any of its obligations hereunder. In the event of any such assignment or subleasing the Lessee shall continue to remain primarily liable for the payment of all rentals herein provided to be paid by it and for the performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

(b) The Lessee will not assign the leasehold interest created hereby nor sublease the Project to any person unless the operations of such assignee or sublessee are consistent

with, and in furtherance of, the purpose of the Enabling Law. The Lessee shall, prior to any such assignment or sublease, other than to the Sublessee, demonstrate to the reasonable satisfaction of the Trustee that the operations of such assignee or sublessee will preserve the character of the Project as a "project" under the Enabling Law and deliver to the Trustee an opinion of Bond Counsel to the effect that such assignment or sublease will not cause the interest on the Bonds to be includable in gross income for federal income taxation under Section 103 of the Code.

(c) The Lessee shall, within thirty days after the delivery thereof, furnish to the Lessor and the Trustee a true and complete copy of each such assignment or sublease.

The Lessor and the Lessee may mortgage and assign to the Bank, under the terms and provisions of the Bank Mortgage, all of the right, title, interest and estate of the Lessee under and pursuant to this Lease Agreement.

Notwithstanding anything herein to the contrary, the sublease of the Project to the Sublessee is hereby acknowledged and approved by the Lessor, the Trustee and the Bank. The assignment to the Bank and to the Trustee of such sublease agreement is further acknowledged and approved.

Section 6.2 Assignment of Lease Agreement and Rents by the Lessor.

(a) The Lessor has, simultaneously with the delivery of this Lease Agreement, assigned its interest in and pledged any money receivable under this Lease Agreement (other than certain rights to indemnification and reimbursement) to the Bank, under the terms and provisions of the Bank Mortgage, and the Lessee hereby consents to such assignment and pledge. The Bank shall have all rights and remedies herein accorded to the Lessor and any reference herein to the Lessor shall be deemed, with the necessary changes in detail, to include the Bank, and the Bank is deemed to be a third party beneficiary of the covenants, agreements and representations of the Lessee herein contained. Prior to the satisfaction of the Bank Mortgage of record, the Lessor and the Lessee shall have no power to modify, alter, amend or terminate this Lease Agreement without the prior written consent of the Bank and then only as provided in the Indenture. All rights of the Lessee under this Lease Agreement are, to the extent of any conflict or inconsistency with the rights of the Bank under the Bank Mortgage, subject and subordinate to the rights of the Bank under the Bank Mortgage.

(b) Subject to the assignment to the Bank described in paragraph (a) of this Section, the Lessor has, simultaneously with the delivery of this Lease Agreement, assigned its

interest in and pledged any money receivable under this Lease Agreement (other than certain rights to indemnification and reimbursement) to the Trustee as security for payment of the principal of and the interest on the Bonds, and the Lessee hereby consents to such assignment and pledge. The Lessor has in the Indenture obligated itself to follow the instructions of the Trustee or the Bondholders or a certain percentage thereof in the election or pursuit of any remedies herein vested in it. The Trustee shall have all rights and remedies herein accorded to the Lessor and any reference herein to the Lessor shall be deemed, with the necessary changes in detail, to include the Trustee, and the Trustee and the Bondholders are deemed to be third party beneficiaries of the covenants, agreements and representations of the Lessee herein contained. Prior to the payment in full of the Bonds, the Lessor and the Lessee shall have no power to modify, alter, amend or terminate this Lease Agreement without the prior written consent of the Trustee and then only as provided in the Indenture. The Lessor will not amend the Indenture or any indenture supplemental thereto without the prior written consent of the Lessee. Neither the Lessor nor the Lessee will unreasonably withhold any consent herein or in the Indenture required of either of them. The Lessee shall not be deemed to be a party to the Indenture or the Bonds and reference in this Lease Agreement to the Indenture and the Bonds shall not impose any liability or obligation upon the Lessee other than its specific obligations and liabilities undertaken in this Lease Agreement.

Section 6.3 Restrictions on Mortgage or Sale of Project by Lessor; Consolidation or Merger of, or Transfer of Assets by, Lessor. Except for the mortgage of the Project to the Trustee pursuant to the Indenture and the mortgage of the Project to the Bank pursuant to the Bank Mortgage, the Lessor will not mortgage, sell, assign, transfer or convey the Project at any time during the Lease Term without the prior written consent of the Lessee while the Lessee is not in default hereunder. If the laws of the State at the time shall permit it, nothing contained in this Section shall prevent the consolidation of the Lessor with, or merger of the Lessor into, or transfer of the Project as an entirety to, any public corporation whose property and income and interest payments are not subject to taxation to which the Project is not subject on the date of such consolidation, merger or transfer, and which has corporate authority to carry on the business of owning and leasing the Project; provided, that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and provisions of this Lease Agreement to be kept and performed by the Lessor shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety.

