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THE FINANCING OF CORPORATE EXPANSION THROUGH INDUSTRIAL REVENUE BONDS

By Charles C. Mulcahy and Thomas P. Guszkowski*

Responsible executives who plan for the future growth and development of their corporation are constantly in search of methods and techniques of developing realistic expansion and sound budgetary tools to accomplish corporate profitability. Until recently, Wisconsin industry operated under a very severe and distinct handicap. Many industries have left Wisconsin in favor of states which allegedly provided a "more positive business growth climate." One of the components of such a more positive business growth climate was the utilization of industrial revenue bonds by the states other than the State of Wisconsin. In fact, the Wisconsin Legislature's enactment of Wisconsin's Industrial Revenue Bond Act in 1969 occurred after more than 40 states had enacted similar legislation, and it was not until April 9, 1973, that Wisconsin's law will have its full force and effect by virtue of the Wisconsin Supreme Court's decision as to its constitutionality.

One infrequently mentioned advantage of industrial revenue bonding is that it is flexible enough to accommodate the needs of large as well as smaller corporations. Traditionally, large corporations in pursuit of funds for corporate expansion purposes utilize the painfully long process of accumulating reserves with after-tax

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1. Wis. Stat. § 66.521 (1971). As of the publication of this article, there are several bills pending in the Wisconsin Legislature which, if enacted, would significantly expand the scope of sec. 66.521, and make the financing of industrial expansion through revenue bonds even more attractive. See A.B. 1354, S.B. 580-581 (1973 Session). Therefore, reference should be made to recent legislative enactments.
dollars, or rely upon conventional financing, the issuance of corporate debt instruments, or, possibly, a public offering. The smaller corporation, in addition to utilizing after-tax dollars derived from corporate profits, most frequently relies upon loans from the principal shareholders, conventional financing, additional investments by small business investment corporations, and Small Business Administration loans. Now, both large and smaller corporations in Wisconsin have an attractive and alternative financing tool—industrial revenue bonding.

PUBLIC AND CORPORATE SENTIMENT

The enactment, determination of constitutionality and implementing of Wisconsin’s industrial revenue bonding law could not have occurred at a more opportune time. The loss of Wisconsin industry and its concomitant effect upon a community’s tax base and employment potential, has caused a concerned public awareness of the problems of Wisconsin industry, as well as provoking inquiry into government’s role with respect to stimulating corporate and industrial growth and development. A recent and well publicized study reveals that a 94% majority of Wisconsin residents feel that economic growth is important to a community’s welfare. Furthermore, 88% agreed that more business growth was necessary to provide employment and revenues to support government. 72% agreed that government should do more to promote industrial employment growth in their respective communities.²

It was in response to such growing public interest, concern and awareness that the Wisconsin Legislature enacted Chapter 278 of the Laws of 1969 which authorized municipalities to issue industrial revenue bonds, the interest from which is exempt for purposes of federal income taxation. By reason of such exemption the industry involved in the bonding process receives expansion funds at an attractive interest rate, as well as other financial and economic considerations. Nevertheless, until the Wisconsin Supreme Court’s decision in State ex rel. Hammermill Paper Co. v. La

² J. Udell, Wisconsin’s Economy as Seen by Industry, Labor and the General Public, at 94 (1973). The Udell study occurred and was published prior to the enactment of the state’s budget for the current biennium. The authors feel that the publicity given to Jon G. Udell’s study was partially responsible for the more favorable treatment granted to industry in the personal property and sales tax areas as part of the current budget. Although the current budget has somewhat improved the strained relationship between government and industry, it is not apparent that the validity of Udell’s conclusions have been significantly altered for long term growth and development purposes.
most industries and municipalities were reluctant to proceed with the utilization of industrial revenue bonds until the constitutionality of the Wisconsin law was determined.

In addition, industry has become skeptical about the State of Wisconsin. The same recent study reveals that after Wisconsin's unreasonably severe tax impact, second on the list of unfavorable characteristics is a perceived negative attitude of government toward industry. Wisconsin industry does not feel that the Governor's office, the legislature nor the judiciary are particularly concerned about the plight of Wisconsin industry. Perhaps as a reflection of that prevalent sentiment, fifty-four percent (54%) of the participating industrial manufacturers interviewed indicated that they had decreased the proportion of their total investment located in Wisconsin.

All responding industries expecting a major expansion were asked if their companies planned more or less expansion in Wisconsin in the next five years as compared to the previous five years. Fifty-nine percent (59%) of the firms expected to expand less in Wisconsin in the next five years than they had during the last five years. Only twenty-seven percent (27%) expected to expand more. If these results are, in fact, indicative of the plans of most Wisconsin industrial manufacturers, significant problems lie ahead for Wisconsin's economic development. Stated plainly, the State of Wisconsin has managed to project, in comparison to its neighboring states, a very distinct negative industrial image. It is hoped that industrial revenue bonds will be an effective tool in attempting to rectify the damage which has been wrought and to interpose the positive image which Wisconsin has formerly enjoyed.

The Wisconsin Supreme Court Decision

On April 9, 1973, the Wisconsin Supreme Court, in a case involving the City of Kaukauna and Hammermill Paper Company, resolved the issue of the constitutionality of Wisconsin's industrial revenue bonding procedure in favor of Wisconsin industry.

In reaching its decision in a case of such moment, the Wisconsin Supreme Court was typically faced with many constitutional

3. 58 Wis. 2d 32, 205 N.W.2d 784 (1973).
4. Udell, supra note 2, at 8.
5. Id.
6. Id.
7. State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 205 N.W.2d 784 (1973).
arguments. Most notably, it was argued that Wisconsin’s industrial revenue bond law violated the Wisconsin Constitution since it constituted an expenditure of public funds for a private purpose. Hammermill Paper Company argued that the benefits running to the company were incidental to the public benefits which would accrue to the city. Hammermill asserted that without such a program, it and other companies in similar situations could be forced to shut down and that such action would necessarily imperil the municipality’s tax base and the economic opportunity of its citizens. Hammermill argued that such programs were necessary to attract new industry and to preserve existing industry during a time in which industry is extremely mobile and in which there is considerable competition among the various states to attract industry. Finally, Hammermill noted that, in return for the benefits flowing to the municipality, the city would expend no public funds or tax monies and risk neither its assets nor its revenues. Based on the facts presented to it, the Wisconsin Supreme Court held Wisconsin’s law to be constitutional as evidencing a public purpose and noted that the law would promote the general welfare of the state by allowing the development of programs which would place Wisconsin upon a competitive basis with neighboring states that heretofore have approved similar legislation.8

In upholding the constitutionality of Wisconsin’s industrial revenue bonding law, the Wisconsin Supreme Court rejected the contention that a potential conflict existed between state and local rights. The Wisconsin Supreme Court indicated that there was no need to engage in the balancing of interests to determine whether the state interest or local interest was paramount since the Wisconsin law did not constitute an unlawful delegation of a matter of state-wide interest to the municipality.9

