

ORDINANCE NO. 97

AN ORDINANCE AUTHORIZING AND DIRECTING THE ISSUANCE OF \$1,000,000.00 PRINCIPAL AMOUNT OF INDUSTRIAL REVENUE BONDS OF THE CITY OF ANDOVER, KANSAS, FOR THE PURPOSE OF PAYING THE COST OF PURCHASING LAND AND CONSTRUCTING A PAINT MANUFACTURING PLANT FOR ENMAR, INC., THEREON, IN BUTLER COUNTY, KANSAS; PRESCRIBING THE FORM AND DETAILS OF SAID REVENUE BONDS; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUES OF SUCH FACILITY FOR THE PURPOSES AUTHORIZED BY LAW, INCLUDING PAYING THE PRINCIPAL OF AND INTEREST ON THE INDUSTRIAL REVENUE BONDS OF SAID CITY ISSUED AGAINST THE NET REVENUES OF SAID FACILITY; PLEDGING SAID FACILITY AND THE NET REVENUES FROM SAID FACILITY TO SECURE SUCH BONDS; PROVIDING FOR A TRUSTEE AND PRESCRIBING THE POWERS AND DUTIES OF SUCH TRUSTEE; AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT TO SUCH BONDS; AND AUTHORIZING THE EXECUTION OF A LEASE TO AND AGREEMENT WITH ENMAR, INC.

WHEREAS, the City of Andover, Kansas, a city of the third class, hereinafter sometimes referred to as the "City," desires to promote, stimulate and develop the general economic welfare and prosperity of the City of Andover and its environs and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and,

WHEREAS, pursuant to the provisions of K.S.A., Sections 12-1740 to 12-1749, inclusive, as amended, the said City is authorized to issue industrial revenue bonds of the City, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds of the City in the principal amount of \$1,000,000.00 be authorized and issued for the purpose of providing funds to pay the cost of purchasing certain real estate in the City and constructing a paint manufacturing plant thereon for Enmar, Inc., a Kansas corporation, such real estate and improvements being hereinafter sometimes referred to as the "Facility"; and,

WHEREAS, the City proposes to enter into a lease with said Enmar, Inc., a Kansas corporation, hereinafter sometimes

referred to as the "Tenant," under which lease said Tenant has agreed and will agree to pay rent to the City in an amount sufficient to pay all debt service requirements on said Bonds, together with any other expense or obligation incurred by the City as the result of ownership of said Facility or the issuance of said Bonds.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

SECTION 1. That the City of Andover, Kansas, is hereby authorized to acquire and lease to Tenant the real estate situated in Butler County, Kansas, the legal description of which is set forth in Exhibit "A" attached to the Lease and Agreement and incorporated herein by reference. That the City of Andover, Kansas, is hereby also authorized to pay the cost of constructing a paint manufacturing plant in accordance with the provisions of the Lease and Agreement dated as of December 1, 1968, between the City and Enmar, Inc. (sometimes referred to hereinafter as the "Lease" or "lease") hereinafter authorized, all at an amount which will not exceed the cost of \$1,000,000.00 to the City.

SECTION 2. That for the purpose of providing funds to pay the cost of purchasing said real estate and of constructing and equipping thereon improvements which together will constitute the Facility, there shall be issued and hereby are authorized and directed to be issued a series of Industrial Revenue Bonds, Series I, 1968, of the City of Andover, Kansas, in the principal amount of \$1,000,000.00. Said Bonds herein authorized, hereinafter sometimes referred to as the "Bonds," and all interest and premium, if any, thereon shall be paid solely from the money and revenue received from the Facility and not from any other fund or source (except to the extent paid out of money attributable to Bond proceeds).

SECTION 3. Said Industrial Revenue Bonds, Series I, 1968, of the City of Andover, Kansas, shall consist of 276 bonds, numbered from 1 to 276, inclusive, a portion of said Bonds being in the denomination of \$5,000.00, and a portion of said Bonds being in the denomination of \$1,000.00. All of said Bonds shall be dated December 1, 1968, and said Bonds shall be numbered, shall bear interest at the rates of, shall be in the denominations of, and shall become due serially on September 1 in each year, as follows:

<u>BOND NOS.</u>	<u>DENOMINATION</u>	<u>AMOUNT</u>	<u>INTEREST RATE</u>	<u>MATURITY</u>
1- 5, Incl.	\$1,000	\$5,000	5-1/2%	September 1, 1970
6- 10, Incl.	5,000	25,000	5-1/2%	September 1, 1970
11- 15, Incl.	1,000	5,000	5-1/2%	September 1, 1971
16- 20, Incl.	5,000	25,000	5-1/2%	September 1, 1971
21- 25, Incl.	1,000	5,000	5-1/2%	September 1, 1972
26- 31, Incl.	5,000	30,000	5-1/2%	September 1, 1972
32- 36, Incl.	1,000	5,000	5-1/2%	September 1, 1973
37- 42, Incl.	5,000	30,000	5-1/2%	September 1, 1973
43- 47, Incl.	1,000	5,000	5-3/4%	September 1, 1974
48- 54, Incl.	5,000	35,000	5-3/4%	September 1, 1974
55- 59, Incl.	1,000	5,000	5-3/4%	September 1, 1975
60- 66, Incl.	5,000	35,000	5-3/4%	September 1, 1975
67- 71, Incl.	1,000	5,000	5-3/4%	September 1, 1976
72- 79, Incl.	5,000	40,000	5-3/4%	September 1, 1976
80- 84, Incl.	1,000	5,000	5-3/4%	September 1, 1977
85- 92, Incl.	5,000	40,000	5-3/4%	September 1, 1977
93- 97, Incl.	1,000	5,000	5-3/4%	September 1, 1978
98-106, Incl.	5,000	45,000	5-3/4%	September 1, 1978
107-111, Incl.	1,000	5,000	6%	September 1, 1979
112-120, Incl.	5,000	45,000	6%	September 1, 1979
121-125, Incl.	1,000	5,000	6%	September 1, 1980
126-135, Incl.	5,000	50,000	6%	September 1, 1980
136-140, Incl.	1,000	5,000	6%	September 1, 1981
141-150, Incl.	5,000	50,000	6%	September 1, 1981
151-155, Incl.	1,000	5,000	6%	September 1, 1982
156-166, Incl.	5,000	55,000	6%	September 1, 1982
167-171, Incl.	1,000	5,000	6%	September 1, 1983
172-183, Incl.	5,000	60,000	6%	September 1, 1983
184-188, Incl.	1,000	5,000	6%	September 1, 1984
189-201, Incl.	5,000	65,000	6%	September 1, 1984
202-206, Incl.	1,000	5,000	6%	September 1, 1985
207-219, Incl.	5,000	65,000	6%	September 1, 1985
220-224, Incl.	1,000	5,000	6%	September 1, 1986
225-238, Incl.	5,000	70,000	6%	September 1, 1986
239-243, Incl.	1,000	5,000	6%	September 1, 1987
244-257, Incl.	5,000	70,000	6%	September 1, 1987
258-262, Incl.	1,000	5,000	6%	September 1, 1988
263-276, Incl.	5,000	70,000	6%	September 1, 1988

Said Bonds shall bear interest from date, at the rates indicated above, per annum, payable September 1, 1969, and semi-annually thereafter on March 1 and September 1 in each year.

Said Bonds, the interest thereon and the call premium, if any, shall be payable at the Union National Bank of Wichita, in the City of Wichita, Kansas, herein sometimes referred to as the "Trustee."

Both principal of and interest on any of said bonds shall be payable to the registered holder thereof as shown by the records of the Union National Bank of Wichita in Wichita, Kansas; and said Bonds shall be transferable by the registered holder thereof in person, or by his duly authorized attorney, at the office of the Union National Bank of Wichita, in Wichita, Kansas, by procedures and on forms prescribed and provided by the said bank; provided that, at the time of original issuance any or all bonds of this issue shall be registered in the name of "Bearer" upon written request of the original purchasers thereof, and the principal and interest on such bonds shall be payable to bearer. In such event the word "Bearer" shall be placed in the first blank space in the column entitled "Registered Holder" on the Memorandum of Registration appearing on such bonds, and coupons in the form hereinafter specified shall be attached to such bonds and interest thereon shall be paid upon presentation and surrender of the interest coupons so attached as said coupons severally become due; provided further that, any bonds so registered in the name of "Bearer" may thereafter be registered in a specific name upon request of the bearer and surrender of all remaining interest coupons with the same force and effect as if originally so registered and with all the resultant rights and procedures.

On any interest payment date on or after September 1, 1979, all of the Bonds then outstanding shall be subject to call for redemption and payment prior to maturity in whole or in part, in inverse numerical order, at the option of the City, upon request of the Tenant, at the par value thereof plus interest to the date of



redemption and with a premium which shall be equal to three percent (3%) of the par value of the principal amount of said bonds so called for redemption and payment.