Section 6.4 Redemption of Bonds. The amount necessary to redeem Bonds shall be deemed to include, in addition to the redemption price of the Bonds, all expenses necessary to effect the redemption and all interest on the Bonds to be redeemed to the next ensuing date on which they can be redeemed, and, if all Bonds are redeemed, all other obligations under the Indenture that shall become due and payable on or prior to the redemption date, including the Trustee's fees, charges and expenses. The Lessee may, at its election and at any time while it is not in default hereunder, pay to the Trustee such amount as shall be sufficient to enable the Lessor to retire, in advance of maturity and in accordance with their terms, all of the Bonds or any of the Bonds. Any payment made by the Lessee under this or any other Section of this Lease Agreement to be applied to the redemption of Bonds shall be made at least ninety-one days prior to the proposed redemption date and at the time of such payment the Lessee shall notify the Lessor and the Trustee, in writing, as to the purpose of such payment, and the Lessor, upon receiving such notice, shall be obligated and hereby agrees to take all necessary action to have the payment made by the Lessee for the purpose of redeeming Bonds applied to the redemption of as many Bonds as such payment will permit under the bond redemption provisions of the Bonds and the Indenture.

Section 6.5 References to Bonds Ineffective After Bonds Paid. Upon payment in full of the Bonds and of all fees and charges of the Trustee, or provision for payment thereof having been made in accordance with the provisions of the Indenture, all references in this Lease Agreement to the Bonds, the Indenture and the Trustee shall be ineffective and neither the Trustee nor any of the Bondholders shall thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested.

In the event the Bonds are fully paid (or provision for the payment thereof has been made in accordance with the provisions of the Indenture) prior to the last maturity of the Bonds, the Lessee shall be entitled to the use and occupancy of the Project from the date of such payment until the expiration of the term provided for in Section 3.1 hereof without the payment of any further Basic Rent or additional rent under Section 3.2 hereof but otherwise on all of the terms and conditions hereof, except that the provisions of Sections 5.1, 5.2, 5.3 and 7.2 hereof shall not apply and except further that the Lessee shall not be required to carry any insurance for the benefit of the Trustee, but shall be required to carry insurance under Section 4.5 hereof for the benefit of the Lessor as its interest may appear.

Section 6.6 Payment of Surplus in Funds After Bonds Paid. If, after full payment of the Bonds, there is any surplus

remaining in the Bond Fund or the Redemption Fund, the Lessor will promptly pay such surplus to the Bank to the extent, if any, of amounts owing thereto under the Reimbursement Agreement, Bank Mortgage and Credit Guaranty Agreement, and if all such amounts have been paid, any amount so remaining shall be paid to the Lessee.

ARTICLE VII

PARTICULAR COVENANTS OF THE LESSEE

Section 7.1 General Covenants. The Lessee shall not do or permit anything to be done at the Project that will affect, impair or contravene any policies of insurance that may be carried on the Project or any part thereof against loss or damage by fire, casualty or otherwise. The Lessee will, in the use of the Project and the public ways abutting the same comply with all lawful requirements of all governmental bodies; provided, however, the Lessee may, at its own expense in good faith contest the validity or applicability of any such requirement.

Section 7.2 Inspection of Project. The Lessee shall permit the Lessor and the Trustee and the Bank and their duly authorized agents (subject to the restrictions and requirements imposed by contracts with the United States of America or agencies thereof, or by subcontracts governed by such contracts, being performed by the Lessee, or its subtenant or subtenants, in any part of the Project) at all reasonable times to enter upon, examine and inspect the Project; and in the event of default as hereinafter provided, the Lessee shall permit a public accountant or firm of public accountants designated by the Trustee to have access to, inspect, examine and make copies of the books and records, accounts and data of the Lessee.

Section 7.3 Special Covenants. So long as any of the Bonds are outstanding:

(a) The Lessee will maintain proper books of record and account, in which full and correct entries will be made, in accordance with generally accepted accounting principles, of all its business and affairs. The Lessee shall furnish to the Trustee (a) within 90 days after the end of its fiscal year financial statements of the Lessee (including a statement of revenues and expenses, balance sheet, retained earnings and changes in financial position for such fiscal year) together with supporting schedules, all on a comparative base with the prior fiscal year, in such reasonable detail, prepared on a tax basis or in accordance with generally accepted accounting principles consistently applied throughout the periods involved, and compiled (but not audited) and accompanied by the

corresponding opinion of independent certified public accountants of recognized standing selected by the Lessee and satisfactory to the Bank and the Trustee, showing the financial condition of such Lessee at the close of such year and the results of the operations of such Lessee during such year, and (b) such other financial statements, financial data, certificates and other information regarding the operations, business affairs and financial condition of the Lessee as the Trustee shall from time to time reasonably request.