The Wisconsin Supreme Court also rejected the contention that upholding the constitutionality of Wisconsin’s industrial revenue bonding law would violate the Wisconsin Constitution in that it would constitute the rendering of the credit of the state to a corporation. The Wisconsin Supreme Court specifically noted that the Wisconsin law expressly limited authority to issue industrial revenue bonds to a “municipality”. The Wisconsin law grants no authority to the State of Wisconsin to issue bonds of this type. The

8. Id. at 47-57, 205 N.W.2d at 793-799.
9. Id. at 57-59, 205 N.W.2d at 799-800.
credit of a city is not the credit of the State of Wisconsin. It was also argued that the Wisconsin law and the Hammermill project created state and municipal debt in excess of and contrary to the limitations contained in the Wisconsin Constitution. Again, the Wisconsin Supreme Court noted that the debt of a municipality is not the debt of the State of Wisconsin. Furthermore, the Wisconsin industrial revenue bonding law expressly negates the municipality's authority to create an indebtedness within the meaning of any constitutional or statutory limitation. Wisconsin industrial revenue bonds do not constitute or give rise to the use of the liability of a municipality, since the principal and interest of the bonds are payable solely out of the revenues to be derived from the lease of the project. Where no funds or property acquired by taxation are involved, and the mortgage is payable solely out of the revenues of the project, the Wisconsin Supreme Court held that the giving of a mortgage upon the property so acquired from the proceeds of the bonds to be sold, does not make the bonds "debts" of the city in violation of the Wisconsin Constitution. To rebut the argument raised involving the potential bankruptcy of the municipality, the Wisconsin Supreme Court noted that pursuant to Wisconsin's industrial revenue bonding law and the resolution of the Common Council of the City of Kaukauna, the bonds issued by the city were payable solely out of the rental or revenues to be derived from the project. While a lien is placed upon the revenues and the property to be acquired, no lien is imposed upon the city property owned prior to the issuance of the bond. Upon default, and in the event of the sale of the project, the municipality would be placed in the same position as it had been prior to the issuance of the bonds. Therefore, the limitation of indebtedness provision of the Wisconsin Constitution is not violated.

Finally, the Wisconsin Supreme Court rejected the objection that the Wisconsin law discriminated against non-industrial enterprises in violation of the equal protection provisions of both the United States and Wisconsin Constitutions. The Wisconsin Supreme Court noted that the Wisconsin Legislature has great authority and discretion to establish classifications in passing legislation. The Wisconsin Supreme Court further noted that all enterprises within the definition of "project" are treated identically pursuant to the Wisconsin law. The court recognized the fact that the

10. Id. at 61-62, 205 N.W.2d at 801-802.
11. Id. at 63-67, 205 N.W.2d at 802-804.
legislature specifically found that it was "industry" located in this state that was being induced to move their operations. To cause such economic drain upon the State of Wisconsin, the legislature determined that it was necessary to promote industrial enterprises. Since such classification was neither irrational nor arbitrary, the Wisconsin Supreme Court held that the Wisconsin law did not violate the equal protection clauses of either the United States or the Wisconsin Constitution.\(^\text{12}\)

**WHAT ARE INDUSTRIAL REVENUE BONDS?**

Industrial revenue bonds are tax free bonds issued by a Wisconsin city, village or town\(^\text{13}\) to finance the acquisition or improvement of an industrial facility. Once acquired or improved, the facility is leased by the municipality to private industry,\(^\text{14}\) and the lease payments are utilized to meet the debt service of the bonds. The municipality must issue the bonds in order to finance the facility; however, the municipality does not guarantee the bonds. Bonds are retired only through the application of the lease payments to the debt service.\(^\text{15}\) It is therefore the private industry which bears the sole liability in the event of default. As the municipality acts only as a conduit, neither municipal finances nor its tax rate structure become directly involved. Traditionally, after the bonds have been completely retired, the industrial facility is sold and titled to the industrial lessee for a relatively nominal consideration. Wisconsin law provides that the bonds may not be issued for a term exceeding 30 years from the issuance date.\(^\text{16}\)

In the industrial revenue bonding process, industry generally functions in the role of the lessee\(^\text{17}\) of the industrial project. In actuality, it is industry that attends to the actual acquisition or construction of the project facility. To industry, most elements of

\(^{12}\) *Id.* at 73-75, 205 N.W.2d at 807-809.

\(^{13}\) *Wis. Stat.* § 66.521(2)(a) (1971).

\(^{14}\) Technically, the industry involved need not be operated in corporate form. Wisconsin's Industrial Revenue Bond Act provides that the term "lessee" can include a single person, firm or corporation. Therefore, it would appear that any individual or form of organization otherwise qualifying, could utilize industrial revenue bonds for industrial expansion purposes. *Wis. Stat.* § 66.521(2)(F) (1971).


\(^{17}\) The lease must provide that the rental payments shall be fixed and revised from time to time so as to produce revenues sufficient for the payment of the interest and principal of the bonds, as well as the operation and maintenance of the project and an adequate depreciation account with respect thereto. *Wis. Stat.* § 66.521(3)(c) (1971).
acquisition and operation remain unchanged and conventional; only the financing is unique. In this regard, it is well to emphasize that it is industrial progress which will dictate the success of the entire bonding process, as it is the industry's ability to generate sufficient cash to retire the bonds which makes this method of financing possible.

**Purpose of Wisconsin Law**

The promotion of industrial development and expansion is the primary reason for the use of industrial revenue bonds. The objectives of the Wisconsin law are the elimination of unemployment; the enhancement of tax bases through the promotion, rehabilitation and revitalization of commerce and industry; and a stimulation of a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions. It is the declared public policy of Wisconsin to promote gainful employment business opportunities and the general welfare of municipalities by authorizing municipalities to acquire industrial buildings and to finance such acquisitions through the issuance of industrial revenue bonds.\(^{18}\)

**Uses Of Industrial Revenue Bonds**

Through the utilization of industrial revenue bonds, Wisconsin corporations have the power to construct, equip, purchase, improve, maintain, repair, remodel, enlarge and reconstruct industrial projects.\(^{19}\) An industrial project means a building or improvement, whether realty or personal property, and whether or not in existence at the time the bonds are issued. The industrial project must be used in a revenue producing enterprise engaged in assembling, fabricating, manufacturing, mixing, processing, warehousing, storing or distributing any product of agriculture, forestry, mining or manufacture. An industrial project also includes data processing, research and development and service activities related to such industries.\(^{20}\)

The Attorney General of the State of Wisconsin has recently issued a formal opinion that Wisconsin's industrial revenue bonding statute is not available for a project involving a new automobile showroom, warehouse, and repair facility of a retail automobile

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dealership. The crux of the opinion is that the Wisconsin law should not be available to businesses which are primarily retail and commercial in nature.\textsuperscript{21}

**Advantages To Wisconsin Industry**

The primary advantage to industry in financing through industrial revenue bonds is the relatively low interest rate which is obtained by virtue of the tax free nature of the bonds. The interest rate on tax exempt bonds has generally been placed somewhere between 1 ½% and 2% less than conventional financing rates. The percentage spread between industrial revenue bond financing and conventional financing will vary depending upon the corporation's financial position. Generally, the stronger the industry's financial position, the less the percentage spread between financing methods. Therefore, the recent determination as to the constitutionality of the Wisconsin law adds an historic dimension to the industrial development in the State of Wisconsin.