On any interest payment date on or after September 1, 1970, all of the Bonds then outstanding shall be subject to call for redemption and payment prior to their maturity, at the option of the City, upon the request of Tenant, at the par value thereof plus interest to the date of redemption and without premium, in the event of the happening of any of the following contingencies:

a. If the City shall default in the performance of its obligations under the Lease and Agreement and such default shall not be cured by the City or Trustee within a reasonable time after written notice thereof from Tenant to City and the Trustee; or,

b. If the Improvements shall have been damaged to the extent that they cannot be reasonably restored to the condition existing immediately preceding such damage within a period of six (6) months, or to the extent that Tenant is thereby prevented from carrying on its paint manufacturing operations therein for a period of six (6) months, or to the extent that the restoration cost would exceed the total amount of insurance carried on the Improvements in accordance with the provisions of Section 9 of the Lease and Agreement; or,

c. If title to, or use for a period in excess of 30 days, of all or substantially all of the Facility, shall be taken by eminent domain; or,

d. If the Lease and Agreement become void or unenforcible or impossible of performance in accordance with the intent and purpose of the parties or whenever the City shall be requested by the Tenant to call such Bonds because in the opinion of the Tenant, exercised in good faith, changes of circumstances have imposed unreasonable burdens or excessive liabilities upon Tenant under the Lease and Agreement, including without limitation

federal, state or other ad valorem property, income or other taxes not being imposed on the date of the Lease and Agreement; Tenant's continued operation after such changes in circumstances shall not constitute a waiver of its right to exercise its option hereunder; or,

e. At the expiration of the "Term" (as defined in the Lease and Agreement) or on any termination of the Lease and Agreement; or,

f. If by reason of technological or other changes, the Facility is no longer economically usable for Tenant for purposes for which it was designed, and cannot in the opinion of Tenant, exercised in good faith, be rendered economically usable without extensive cost.

When less than all the bonds then outstanding are called for redemption, the Trustee, the Union National Bank of Wichita, Wichita, Kansas, shall give notice of the call of bonds so selected for redemption and payment to the registered holders thereof at least thirty (30) days before the call date by registered or certified mail, which notice shall specify the bond numbers called, the effective date of call and the redemption price to be paid therefor. Notice of the call of bonds so selected for redemption and payment and at that time registered in the name of "Bearer" shall be given, at the time and in the form and manner provided above, to the original purchasers of such bonds and, except where published notice is waived by the Bearer, the Trustee shall publish a Notice of Call, in the form provided for mailed notice, in the official paper of the State of Kansas published in Topeka, Kansas. Failure of the registered holder or bearer to receive notice under the above provisions shall not affect the validity of the call and redemption of bonds if the Trustee has acted in good faith and with reasonable diligence. Interest shall cease on any of said bonds so called for redemption and payment as of the redemption date, provided funds are available to pay the same according to their terms; and thereafter all bonds so redeemed shall be cancelled.

Replacement bonds are hereby authorized to be issued by the City to replace bonds of this issue which are lost, destroyed, mutilated, defaced, on which the Memorandum of Registration is full, or which for any other reason the Trustee deems a replacement to be necessary. In such event such replacement shall be made pursuant to such procedures and requirements as the Trustee shall deem proper and sufficient to fully protect the City and the Tenant in the premises which procedures and requirements may include the posting of an indemnity bond and the payment of all expenses involved in the replacement except where the replacement is for a bond physically delivered to the Trustee and the necessity for replacement is no fault of the holder such as the lack of space on the Memorandum of Registration. Such replacement bond shall be in the same form as the original, bear the same number as the original except that a supplemental letter shall be added thereto and shall be manually executed by the Mayor and manually attested by the City Clerk. Any such replacement bonds shall be considered the same as and have the same force and effect as the original bonds of this issue.

Nothing contained herein shall restrict the right of any bondholder to change the manner of registration of any Bonds held from bearer to registered or from registered to bearer at any time; provided, that such change in registration shall be by procedures and on forms prescribed and provided by the Trustee; and further provided, that though any bond may have its manner of registration changed once without cost to the bondholder, that any subsequent change in the manner of registration shall be at the expense of the holder of said Bond, such expense or fee to be established by the Trustee.

SECTION 4. Bonds issued under this Ordinance shall be in substantially the form hereinafter set forth, shall be executed for and on behalf of the City by the facsimile signature of the Mayor and attested by the City Clerk. Bonds will be issued in registered form but with provision for the addition of coupons as hereinabove provided. All Bonds shall be registered by the City Clerk in substantially the form hereinafter set forth, with his facsimile signature, and such registration certificate shall be attested by the seal of the City. All of the bonds shall be authenticated by the manual signature of an authorized officer of the Trustee.

SECTION 5. Each of said Bonds and interest coupons and the certificates attached thereto shall be in substantially the following form:

No. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF KANSAS  
COUNTY OF BUTLER  
CITY OF ANDOVER

\$ \_\_\_\_\_

INDUSTRIAL REVENUE BOND  
SERIES I, 1968

(Enmar, Inc.)