(b) The Lessee will duly pay and discharge all taxes, assessments and other governmental charges and liens lawfully imposed on the Lessee and upon the properties of the Lessee; provided, however, the Lessee shall not be required to pay any taxes, assessments or other governmental charges so long as in good faith it shall contest the validity thereof by appropriate legal proceedings and the Lessee shall have set aside an adequate reserve with respect to any such tax, assessment or other governmental charge so contested.

(c) The Lessee will maintain and preserve its existence and organization as a general partnership under the laws of the State and will not voluntarily dissolve without first discharging its obligations under this Lease Agreement, and will comply with all valid laws, ordinances, regulations and requirements applicable to it or to its property and the Project.

(d) The Lessee will not in any manner, sell, transfer, convey or dispose of any substantial portion of its property, assets and licenses without the prior written consent of the Bank and the Trustee; provided, however, the Lessee may without such consent and without violating the foregoing provision make such a transfer or conveyance if prior thereto it files with the Trustee and the Bank a letter or certificate by a firm of certified public accountants acceptable to the Trustee and the Bank certifying that upon the consummation of such transfer or conveyance the Lessee will have an excess of assets over liabilities at least as great as the Lessee would have had if such sale, transfer or conveyance had not occurred.

(e) The Lessee will promptly notify the Lessor, the Bank and the Trustee in writing of all defaults, litigation or any adverse condition, fact, circumstance or change that may have a material adverse effect on the operations of the Lessee.

(f) The Lessee will preserve, renew, maintain and keep in full force all rights, privileges and franchises necessary or desirable in the normal conduct of its business.

Section 7.4 Financing and Continuation Statements. The Lessee shall, upon request of the Lessor or the Trustee,

execute and file or cause to be executed and filed all financing statements, amendments thereto, and continuation statements necessary to perfect and to maintain the Lessor's title to and interest in the Equipment and fixtures constituting a part of the Project and to perfect and maintain the security interest of the Trustee in such property for the benefit of the Bondholders under the Indenture.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. The following shall be events of default under this Lease Agreement and the term "event of default" shall mean, whenever used in this Lease Agreement, any one or more of the following events:

(a) Failure to pay any installment of Basic Rent that has become due and payable by the terms of this Lease Agreement;

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) of this Section, for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Lessor or the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration, which agreement shall not be unreasonably withheld if corrective action is instituted by the Lessee promptly upon receipt of the written notice and is diligently pursued until the default is corrected;

(c) The dissolution or liquidation of the Lessee or the filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations, or the Lessee's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all its property or of the Project, or the adjudication of the Lessee as a bankrupt, or any assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or if a petition or answer is filed by the Lessee proposing the adjudication of the Lessee as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty days;

(d) The occurrence of an event of default under the Indenture or the Guaranty;

(e) Receipt by the Trustee of written notice from the Bank that an event of default has occurred and is continuing under the Reimbursement Agreement, the Bank Mortgage, the Credit Guaranty Agreement, or any thereof.

Section 8.2 Remedies on Default. Whenever any such event of default shall have happened and be continuing, the Lessor or the Trustee may take any of the following remedial steps; provided, that as long as the Bank is not in default in timely payment of its obligations under the Letter of Credit, neither the Lessor nor the Trustee shall exercise any of the following remedies without the prior written consent of the Bank:

(a) Declare all installments of Basic Rent payable under Section 3.2(a) of this Lease Agreement for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) Reenter the Project, without terminating this Lease Agreement, and, upon ten days' prior written notice to the Lessee, relet the Project or any part thereof for the account of the Lessee, for such term (including a term extending beyond the Lease Term) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Project or any part thereof, as the Lessor may, with the approval of the Trustee, deem advisable, and such reentry and reletting of the Project shall not be construed as an election to terminate this Lease Agreement nor relieve the Lessee of its obligations to pay Basic Rent and additional rent or to perform any of its other obligations under this Lease Agreement, all of which shall survive such reentry and reletting, and the Lessee shall continue to pay Basic Rent and all additional rent provided for in this Lease Agreement until the end of the Lease Term, less the net proceeds, if any, of any reletting of the Project after deducting all of the Lessor's and the Trustee's expenses in connection with such reletting, including, without limitation, all repossession costs, brokers' commissions, attorneys' fees, alteration costs and expenses of preparation for reletting;

(c) Terminate this Lease Agreement, exclude the Lessee from possession of the Project and, if the Lessor or Trustee elects so to do, lease the same for the account of the Lessor, holding the Lessee liable for all rent due up to the date such lease is made for the account of the Lessor;

(d) 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 or covenant or agreement of the Lessee under this Lease Agreement or by law.