Another corporate advantage stems from the fact that the industrial revenue bonding process permits a degree of flexibility concerning the structuring of the transaction. The corporation's acquisition of its industrial facility can be structured as a lease or as an installment sale.\textsuperscript{22} In the event that the transaction is structured as a lease, the corporation would be entitled to deduct the rental payments paid to the municipality. If the transaction is structured as an installment sale, the corporation would be entitled to the depreciation deduction with respect to the cost of the project.\textsuperscript{23} In addition, the corporation would be entitled to any portion of the periodic mortgage amortization payments made to the municipality which can be allocable and attributable to the interest portion of the financing package.\textsuperscript{24} The tax benefits flowing from an installment sale approach may very well be greater by virtue of the accelerated depreciation accruing to the industry. However, the particular facts in each bonding must be carefully evaluated to determine which method is most advantageous.

The federal investment tax credit\textsuperscript{25} is also a factor to be considered in structuring the transaction. Investigation must be made as

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to which part of the industrial facility will qualify for the industrial tax credit and coordinated with the method and term of depreciation selected by the corporation. The investment tax credit generally does not apply to buildings; however, other portions of the corporate expansion may very easily qualify for this very desirable tax benefit. In the event that the transaction is structured as a true lease, the corporation should obtain the municipality's consent to use the investment credit by having the municipality pass such credit on to the corporate lessee. As the municipality is not a taxable entity for purposes of federal income taxation, it should have no objection to passing the investment credit on to the corporate lessee with respect to those portions of the industrial revenue bonding expansion as are available.

Finally, an industry involved in the industrial revenue bonding procedure can benefit from the time and effort spent with municipal officials. Such exposure should prove mutually beneficial and result in greater respect, understanding and improved communication.

**Pollution Abatement Facilities**

The Wisconsin Supreme Court specifically approved the use of industrial revenue bonds for pollution abatement facilities. The court reasoned that since Hammermill Paper Company was a revenue producing enterprise, engaged in the manufacture of paper products, pollution abatement facilities were appropriate for its commercial use. Since the definition of the Wisconsin statutory term "improvement" was broad enough to include pollution abatement equipment, the project envisioned by Hammermill Paper Company and the City of Kaukauna was determined to be a proper use of industrial revenue bonds.

The Internal Revenue Code provides that issues of industrial revenue bonds to finance air and water pollution control facilities are not subject to the usual dollar limitations regarding the amount of the issuance. Therefore, as the interest yield of industrial revenue bonds for pollution control facilities is automatically exempt from federal income taxation, the Treasury Department has exercised its role by issuing regulations which establish general guide-
lines as to what constitutes pollution control equipment. Any pollution control facility will qualify if its sole purpose is to control pollution. Facilities related to pollution control also qualify if the facility does not substantially increase the production capacity or useful life of the plant. Also, a governmental unit having jurisdiction must certify that project construction would result in the furtherance of the control or abatement of pollution.

With increasing public awareness and sensitivity to the problems of pollution and the growing recognition that municipalities must, of necessity, strive to maintain an equilibrium in corporate structures as well as an equilibrium in nature, industrial revenue bonds seem destined to play a notable role in controlling our environment as well as alleviating the cost of doing so.

**ROLE OF AND ADVANTAGES TO A MUNICIPALITY**

As issuer of the industrial revenue bonds, the municipality is the coordinator of the bonding process. The municipality acquires the project, borrows the funds, and issues bonds to finance the cost of acquisition. The municipality then leases the facility to the expansion-minded corporation, mortgages the industrial project in favor of the bondholders, and eventually sells and conveys the expansion project to the corporation. The municipality is charged with the responsibility of determining the amount of funding necessary to pay the principal and interest portion of the bonds and the amount necessary to be paid into reserves for retirement of the bonds and maintenance of the facility.

The primary advantage to the municipality is the ability to expand existing industry and acquire new industry, along with the resultant stabilization and increase in the municipality's tax base. Despite the fact that the municipality is the record owner of the facility, the property is not exempt from real property taxes. This consideration is increasingly important in view of the United States Supreme Court's decision to the effect that property taxes may continue to be utilized to finance educational expenditures. Obviously, a solid industrial tax base, along with adequate employ-

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33. However, such real property taxes do not become a lien against the property. Wis. Stat. § 66.521(9) (1971).
ment opportunities, is important to and affects all aspects of a community, including industry. Another advantage is that the industrial revenue bonding involves no actual liability to the municipality. Finally, a municipality benefits by being able to project a positive and progressive image with respect to industrial cooperation and expansion. Each municipality is given the opportunity of correcting the negative image which the State of Wisconsin and its entities have managed to acquire over the course of the past several years.

THE ROLE OF AND ADVANTAGES TO THE BONDHOLDERS

The bondholders are the investors. The advantages to such bondholders relate to their investment role. The interest derived from industrial revenue bonds is exempt from federal income taxation. Of course, tax free interest at a lower yield rate is often far more beneficial to high bracket taxpayers than is taxable income derived from investments generating a greater percentage yield. The inability of the stock market to generate the confidence of increasingly significant numbers of investors has resulted in increasing attention to the tax free bond market. As industrial revenue bonds are essentially debt obligations, they tend to be somewhat more secure and stable investments than equity securities. In addition, the bond market may be increasing in appeal due to the fact that bond issues are used to finance socially desirable improvements, such as pollution control and abatement facilities. Individual investors may tend to favor such investments for the psychological reason that they are in fact investing in the future of the municipality and the State of Wisconsin.

The initial projects financed in Wisconsin have consisted of the private placement of an entire bond issue with a bank or group of banks combined with resale to their respective accounts. It is inevitable that as the size and number of bond issues increase, the variations in investor mix will be as interesting as the industrial facilities financed by this new financing tool. The involvement of insurance and investment companies seems certain. One factor also points to the likelihood of public offerings: the fact that there is no dollar limitation on the amount of a bond issue which can be utilized to finance air and water pollution abatement facilities.

The number and size of future offerings leads to the conclusion that industry will look to the public sector as a dimension of corporate financing through industrial revenue bonds.