Section 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lessor or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 8.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Lease Agreement and the Lessor or the Trustee (in its own name or in the name and on behalf of the Lessor) should employ attorneys or incur other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee will on demand therefor pay to the Lessor or the Trustee (as the case may be) the reasonable fee of such attorneys and such other expenses so incurred.

Section 8.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.6 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Lease Agreement invalid or unenforceable.

ARTICLE IX

OPTIONS

Section 9.1 Option to Terminate. At any time prior to full payment of the Bonds, the Lessee may terminate the term of this Lease Agreement by paying to the Trustee for the account of the Lessor such an amount, determined as specified in Section 6.4 hereof, as shall, together with the amount, if any, on deposit in the Bond Fund and Redemption Fund and available

therefor, be required to redeem all of the then outstanding Bonds.

Section 9.2 Option to Purchase Project Prior to Payment of the Bonds. The Lessee, if not in default hereunder, shall have the option to purchase the Project at any time prior to the full payment of the Bonds if any of the following shall have occurred:

(a) The Project or any part thereof shall have been damaged or destroyed (i) to such extent that, in the opinion of the Lessee, it cannot be reasonably restored within a period of four consecutive months substantially to the condition thereof immediately preceding such damage or destruction, or (ii) to such extent that, in the opinion of the Lessee, the Lessee or the Sublessee is thereby prevented from carrying on its normal operations at the Project for a period of four consecutive months, or (iii) to such extent that the cost of restoration thereof would exceed by more than \$25,000 the Net Proceeds of insurance carried thereon pursuant to the requirements of this Lease Agreement; or

(b) Title to the Project or any part thereof or the leasehold estate of the Lessee in the Project created by this Lease Agreement or any part thereof shall have been taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority, which taking may result, in the opinion of the Lessee, in the Lessee or the Sublessee being thereby prevented from carrying on its normal operations at the Project for a period of four months; or

(c) As a result of any changes in the Constitution of the State or the Constitution of the United States of America or of legislative or administrative action (whether State or Federal), or by final decree, judgment or order of any court or administrative body (whether State or Federal) entered after the contest thereof by the Lessee in good faith, this Lease Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed on the Lessor or the Lessee, including without limitation, the imposition of taxes of any kind on the Project or the income or profits of the Lessor therefrom, or upon the interest of the Lessee therein, which taxes were not being imposed on the date of this Lease Agreement.

To exercise such option, the Lessee shall, within thirty days following the event authorizing the exercise of such option, give written notice to the Lessor and to the Trustee and shall specify therein the date of closing such purchase,

which date shall be not less than forty-five nor more than ninety days from the date such notice is mailed, and shall make arrangements satisfactory to the Trustee for the giving of the required notice for the redemption of the Bonds. The purchase price payable by the Lessee in the event of its exercise of the option granted in this Section shall be such an amount determined as specified in Section 6.4 hereof as shall, together with the amount, if any, on deposit in the Bond Fund and the Redemption Fund and available therefor, be required to redeem all of the then outstanding Bonds. The purchase price shall be paid by the Lessee to the Trustee.

Upon the exercise of the option granted in this Section and the payment of the option price, any Net Proceeds of insurance or condemnation award then on hand or thereafter received shall be applied or provided in Article V hereof.

Section 9.3 Option to Purchase Project After Payment of the Bonds. The Lessee, if not in default hereunder, shall also have the option to purchase the Project at any time following full payment of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture) for a purchase price of one hundred dollars. To exercise the option granted in this Section, the Lessee shall notify the Lessor of its intention so to exercise such option not less than thirty days prior to the proposed date of purchase and shall on the date of purchase pay such purchase price to the Lessor.

If the option granted in this Section shall for any reason be held invalid upon the attempted exercise thereof by the Lessee following full payment of the Bonds, the Lessor shall be obligated to sell the Project to the Lessee for a price of \$100. The date of closing such purchase shall be thirty days from the date of such holding.

Section 9.4 Option to Purchase Unimproved Leased Realty. The Lessee, if not in default hereunder, shall also have the option to purchase, with the prior written consent of the Bank, any part of the Leased Realty at any time and from time to time at and for a purchase price determined as provided below, provided that it furnishes the Lessor and the Trustee with the following:

(a) A notice in writing containing (i) an adequate legal description of that portion of the Leased Realty with respect to which such option is to be exercised, which portion may include rights granted in party walls, the right to tie into existing utilities, the right to connect and join any building, structure or improvement with existing structures, facilities and improvements on the Leased Realty, and the right of ingress or egress to and from any public highway which shall not

interfere with the use and occupancy of existing structures, improvements and buildings, (ii) a statement that the Lessee intends to exercise its option to purchase such portion of the Leased Realty on a date stated, which shall not be less than thirty days from the date of such notice, (iii) a description of the buildings, structures, or improvements to be erected on the portion of the Leased Realty to be purchased, and (iv) a statement that the use to which such portion of the Leased Realty will be devoted will be in furtherance of the purposes for which the Lessor was organized.

(b) A certificate of an Independent Engineer or of an Independent Architect dated not more than sixty days prior to the date of the purchase and stating, in the opinion of the person signing such certificate, (i) that the portion of the Leased Realty with respect to which the option is exercised is not and will not be needed for the operation of the Project, (ii) that the buildings, structures or improvements described in the aforesaid certificate by the Lessee can be constructed on the real property to be purchased, and (iii) that the severance of such portion of the Leased Realty from the Project and the construction thereon of the buildings, structures and improvements above referred to (if any) will not impair the usefulness of the Project for its intended purpose or the means of ingress thereto and egress therefrom.

(c) The purchase price consisting of an amount of money equal to \$10,000 per acre. The purchase price shall be deposited in the Redemption Fund.

Upon receipt by it of the notice and certificate required in this Section to be furnished by the Lessee and the payment by the Lessee to the Trustee of the purchase price, the Lessor will promptly deliver to the Lessee the documents referred to in Section 9.5 hereof and will secure from the Trustee a release from the lien of the Indenture of the portion of the Project with respect to which the Lessee shall have exercised the option granted to it in this Section.

If such option relates to Leased Realty on which transportation or utility facilities are located, the Lessor shall retain an easement to use such transportation or utility facilities to the extent necessary for the efficient operation of the Project.

No purchase effected under the provisions of this Section shall affect the liability or the obligation of the Lessee for the payment of Basic Rent and additional rent in the amounts and at the times provided in this Lease Agreement or the performance of any other agreement, covenant or provision hereof, and there shall be no abatement or adjustment in rent by reason of the release of any such realty except as specified

in this Section and the obligation and the liability of the Lessee shall continue in all respects as provided in this Lease Agreement, excluding, however, any realty so purchased.

Section 9.5 Conveyance on Exercise of Option to Purchase. At the closing of the purchase pursuant to the exercise of any option to purchase granted herein, the Lessor shall, upon receipt of the purchase price and a waiver and release of any claim or right of action by the Lessee against the Lessor arising under any Environmental Law or with respect to any Hazardous Substances (as such terms are defined in Section 4.7 hereof) in connection with the Project, execute and deliver to the Lessee documents conveying to the Lessee the property with respect to which such option was exercised, as such property then exists, subject to the following: (i) all easements or other rights, if any, required to be reserved by the Lessor under the terms and provisions of the option being exercised by the Lessee; (ii) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Lessor; (iii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; and (iv) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease Agreement.

ARTICLE X

INTERNAL REVENUE CODE

Section 10.1 Covenants Regarding the Code. The parties hereto recognize that the Bonds are being sold on the basis that the interest payable on the Bonds is excludable from gross income of the Bondholders for federal income taxation under Section 103 of the Code. The Lessor and Lessee do each hereby covenant and agree with the Trustee and the Bondholders that neither the Lessee nor the Lessor will take any action, or omit to take any action, permit any action to be taken, or fail to require any action to be taken, with respect to the Project or the Bonds, that would cause the interest on the Bonds to be or become includable in the gross income of the registered owners thereof for federal income taxation, and further covenant and agree that:

(i) the proceeds of the Bonds shall not be used or applied in such manner as to cause any Bond to be or become an "arbitrage bond" as that term is defined in Section 148 of the Code;

(ii) ninety-five percent (95%) or more of the net proceeds of the Bonds will be used for the acquisition, construction, reconstruction, or improvement of land or property of a

character subject to the allowance for depreciation, within the meaning of Section 144 of the Code;

(iii) the proceeds of the Bonds will be used for the acquisition, construction and equipping of the 1993 Improvements and not more than \$29,000 will be used or for issuance expenses with respect to the Bonds, or such proceeds shall be rebated to the United States of America as provided in Article XI of the Indenture, and no part of the proceeds of the Bonds are to be used by the Lessee, directly or indirectly, for working capital, or to finance inventory, or to acquire any facility or asset which may not, under the Code, be financed in whole or in part with the proceeds of obligations the interest on which is excludable from gross income for federal income taxation;