**THE ROLE OF BOND COUNSEL**

Bond counsel renders a formal legal opinion at the time of the closing of the transaction as to various matters, including the validity of the industrial revenue bond proceedings, the validity and binding effect of the bonds and the federal taxation and securities aspects of the issuance. In this regard, bond counsel will generally assume responsibility for the drafting of the necessary documents, including: the municipality's authorizing resolutions, the bond form itself, the documents conveying record title of the industrial project to the municipality, the lease from the municipality to the industry, and the trust indenture under which the bonds are issued and secured. Also, bond counsel will act as a liaison between the municipal officials, including the municipal attorney and the representatives of the industry involved, and its corporate attorney.

**THE MARKET FOR INDUSTRIAL REVENUE BONDS**

The financial market for industrial revenue bonds includes banks, investment and insurance companies, as well as investment funds, trusts and individuals. This characteristic makes it uniquely possible for a local financial institution and local investors to become actively involved in promoting the mutual goals of the expansion-minded corporation and of the municipality.

Ultimately, as with the analysis of equity securities, the potential investor in industrial revenue bonds will evaluate the corporation's financial stability, its future potential, and its management and credit rating in determining its appropriateness as an investment and its marketability. As mentioned previously, the credit for industrial revenue bonds is strictly and solely that of the corporation leasing the facilities and generating income sufficient to serve the periodic debt payments of principal and interest.38

More frequently than not, an industry seeking the use of industrial revenue bonds will seek its own privately placed source of most or all of the entire bond issue. This is especially true when the size of the issue is relatively small. As a result, the industry's application to a bank or insurance company for a private place-

ment of its industrial revenue bonds will closely resemble the procedure involved in an application for commercial financing. Many of the same considerations will be relevant in determining whether a corporation can market its debt.

**TAX ASPECTS**

If the industrial revenue bond meets the requirements of the Internal Revenue Code, the interest yield derived from such bonds will be free from federal income taxation. The Internal Revenue Code and the Treasury Regulations relating to municipal bonds generally, establish several important requirements concerning the availability of the federal income tax exemption.

First, the industrial revenue bond issue must satisfy the "trade or business" test. The trade or business test is satisfied if all or a major portion of the proceeds of a bond issue is used in the trade or business conducted by the industry. Generally, if 75% of the proceeds of the bond issue is used in the industry's trade or business, this first requirement will be satisfied.

Second, the industrial revenue bond issue must pass the "security interest" test. The security interest test relates to the nature of the security for, and the source of, the payment of either the principal or interest of a bond issue. This test is satisfied if, for example, the debt obligation is secured by unimproved land or investment securities used, directly or indirectly, in the industry's trade or business. In this regard it should be noted that the requirements of the Wisconsin law are more stringent than that of the Internal Revenue Code since the security required under federal law is not limited to the industrial project, as it is under the Wisconsin statute.

Third, the Internal Revenue Code imposes dollar limitations with respect to the issuance of the tax exempt bonds. This requirement is set forth in two alternative provisions. The first provision states that $1,000,000 of tax exempt bonds may be issued by a municipality on behalf of private industry without any restrictions as to the nature of the capital expenditure other than that the

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44. Treas. Reg. § 1.103-7(b)(4) (1973).
character of the project must be such that it would qualify for a depreciation allowance. The second alternative provisions states that the issuer may elect to have a $5,000,000 limitation apply to a bond issue. In calculating the $5,000,000 amount, all capital expenditures made by the industry through the utilization of industrial development bonds within the three years before and three years after the date of the new bond issue must be taken into account. If the total capital expenditure during the six year period exceeds the amount of the limitation, the bonds lose their federal income tax exemption. In determining whether an issue qualifies under either alternative, it is necessary to evaluate all outstanding prior industrial revenue bond issues with respect to that specific industry. Such outstanding prior issues must be counted as part of the respective dollar amount if the previously financed project and facilities to be financed under the new bond issue are situated in the same locality and there is an identity as to the principal users of both facilities. It is important to note that the dollar limitations as to the amount of the industrial revenue bond issue do not, under federal tax law, apply to the size of issues relating to pollution control facilities.

Despite the fact that the interest derived from federally qualified bonds is exempt from federal income taxation, such interest is subject to Wisconsin income taxation to both corporate and individual taxpayers. In order to further enhance the desirability of using the industrial revenue bonding process to promote industrial growth, the State of Wisconsin should exempt from taxation the interest income derived from Wisconsin-based industrial expansion projects.

**Securities Aspects**

At present, the Federal Securities and Exchange Commission does not regulate the issuance of industrial revenue bonds; nevertheless, the antifraud provisions of the federal securities laws appear to be applicable. The State of Wisconsin does, however,
regulate the offering or sale of such securities to the public. Therefore, unless exempted from registration pursuant to one of the specific statutory exceptions, such as that utilized in placing an entire issue with a commercial lending institution, it may be necessary to register industrial revenue bonds with the Office of the Wisconsin Commissioner of Securities.

**The Industrial Revenue Bonding Procedure**

Although procedures may vary somewhat between municipalities, the following is a general outline of the steps involved in an industrial revenue bond issuance:

a) Preliminary contact is made with the municipality to determine its policy with respect to bonding, its interest in the proposed project and to obtain general background information concerning the industrial revenue bonding procedure utilized by that municipality.

b) A financial analysis of the corporation is undertaken in order to determine whether the industrial revenue bonding method is the most appropriate financing tool available. This analysis will involve an evaluation of the then current money market as well as the projected future cash flow position of the corporation and its ability to carry the anticipated debt load.

c) An initial presentation is made to the municipality. This step involves the presentation of the financial data and completed governmental applications which will, in turn, be evaluated by the municipality or its agent. It is at this point that the municipality makes its very important initial determination that the industrial expansion project is worth pursuing by the municipality and the corporation involved. Upon a successful presentation, the municipality may pass a "comfort resolution" evidencing its conditional interest in the project or may provide some other evidence of encouragement to the industry.

d) The pursuit of a privately-financed placement for the industrial revenue bonds is undertaken, primarily with local financial institutions.

e) The municipality appoints bond counsel.

f) Appropriate legal documents are negotiated and drafted. Selected portions of the Project Purchase and Financing Agreement, the Lease, and the Mortgage and Indenture of Trust utilized in the Hammermill Paper Company bonding as summarized in the Appendix to this article.

g) A trustee is appointed for purposes of handling the rental payments and the amortization of the bonding issue.
h) Final presentation of the bond issue is made to the municipality.
i) Approval by appropriate municipal authority is obtained.
j) A certificate of good standing issued by the Secretary of State and formal opinion of bond counsel are filed with the municipality.
k) Any required Wisconsin securities filing occurs.
l) The mandatory 30-day waiting period (to permit the citizenry to request a referendum with respect to the industrial revenue bond issue) must pass.\textsuperscript{55}
m) The bonds are sold and the proceeds are delivered to the municipality.

n) The finalized documents are executed.
o) The proceeds are delivered to the trustee. The lessee corporation delivers a certificate of completion of the project. The trustee pays the construction creditors and other vendors with the proceeds of bond issuance.
p) The corporation makes periodic payments to the trustee to amortize the issuance of the industrial revenue bonds.