(iv) the proceeds of the Bonds shall not be used for the acquisition, construction, reconstruction or improvement of any property which would cause the average maturity of the Bonds to exceed 120 percent of the average reasonably expected economic life of the facilities financed with the net proceeds of the Bonds, within the meaning of Section 147(b) of the Code;

(v) neither the Bonds nor any of the proceeds therefrom shall ever be federally guaranteed, within the meaning of Section 149(b) of the Code, except as expressly provided in said Section 149(b);

(vi) none of the proceeds of the Bonds shall be used to acquire (directly or indirectly) any land (or any interest therein) to be used for farming purposes;

(vii) less than twenty-five percent (25%) of the proceeds of the Bonds shall be used to acquire (directly or indirectly) any land (or any interest therein);

(viii) none of the net proceeds of the Bonds shall be used to acquire any property, or any interest therein (including without limitation buildings, structures, facilities, improvements, equipment, machinery or other personal property) the first use of which property was not pursuant to such acquisition with the proceeds of the Bonds, unless "rehabilitation expenditures" (as defined in Section 147(d) of the Code) with respect to said property are incurred in the amounts and within the times set forth therefor in said Section 147(d);

(ix) no person shall ever be allowed to use, occupy, or otherwise derive any benefit whatsoever from the Project, or any part thereof, if the effect thereof shall result in a test period beneficiary (as defined in Section 144(a) (10) of the Code) having allocated to it and outstanding tax-exempt

facility-related bonds (as defined in Section 144(a) (10) of the Code) in an aggregate principal amount exceeding \$40,000,000;

(x) no more than two percent (2%) of the proceeds of the Bonds shall be used to finance the issuance costs of the Bonds;

(xi) the 1993 Improvements will constitute a "manufacturing facility" as defined in Section 144(a)(12) of the Code;

(xii) any office facilities which are part of the 1993 Improvements shall be located on the Leased Realty and not more than a de minimis amount of the functions to be performed in such office facilities will not be directly related to the day-to-day operations at such manufacturing facility;

(xiii) not more than 25% of the net proceeds of the Bonds will be used to provide facilities which are directly related and ancillary to the said manufacturing facility (determined without regard to this clause) and all of such directly related and ancillary facilities will be located on the same site as the said manufacturing facility;

(xiv) the Lessee will not change and will not permit a change in the use of the 1993 Improvements which would cause any of the covenants, representations and recitals contained in this Lease Agreement to not be true at any time while the Bonds are issued and outstanding; and

(xv) since the Lessor is issuing the Bonds pursuant to an election made by it under Section 144(a)(4) of the Code, the Lessee will not take any action, or permit the Sublessee or any other user of the Project or the 1993 Improvements to take any action, which would cause the \$10,000,000 limitation contained in the said Section 144(a)(4) to be exceeded during the three years next preceding the date of issuance of the Bonds and the three years next following the date of issuance of the Bonds.

Section 10.2 Lessee's Obligation If Interest on the Bonds Is Determined To Be Includable in Gross Income for Federal Income Taxation. (a) If the Commissioner of Internal Revenue makes a determination that interest on the Bonds or any of them is not excludable from gross income for federal income taxation pursuant to Section 103 of the Code for any reason other than the operation of Section 147(a) of the Code, and the Lessee exhausts (at its sole expense) or fails to pursue in a timely manner any administrative or judicial remedy available to it with respect to such determination, the Lessee will notify the Lessor and the Trustee of those facts and the Trustee shall notify the Lessee in writing that all outstanding Bonds shall be prepaid on the next practicable interest payment date, irrespective of whether the Lessee has violated any covenant or

representation in this Lease Agreement. Within thirty days after the receipt of such notice the Lessee shall either

(i) purchase the Project from the Lessor for the price specified in subsection (b) of this Section, which purchase price shall be paid to the Trustee, or

(ii) pay to the Trustee the sum specified in subsection (b) of this Section, in which event the Lessee shall be entitled to the use and occupancy of the Project until the expiration of the term provided for in Section 3.1 without the payment of any further rent, but otherwise on all of the terms and conditions hereof, except that the provisions of Sections 5.1, 5.2, 5.3 and 7.2 shall not apply, and except further that the Lessee shall not be required to carry any insurance for the benefit of the Trustee, but shall be required to carry insurance under Section 4.5 hereof for the benefit of the Lessor as its interest may appear.

Any other options of the Lessee to purchase the Project shall be superseded by its mandatory obligation to elect one of the alternatives set forth in this subsection (a).