CONCLUSION

In the \textit{Hammermill} decision, Honorable Connor T. Hansen, speaking for the entire court, noted:

In the instant case, the declaration of purpose enunciated by the legislative enactment . . . demonstrates that industrial revenue bond projects provided for and authorized by sec. 66.521, Stats., will promote the general welfare of this state. The development of such programs will also place Wisconsin upon a competitive bases with neighboring states that heretofore have approved similar legislation.\textsuperscript{58}

In addition, the Wisconsin Legislature and Judiciary have provided Wisconsin municipalities with a method of improving local economic growth, the Wisconsin investment community with a new investment device, and Wisconsin industry with an attractive method of financing corporate expansion.

\textsuperscript{55} \textsc{Wis. Stat.} § 66.521(10) (1971).
\textsuperscript{56} State ex rel. Hammermill Paper Co. v. LaPlante, 58 Wis. 2d 32, 56-57, 205 N.W.2d 784, 798-799 (1973).
This Appendix consists of summaries of selected portions of the Project Purchase and Financing Agreement, the Lease, and the Mortgage and Indenture of Trust involved in the Hammermill Paper Company Bonding. In the interests of brevity, the authors attempted to encapsulate only the more salient substantive provisions, and not the procedural provisions.

PROJECT PURCHASE AND FINANCING AGREEMENT

Agreement between Hammermill Paper Company ("Company"), the City of Kaukauna ("Municipality"), and Marine Exchange Bank and First National Bank of Appleton ("Banks"):

AGREEMENT TO SELL THE PROJECT

Purchase and Sale. Municipality agrees to purchase the Project solely from the proceeds of the sale of the Bonds, and Company agrees to sell the Project to Municipality upon the following terms and conditions.

The Project. The "Project" means certain land, plant and equipment described in exhibits to the Agreement.

Purchase Price. The purchase price for the Project shall be paid solely from the proceeds of the sale of the Bonds, and shall be the lesser of: (a) the cost of acquisition, construction and equipping the Project to the Company, or (b) the principal amount of the Bond issue less certain expenses.

Conveyance. At closing, the Company shall transfer the Site and Plant to Municipality by warranty deed, free from encumbrances except "Permitted Encumbrances".

Permitted Encumbrances. The term includes liens for ad valorem taxes not then delinquent, utility and other easements, minor defects, the Lease and the Mortgage.

Title. At closing, Company shall deliver to Municipality a report of title showing that the Site and Plant are free from encumbrances, except Permitted Encumbrances.

Taxes and Other Expenses. General taxes, special assessments and all other expenses in connection with the Project shall be paid by Company.

ISSUANCE AND SALE OF BONDS

Issuance. At closing, and pursuant to Section 66.521 of the Wisconsin Statutes, Municipality agrees to issue Bonds in the principal amount of $2,400,000.

Sale. The Banks agree to purchase all of the Bonds and pay the par value thereof plus accrued interest to the date of delivery. Municipality agrees to take all actions necessary to sell and deliver the Bonds to the Banks.

Investment Representation. The Banks represent that they are acting on their own behalf, that they are purchasing the Bonds for their own account and not with a view to the sale or distribution of the Bonds, that they will not sell any of the Bonds in violation of the Federal or Wisconsin Securities laws, and that they are not a "substantial user" of the Project or a "related person" to the Company within the meaning of the applicable Internal Revenue laws.

Expenses of Issuance. All expenses related to the issuance of the Bonds shall be paid by Municipality from the proceeds of the sale of the Bonds.
Arbitrage. The parties agree that no use of the Bond proceeds shall be made which, if such use had been reasonably expected on the date of issue of the Bonds, would have caused the Bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code.

LEASE

Lease Agreement. The Company agrees that on the day of closing it will lease the Project from Municipality. The lease shall be a net lease and shall obligate Company to pay basic rental in amounts sufficient to provide for payment of principal and interest on the outstanding Bonds, as and when the same mature or come due.

MISCELLANEOUS

Conformity with Wisconsin Statutes. The Project will be sold and leased and the Bonds will be issued and sold pursuant to Section 66.521 of the Wisconsin Statutes and all documents and procedures shall conform to such statute. The Bonds shall be limited obligations of Municipality as provided in the statute.

Transcript of Proceedings. It is understood that the parties to this Agreement shall be furnished with a complete certified transcript of the proceeds covering the issuance of the Bonds.

Conditions for Closing. Each of the Agreements contained herein for which performance is required shall be deemed a condition precedent to closing, in putting the condition that the petition for referendum aspect is satisfactorily resolved.

LEASE

LEASE between the City of Kaukauna ("Municipality") and Hammermill Paper Company ("Hammermill"): 

FINANCING PURCHASE OF PROJECT

Issuance of Bonds. Simultaneously with the delivery of this Lease, Municipality has issued, sold and caused to be delivered the Bonds in order to finance the costs of acquisition and purchase of the Leased Premises and related expenses.

Application of Proceeds of Bonds. Municipality has caused the proceeds from the sale of the Bonds, less accrued interest, to be deposited in the Project Payment Fund. Municipality shall use the monies in the Project Payment Fund for the following purposes, which include payment of Trustee's fees, recording fees, filing fees, legal fees, accounting fees, printing and engraving costs, other costs and expenses relating to the Project and the payment for the purchase price of the Project as specified in the Project Purchase and Financing Agreement.

LEASE OF PREMISES

Lease of Premises. Municipality does hereby lease and rent to Company, and Company does hereby lease and rent from Municipality, the Site, the Plant and the Leased Equipment in accordance with the provisions of this Lease.

State of Title. The Leased Premises are leased subject to the existing state of title and subject to Permitted Encumbrances. Company is familiar with the state of title and accepts the same and shall, at its expense, defend the Municipality's title to and Company's right to possession of the Leased Premises hereunder. The
Company assumes all risks, if any, resulting from any present or future, latent or patent defects, or failure of the Leased Premises to comply with all legal requirements.

Reservation of Right to Subject Leased Premises to the Lien of the Mortgage. Contemporaneous with the delivery of the Lease, Municipality shall mortgage the Mortgaged Property to the Trustee under the Mortgage as security for the payment of the Bonds, subject to this Lease (which shall be superior to the Mortgage), and shall assign its rights in, and pledge any monies receivable under, this Lease to the Trustee as security for the payment of the principal and interest on the Bonds.

No Warranty of Suitability, Company to Bear Certain Costs. The Company recognizes that Municipality can make no warranty that the Project will be suitable for Company's purposes, or that Bond proceeds will be sufficient to pay in full all costs of the Project. Company shall not be entitled to any reimbursements from Municipality, the Trustee or the Bondholder; nor shall the Company be entitled to any reduction in the rent payable by reason of the payment of costs.

Use of Leased Premises. It is Company's present intention to use and occupy the Leased Premises primarily for pollution abatement. The Company shall have the right to use the Leased Premises for any lawful purpose which will not effect the validity of the Bonds or the tax exempt nature thereof.

Compliance with Laws. Company shall promptly comply with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities.

Commencement, Term, Rent and Redemption

Commencement, Term and Possession. This Lease shall become effective upon its delivery and shall continue in full force and effect, unless terminated prior thereto, until November 20, 1987, or on such date as payment of all of the Bonds has been made. Municipality agrees to deliver sole possession of the Leased Premises to Company and Company agrees to accept possession simultaneously with the delivery of this Lease.

Rent. During the term of this Lease, Company will pay to Trustee for the account of Municipality as rent the following amounts on or before the following dates: (rent payment schedule omitted). The Trustee shall deposit all rental payments in the Bond Fund as provided in the Mortgage.

Obligations of Company are Absolute. The obligations of Company to make rental payments and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to diminution by set off, counterclaim, abatement or otherwise.

Expenses of Trustee. Company agrees to compensate Trustee for its services in connection with the Bonds and also agrees to indemnify trustee against any loss, liability or expense incurred without negligence or bad faith on the part of Trustee arising out of the administration of the Mortgage.

Prepayment of Rent. Company may make prepayments of rent to Trustee for deposit in the Bond Fund for the account of Municipality, but such prepayment shall not alter or suspend any obligations of Company under the terms of this Lease.

Bond Purchase or Redemption. Municipality shall not redeem any Bonds without the consent of Company. At the request of Company, Municipality shall
cooperate and take all steps necessary to effect redemption of all or part of the then outstanding Bonds as may be specified by Company on the earliest redemption date possible.

**TAXES AND OTHER CHARGES**

*Payment of Taxes.* In addition to the rent previously specified, Company agrees to pay each and every lawful cost, expense, or obligation for which Municipality or Company shall become liable by reason of its interest in the Leased Premises. The Company also agrees to pay all lawful real estate and other conceivable taxes and charges relating to the Leased Premises.

*Licenses and Utilities.* The Company shall pay the cost of any and all building and other permits, licenses and other authorizations required with respect to the construction, use, occupation, operation and management of the Leased Premises. Company also agrees to pay all lawful utility charges.

**MAINTENANCE, REPAIRS, REMODELING AND IMPROVEMENTS**

*Obligation to Maintain and Repair.* Company agrees to keep and maintain the Leased Premises in good condition, repair and working order at its own cost. Municipality shall have no obligation to repair or maintain any part of the Lease Premises.

*Remodeling and Improvements.* Company shall have the privilege of remodeling the Project or making improvements thereon, provided that such does not impair the operating unity or materially alter the character of the Leased Premises. The cost of the remodeling or improvements shall be paid by the Company or from the proceeds of Improvement Bonds and shall become a part of the Leased Premises.

*Additional Bonds.* In the event that Company makes additional improvements in an amount greater than $50,000, Company may request Municipality to pay for same from the proceeds of the sale of Additional Bonds. In such event the parties shall enter into an appropriate supplement to this Lease.

**COVENANTS OF MUNICIPALITY**

The Municipality covenants and agrees that it has authority to enter into the Lease; that it will not sell, convey or otherwise dispose of the Leased Premises; and that Company may perform any action necessary to prevent or correct a default of Municipality under the Mortgage.

**COVENANTS OF COMPANY**

Company agrees and covenants that it will maintain its corporate existence and will not dispose of substantially all of its assets; that it is in good standing and fully authorized to do business in the State of Wisconsin; that it will annually deliver to the Municipality and Trustee certain specified documents and financial statements; that it will not encumber the Leased Premises, and that the Project is a water pollution control facility within the applicable provision of the Internal Revenue Code.

**INSURANCE**

Company shall maintain insurance with respect to the Leased Premises
against such risks as are customarily insured against by businesses of like size and type including property insurance to the extent of the lesser of:

(a) The full insurable value of the Leased Premises, or
(b) An amount necessary to pay, retire, and redeem all then outstanding Bonds in accordance with the provisions of the Mortgage.

INDEMNIFICATION AND NONLIABILITY OF MUNICIPALITY

Company agrees to pay, indemnify and save Municipality harmless of, from, and against any and all claims, damages, demands, and losses of every conceivable nature whatsoever asserted by anyone arising out of the Leased Premises; acts of third parties in connection with securities transactions; and acts by Municipality, except acts committed with actual intent in connection with securities transactions. However, Municipality is not indemnified from any liability which it would otherwise have had arising from the negligent actions of itself or its employees acting in capacities other than contemplated in the Lease.

ASSIGNMENT AND SUBLEASING

Company may assign the Lease or sublet the Leased Premises without consent of Municipality provided that the use of the Leased Premises will not affect the validity of the Bonds or the tax exempt nature of the interest thereon. Company will remain primarily liable for the payment of Rent and for full performance of the other conditions of the Lease.

SUBSTITUTION AND REMOVAL OF LEASED EQUIPMENT

Company may substitute different equipment for any Leased Equipment included under the terms of the Lease, provided that such different equipment has equivalent value and utility to that replaced and shall meet the requirements of the Internal Revenue Code. Company may purchase any Leased Equipment so long as removal of the Leased Equipment does not impair operating unity or materially alter the character of the Leased Premises, and provided that the Trustee is adequately compensated for such Leased Equipment. Company shall be entitled to any investment tax or similar credit relating to the Project and to Leased Equipment. Company may install additional moveable equipment, which equipment shall remain the sole property of Company. No substitution, purchase or removal of equipment shall entitle Company to any abatement of rent payable.

CERTAIN EASEMENTS, "TIE-IN" WALLS AND FACILITIES; RELEASE OF UNIMPROVED LAND

Company may grant or release easements with respect to the Site, provided that such is not detrimental to the proper conduct of business and will not impair the effective use or interfere with the operation of the Leased Premises. Company may connect or "tie-in" walls to other facilities erected on real property adjacent to the Leased Premises or, in connection with the expansion of any building on the Leased Premises, tear down any wall of such building and build an addition to such building, provided that the expansion will not impair the operating unity or materially alter the character of the Leased Premises and provided that the Trustee is given adequate security. The parties reserve the right to amend the Lease to effect the release of and removal from the Lease of any unimproved part
of the Site or any part of the Site with respect to which Municipality proposes to grant an easement or convey fee title to a railroad or public utility.

**Damage to Leased Premises**

*Minor Damage.* If the Leased Premises shall be partially or totally damaged or destroyed by reason of casualty, to the extent that the claim for loss resulting from such damage is not greater than $50,000, the Company will restore the property damaged and pay for such restoration with any Net Proceeds of insurance policies, or out of its own funds.