(b) The price payable by the Lessee for the Project in the event interest on any of the Bonds is determined to be includable in gross income for federal income taxation as provided in subsection (a) of this Section 10.2, or the amount payable to the Trustee in lieu of purchasing the Project, shall be equal to the sum of the following:

(i) the principal amount of all outstanding Bonds plus accrued interest thereon to the date of their prepayment;

(ii) the Trustee's fees and expenses under the Indenture accrued and to accrue until the prepayment of all Bonds; and

(iii) a premium for each Bond the interest on which has been determined to be taxable (whether or not such Bond has matured) equal to 2% of the principal amount of such Bond.

There shall be credited against any payments to be made by the Lessee pursuant to (i) and (iii) above all amounts which have been paid to the Trustee pursuant to the Letter of Credit with respect to the prepayment of the Bonds pursuant to this Section 10.2.

(c) Upon payment by the Lessee of the amount specified in subsection (b) of this Section, the Trustee shall call the

outstanding Bonds for prepayment on the next practicable interest payment date. The Lessor shall cause the Trustee to pay to the registered owner of each Bond being prepaid, in addition to the principal amount of such Bond and the interest accrued thereon to the prepayment date, that portion of the Prepayment premium (calculated under clause (iii) of subsection (b) of this Section) allocable to such Bond, and the Lessor shall cause the Trustee to pay to the last registered owner of each Bond that has already matured, and the interest on which has been so determined to be taxable, upon receipt of appropriate verification of ownership, the prepayment premium (calculated under clause (iii) of subsection (b) of this Section) allocable to such Bond.

Section 10.3 Federal Rebate Payments. The provisions of Article XI of the Indenture are incorporated herein by reference, and the Lessee shall comply with the said provisions and shall perform and discharge all obligations, duties and responsibilities imposed upon the Lessee under the said Article, including without limitation the payment of all required rebates to the United States of America and the maintenance of all records with respect thereto.

ARTICLE XI

PROVISIONS OF GENERAL APPLICATION

Section 11.1 Covenant of Quiet Enjoyment. So long as the Lessee performs and observes all the covenants and agreements on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term subject to all the terms and provisions hereof.

Section 11.2 This Lease a Net Lease. The Lessee recognizes, understands and acknowledges that it is the intention hereof that this Lease Agreement be a net lease and that until the Bonds are fully paid all Basic Rent be available for payment of the principal of, premium, if any, and interest on the Bonds and that all additional rent shall be available for the purposes specified therefor. This Lease Agreement shall be construed to effectuate such intent.

Section 11.3 Lessor's Liabilities Limited. This Lease Agreement is entered into under and pursuant to the provisions of the Enabling Law. No provision hereof shall be construed to impose a charge against the general credit of the Lessor or any personal or pecuniary liability upon the Lessor except to apply the proceeds to be derived from the sale of the Bonds and the revenues and receipts to be derived from any leasing or sale of the Project or any part thereof as provided herein and in the Indenture.

Section 11.4 Prior Agreements. This Lease Agreement shall completely and fully supersede all prior agreements both written and oral, between the Lessor and the Lessee relating to the acquisition of the Leased Realty, the construction of the Buildings, the acquisition and installation of the Equipment, the leasing of the Project and any options to renew or to purchase; excepting however the lease between the parties dated as of October 1, 1986, and any deed or other instrument by which the Project, any part thereof, or any interest therein has been transferred and conveyed by the Lessee to the Lessor. Neither the Lessor nor the Lessee shall hereafter have any rights under any prior agreements other than such lease and deeds, but shall, subject to Section 3.1 hereof, look to this Lease Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the Project.

Section 11.5 Execution Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.6 Binding Effect; Governing Law. This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Lessor, the Lessee and their respective successors and assigns. This Lease Agreement shall be governed exclusively by the applicable laws of the State.

Section 11.7 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.8 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 11.9 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: if to the Lessor, at City Hall, P. O. Box 277, Pelham, Alabama 35124; if to the Lessee, at P. O. Box 509, Pelham, Alabama 35124; and if to the Trustee, at P. O. Box 11746, Birmingham, Alabama 35209, Attention: Corporate Trust Department. A duplicate copy of each notice, certificate or other communication given hereunder by either the Lessor or the Lessee to the other shall also be given to the Trustee. The Lessor, the Lessee, and the Trustee may, by notice given hereunder, designate any further

or different addresses to which subsequent notices, certificates or other communications shall be sent.


Section 11.10 Public Service Payments. The Lessee acknowledges that public services rendered by the City benefit the Lessee and enhance the value of the interest of the Lessee in the Project. In order to compensate for the aforesaid services, the Lessee shall pay directly to the City the following amounts (the "Service Payments") during the Lease Term in addition to any payments to be made to the City under the lease between the Lessor and the Lessee dated as of October 1, 1986: on October 1, 1994, and on the first day of each October thereafter during the Lease Term, until and including October 1, 2003, the sum of \$6,235.