*Major Damage.* If the damage is in excess of $50,000, the same basic procedure is followed, except that the Company must give prompt notice to the Municipality and the Trustee, and the Net Proceeds of insurance policies are paid to and held by the Trustee in a separate insurance loss trust account, and payments for restoration are made from such account.

**Eminent Domain**

Any proceeds received from an award made in eminent domain proceedings shall be paid to and held by the Trustee in a separate condemnation Trust Account and shall be applied as follows, at the direction of Company:

(a) Restoration of improvements located on the Leased Premises to substantially the same condition as they existed prior to the exercise of eminent domain;

(b) Acquisition of other improvements suitable for Company's operation on or adjacent to the Site; or

(c) Redemption of the Bonds pursuant to the Mortgage, together with accrued interest thereon to the date of redemption.

**Purchase Options and Obligations of Company**

*Option to Purchase Leased Premises in Certain Events.* Company shall have the option to purchase all of the Leased Premises if the Leased Premises have been damaged or destroyed by casualty or if title to substantially all the Leased Premises shall have been taken by eminent domain.

*Obligation to Purchase Leased Premises in Certain Events.* Company shall have the obligation to purchase all of the Leased Premises if the Lease, Mortgage or Bonds shall become void or unenforceable; if unreasonable burdens or excessive liabilities shall be imposed upon Municipality; if the interest on the Bonds shall be subject to Federal income taxation; or if Section 66.521 of the Wisconsin Statutes shall be repealed, invalidated or amended so as to make the Bonds, the Mortgage or the Lease illegal or unauthorized.

*Exercise of Options and Obligations to Purchase.* Company shall give specified notice to Municipality and to the Trustee. The purchase price payable by Company shall be the sum of the amount necessary to retire and redeem all of the outstanding Bonds, plus Trustee's fees, plus all outstanding rents and other amounts due under the Lease, plus $100.

*Option to Purchase Leased Premises at Termination of Lease or Upon Full Payment of Bonds.* Company shall have the option to purchase the Leased Premises for the aforementioned sum at any time following full payment of the Bonds or upon termination of the Lease.
INDUSTRIAL REVENUE BONDS

OPTIONS TO TERMINATE AND RENEW

At any time prior to full payment of the Bonds, Company may terminate the Lease by paying to Municipality and the Trustee an amount sufficient to redeem all outstanding Bonds, plus expenses and Trustee's fees. After full payment of the Bonds, Company may terminate the Lease by giving Municipality 30 days written notice. Upon expiration of the Lease, and provided that the Bonds are paid in full, Company shall have three options to renew the Lease for terms of five years each. The rental payment upon renewal shall be $100 per month.

EVENTS OF DEFAULT AND REMEDIES

Events of Default. "Events of Default" shall mean the failure of Company to pay required rents; the failure of Company to observe and perform any covenant or condition; the dissolution, liquidation or insolvency of Company.

Remedies upon Default. If an Event of Default occurs, Municipality may take any one or more of the following remedial steps:

(a) Declare all installments of rent payable for the remainder of the term of the Lease to be immediately due and payable.
(b) Re-enter and take possession of the Leased Premises without terminating the Lease and sublease the Leased Premises for the account of Company, holding Company liable for the difference between the rent and other amounts payable by sublessee and the rents payable by Company.
(c) Terminate the Lease, exclude Company from possession of the Leased Premises and use best efforts to lease the Leased Premises to another for the account of the Company holding the Company liable for all rent and other payments due.
(d) Inspect the books of Company as they relate to the Leased Premises.
(e) Take whatever action may be necessary or desirable to collect rent or to enforce performance of any obligation of Company under the Lease.
(f) Remodel, improve and repair the Leased Premises in order to better sublease or re-let the Leased Premises.

Any amounts collected pursuant to these remedies shall be placed in the Bond Fund and applied in accordance with the provisions of the Mortgage. The aforementioned remedies of Municipality are not exclusive, but are cumulative. Company agrees to pay the cost of expenses incurred in exercising the above remedies.

MORTGAGE AND INDENTURE OF TRUST

MORTGAGE between the City of Kaukauna ("Municipality") and First National Bank of Appleton ("Trustee"): MORTGAGE between the City of Kaukauna ("Municipality") and First National Bank of Appleton ("Trustee"): MORTGAGE between the City of Kaukauna ("Municipality") and First National Bank of Appleton ("Trustee"): MORTGAGE between the City of Kaukauna ("Municipality") and First National Bank of Appleton ("Trustee"): Form, Execution, Issuance, Registration and Exchange of Bonds

Form of Bonds. This Mortgage shall be a continuing lien to secure the payment of principal and interest on all Bonds. (The specific form of the Bonds is then described in the Mortgage.)
Issuance of Bonds. The Bonds shall be issued hereunder to an aggregate principal amount of $2,400,000. The Bonds shall mature serially and shall bear interest as indicated in the following table. (Table omitted)

Execution; Special Obligation. The Bonds shall be executed on behalf of the Municipality and shall have imprinted thereon the corporate seal of the Municipality. The Bonds, together with interest thereon, shall be special obligations of the Municipality payable solely from the net revenues derived from the Project and shall be a valid claim of the respective holders thereof only against such net revenues derived from the Project, which revenues are hereby pledged and mortgaged for the payment of the Bonds. The Bonds and interest shall never constitute general obligations of the Municipality nor give rise to a pecuniary liability of the Municipality or a charge against its general credit or taxing powers.

Delivery of Bonds. Upon the execution of this Mortgage, the Municipality shall execute and deliver to the Trustee, and Trustee shall authenticate, Bonds to be issued in the aggregate principal amount of $2,400,000. Trustee shall deliver the Bonds to purchasers as may be directed by the Municipality. The proceeds received from the sale of the Bonds shall be paid over to the Trustee for the account of the Municipality and deposited to the credit of the Project Payment Fund and the Bond Fund.

Registration of Bonds. The Trustee is hereby appointed the Registrar of the Municipality for the purpose of registering, transferring and exchanging the Bonds.

Additional Bonds. The Municipality may issue Additional Bonds under this Mortgage pursuant to terms and conditions herein set forth, provided however, in no event shall the Municipality issue any Additional Bonds if as a result of the issuance thereof the interest on the Bonds would not be fully exempt from Federal income taxation. All Bonds of all series from time to time issued under this Mortgage shall be secured both as to principal and interest by this Mortgage.

Redemption

Redemption by Reason of Certain Prepayments of Rent. The Bonds are subject to redemption by the Municipality prior to maturity from funds available therefor by the Company, or when the amount in the Bond Fund reaches a specified level. Any such redemption shall be at a redemption price equal to the principal amount of each Bond to be redeemed, plus accrued interest to the date of redemption, plus a specified premium.

Redemption by Reason of Condemnation or Destruction. The Bonds are subject to redemption by the Municipality prior to maturity in the event of condemnation or destruction of the Project, or exercise by the Company of its option to purchase. Any such redemption shall be at a redemption price equal to the principal amount of each Bond to be redeemed, plus the accrued interest thereon to date of redemption.

Redemption by Reason of Taxable Event. In the event that the Bonds are subject to a mandatory redemption by the Municipality prior to maturity by reason of the taxable events specified in the Lease, any such redemption shall be at a redemption price equal to the principal amount of each Bond to be redeemed, plus the accrued interest thereon to the date of redemption.
GENERAL COVENANTS

The Municipality covenants that:

(a) It will promptly pay principal and interest on every Bond issued under this Mortgage as provided herein; that the principal and interest are payable solely from revenues derived from the leasing or sale of the Project, which revenues are hereby specifically pledged to the payment thereof; and that nothing in the Bonds or this Mortgage shall be considered as pledging any other funds or assets of the Municipality.

(b) It will faithfully perform at all times any and all covenants and provisions contained in this Mortgage and the Bonds.

(c) It is duly authorized under the Constitution and laws of the State of Wisconsin to issue the Bonds authorized hereby; to execute the Mortgage; to Mortgage the property described; to pledge the revenues; and to assign its rights as lessor under the Lease in the manner herein set forth.

(d) It lawfully owns and is lawfully possessed of the Project; that it has good title therein; and that it will not sell, convey, mortgage, encumber or otherwise dispose of the Project or the revenues derived therefrom.

(e) Pursuant to the terms and conditions of the Lease, the Company has agreed to annually furnish Trustee with certain specified information; pay taxes, assessments and charges; maintain the Project in good condition and repair; and maintain specified insurance.

(f) The Lease shall not be effectively amended, changed, modified, altered or terminated without the concurring written consent of Trustee; and in that regard, Municipality agrees that Trustee, in its own name, may enforce all rights of the Municipality and all obligations of the Company under the Lease for and on behalf of the Bondholders.

CUSTODY AND APPLICATION OF PROCEEDS OF BONDS; REVENUES AND FUNDS

Source of Payment of Bonds. The Bonds issued hereunder, and all payments required by the Municipality, are not general obligations of the Municipality; but rather are special obligations payable solely from revenues derived from the Project. The Bonds are secured by a Mortgage on the Project. The Project has been leased under the Lease and the rent of the Lease is to be remitted directly to the Trustee for the account of the Municipality and deposited in the Bond Fund. The rent so provided is sufficient in amount to insure the prompt payment of principal and interest on the Bonds, and the entire amount of said rent payment is pledged to the payment of the principal and interest on the Bonds.

Project Payment Fund. There is hereby created a Project Payment Fund that shall be used to purchase the Project. Proceeds from the sale of the Bonds shall be deposited into the Project Payment Fund. The project Payment Fund shall be used to make payments for the acquisition of the Project as specified in the Lease.

Bond Fund. There is hereby created a Bond Fund which shall be used to pay the principal, interest and redemption premium on the Bonds. An amount equal
to the accrued interest paid on the sale of the Bonds shall be deposited into the Bond Fund from the proceeds of the Bonds. In addition, all rents from the Lease, monies transferred from the Project Payment Fund and all other monies received by the Trustee pursuant to the provisions of the Lease shall be deposited into the Bond Fund. The Municipality agrees that it will deposit in the Bond Fund sufficient sums from the revenues derived from the Project to pay principal and interest on the Bonds; that it will use its best efforts to cause the Project to be continuously and efficiently leased as a revenue producing undertaking; that should there be a default under the Lease with the result that the possession of the Project is returned to the Municipality, it will fully cooperate with the Trustee so as to fully protect the Bondholders and shall diligently proceed in good faith and use its best efforts to secure another tenant for the premises. However, nothing herein shall mean that the Municipality shall operate the Project. The monies in the Bond Fund shall be used solely for the payment of the interest on the Bonds and for the payment of principal and redemption premiums upon redemption of the Bonds.

**Possession, Use And Release Of Mortgaged Property**

This Mortgage and the rights of the Trustee and Bondholders hereunder are subject to the rights of the Company set forth in the Lease. The Company's right to use the Mortgaged Property shall not be disturbed so long as the Company is not in default under the Lease. At the request of the Municipality or the Company, the Trustee shall release from the lien of this Mortgage any rights, equipment, land or building which are no longer subject to the lien of this mortgage. Upon payment by the Municipality of all principal and interest on the Bonds, the Trustee shall cancel and discharge the lien of this Mortgage.

**Default Provisions And Remedies Of Trustee And Bondholders**

*Events of Default.* "Event of Default" shall mean default in payment of interest on any Bond; default in the payment of principal or redemption premium of any Bond; default in the performance of a covenant in the Mortgage or in the Bond by the Municipality; a default by the Company under the Lease; or a default by the Company in the prompt payment of any rent required to be paid under the Lease.

*Acceleration.* If an Event of Default occurs, the Trustee may, and upon the written request of holders of 25% of the principal amount of the outstanding Bonds shall, declare the principal of all outstanding Bonds to be immediately due and payable.

*Surrender of Possession of Mortgaged Property; Rights and Duties of Trustee in Possession.* If an Event of Default occurs, the Municipality, upon demand of the Trustee, shall surrender possession of the Mortgaged Property to the Trustee and the Trustee may manage the Mortgaged Property. Whenever all that is due upon the Bonds shall have been paid and all the defaults made good, the Trustee shall surrender possession to the Municipality. Alternatively, if an Event of Default occurs, the lien on the Project created by this Mortgage may be foreclosed and the Trustee or the holder of any of the outstanding Bonds may become the purchaser at any foreclosure sale if the highest bidder.
Other Remedies; Rights of Bondholders. If an Event of Default occurs:

(a) The Trustee may, as an alternative, pursue any available remedy to enforce the payment of principal and interest on the Bonds, including foreclosure and mandamus;
(b) The Trustee, if permitted by law, is empowered to sell the Mortgaged Property at public sale;
(c) And if requested by Bondholders holding 25% of the outstanding Bonds, the Trustee shall exercise the rights conferred to it pursuant to the Lease, pursuant to its ability to take possession and manage the Mortgaged Property and appoint a receiver;
(d) The remedies of the Trustee and the Bondholders are nonexclusive and are cumulative.

Right of Bondholders to Direct Proceedings. In addition, Bondholders holding a majority of the outstanding Bonds, shall have the right to direct the method of conducting all proceedings to be taken in connection with the enforcement of the terms of this Mortgage; or for the appointment of a receiver; or any other proceedings not inconsistent with the provisions of law or of this Mortgage.

Appointment of Receivers. If an Event of Default occurs, the Trustee shall be entitled to the appointment of a receiver of the Mortgaged Property and of the income thereof, pending such proceedings.

Rights and Remedies of Bondholders. No Bondholder shall have the right to institute any action for the enforcement of this Mortgage unless specified notification, request, and offer of indemnity are given to Trustee.