If, as a result of a change in law, the Project becomes subject during the Lease Term to all ad valorem taxes and if the Lessee shall pay such taxes pursuant to the requirements of the other provisions of this Lease Agreement, then in such case the Lessee shall not be required to pay any Service Payments scheduled with respect to the period for which such taxes are levied. The Service Payments are not and shall not be assigned or pledged by the Lessor to the Trustee or the Bank for any purpose.

IN WITNESS WHEREOF, the Lessor has caused this Lease Agreement to be executed, sealed and attested in its name by duly authorized officers, under corporate seal, and the Lessee has caused this Lease Agreement to be executed by all of its general partners, and the parties hereto have caused this Lease Agreement to be dated as of November 1, 1993.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

S E A L

By 
Its Chairman of the Board of
Directors


Attest: 
Its Secretary

[Signatures continued on next page]

PELTOWN REALTY COMPANY

By 
A General Partner

By 
A General Partner

By 
A General Partner

STATE OF ALABAMA
Shelby COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Daniel M. Spitler, Jr. whose name as Chairman of the Board of Directors of The Industrial Development Board of the Town of Pelham, a public corporation, is signed to the foregoing Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, 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 this the 23rd day of November, 1993.

Robert H. Walston
Notary Public

NOTARIAL SEAL

My commission expires: 12-30-94

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that W. D. Upton, Jr., Kent Upton and William F. Jenkins, whose names as general partners of Peltown Realty Company, an Alabama general partnership, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, they, as such general partners and with full authority, executed the same voluntarily for and as the act of said general partnership.

December, 1993. Given under my hand and official seal this the 14th day of

Robert H. Walston
Notary Public

NOTARIAL SEAL

My commission expires: 12-30-94

EXHIBIT A

PARCEL ONE:

Commence at the southwest corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 12, Township 20 south, Range 3 west, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section a distance of 1,091.42' to a point; Thence turn 69°30'00" left and run northeasterly a distance of 480.00' to an iron (steel) pin; Thence turn 1°30'55" right and continue northeasterly a distance of 331.34' to a point; Thence turn 112°00'50" left and run westerly a distance of 795.38' to the point of beginning of the parcel being described; Thence turn 89°04'12" right and run northerly a distance of 306.66' to a point; Thence turn 1°18'02" left and continue northerly a distance of 90.51' to a point in the centerline of Bishop Creek; Thence turn 54°48'16" left and run northwesterly along centerline of said creek 30.91' to a point; Thence turn 15°24'04" right and run northwesterly along centerline of said creek 185.97' to a point; Thence turn 11°32'36" left and continue northwesterly along centerline of said creek 91.57' to a point; Thence turn 87°36'20" left and run southwesterly 536.95' to a point; Thence turn 129°35'19" left and run easterly 174.53' to a point; Thence turn 40°30'57" right and run southeasterly 299.32' to a point; Thence turn 40°38'40" left and run easterly 172.26' to the point of beginning, containing 4.51 acres. Property is marked on each corner with a steel pin, pipe, monument or axle (except those points that fall in the centerline of creek).

ALSO, a non-exclusive easement for ingress and egress, being more particularly described as follows:

Commence at the southwest corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 12, Township 20 south, Range 3 west, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section 1,091.42' to a point; Thence turn 69°30'00" left and run northeasterly 480.00' to a point; Thence turn 1°30'55" right and continue northeasterly 331.34' to a point; Thence turn 112°00'50" left and turn westerly 795.38' to a point; Thence turn 89°04'12" right and run northerly 306.66' to a point; Thence turn 1°18'02" left and run northerly 16.06' to the point of beginning, on the centerline of a thirty foot wide access easement, the centerline being fifteen feet from each side of subject easement; Thence turn 69°05'03" right and run northeasterly 216.88' to a point; Thence turn 15°54'01" left and run northeasterly 219.50' to the southerly margin of Crosscreek Trail, a public road, and the end of easement.

All situated in Shelby County, Alabama.

- 1 Videx Vas-20-BH Specialty Bolt Machine
- 3 Tesker Model 320 Thread Rolling Machines Max 3"
Ser. #93611-93613
- 1 Ruja Eagle 1-1/2" - 1-1/4" Single End Threader
- 3 Nissan C504 188" Triple Mast/54" Forklifts
- 2 486 Computer Systems
- 2 Tesker Model 35 Thread Rolling Machines

01/24/1994-02578
04:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
049 MCD 128.50

st # 1994-02578

01/24/1994-02578
04:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
049 MCD 128.50

EXHIBIT B