KNOW ALL MEN BY THESE PRESENTS: That the City of Andover, in the County of Butler, State of Kansas, for value received, hereby promises to pay, but only out of the revenues hereinafter specified, to the holder hereof the sum of

\_\_\_\_\_ THOUSAND DOLLARS

in lawful money of the United States of America, on the First day of September, 19\_\_\_\_, and to pay interest thereon from the date hereof at the rate of \_\_\_\_\_ per cent (\_\_\_\_%) per annum, payable September 1, 1969, and semiannually thereafter on March 1 and September 1 in each year after the date hereof until the said principal sum shall have been paid, both principal of and interest on this Bond being payable at the office of the Union National Bank of Wichita, in the City of Wichita, Kansas; provided, that if this Bond is registered in the name of "Bearer" both said principal and interest hereon shall be paid when due to bearer so long as such registration continues, such interest to be paid to bearer upon presentation and surrender of the interest coupons attached.

THIS BOND is one of an authorized series of 276 Bonds of like date, though varying as to number, denomination, rate of interest, privilege of redemption and maturity, aggregating the principal amount of \$1,000,000.00, numbered from 1 to 276, inclusive, some in the denomination of \$5,000.00 and some in the denomination of \$1,000.00, authorized by Ordinance No. 97 of said City, issued for the purpose of providing funds to pay the cost of purchasing and constructing a paint manufacturing plant for Enmar, Inc., a Kansas corporation, on certain real estate in Butler County, Kansas, such real estate and improvements referred to as the "Facility," to be leased to said Enmar, Inc. by the authority of and in conformity with the provisions, restrictions and limitations of said Ordinance and of the Constitution and Statutes of the State of Kansas, K.S.A. 12-1740 to 12-1749, inclusive, and all amendments thereof and acts supplemental thereto, and this Bond and all interest and premium, if any, hereon, are to be paid by said City solely and only from the money and revenue received from the Facility and not from any other fund or source (except to the extent paid out of money attributable to Bond proceeds). Pursuant to the provisions of said statute, the governing body of the City has pledged said Facility and the net earnings from said Facility to the payment of the series of bonds of which this Bond is a part, and the interest and premium, if any, thereon. Reference is hereby made to the Ordinance aforesaid and to said Lease and Agreement from the City to said Enmar, Inc. for a description of the covenants of the City with respect to the collection, segregation and application of the revenues of said Facility, the nature and extent of the security of said Bonds, the rights, duties and obligations of the City and of the Trustee, with respect thereto, and the rights of the holders thereof.

On any interest payment date on or after September 1, 1979, all of the Bonds then outstanding shall be subject to call for redemption and payment prior to maturity in whole or in part at the option of the City, upon request of the Tenant, at the par value thereof plus interest to the date of redemption and with a premium of three percent (3%) of the principal amount of said bonds so called for redemption and payment.



On any interest payment date on or after September 1, 1970, all of the Bonds then outstanding shall be subject to call for redemption and payment prior to their maturity, at the option of the City, upon request of Tenant, at the par value thereof plus interest to the date of redemption and without premium, in the event of the happening of the following contingencies:

a. If the City shall default in the performance of its obligations under the Lease and Agreement and such default shall not be cured by the City or Trustee within a reasonable time after written notice thereof from Tenant to City and the Trustee; or,

b. If the Improvements shall have been damaged to the extent that they cannot be reasonably restored to the condition existing immediately preceding such damage within a period of six (6) months, or to the extent that Tenant is thereby prevented from carrying on its paint manufacturing operations therein for a period of six (6) months, or to the extent that the restoration cost would exceed the total amount of insurance carried on the Improvements in accordance with the provisions of Section 9 of the Lease and Agreement; or,

c. If title to, or use for a period in excess of 30 days, of all or substantially all of the Facility, shall be taken by eminent domain; or,

d. If the Lease and Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties or whenever the City shall be requested by the Tenant to call such bonds because in the opinion of the Tenant, exercised in good faith, changes of circumstances have imposed unreasonable burdens or excessive liabilities upon Tenant under the Lease and Agreement, including without limitation federal, state or other ad valorem property, income or other taxes not being imposed on the date of the Lease and Agreement; Tenant's continued operation after such changes in circumstances shall not constitute a waiver of its right to exercise its option hereunder; or,

e. At the expiration of the Term or on any termination of the Lease and Agreement; or,

f. If by reason of technological or other changes, the Facility is no longer economically usable for Tenant for purposes for which it was designed, and cannot in the opinion of Tenant, exercised in good faith, be rendered economically usable without extensive cost.

Such call option shall be exercised by the Trustee, the Union National Bank of Wichita, Wichita, Kansas, at any time permitted by the above call provisions, when there are sufficient monies in the Principal and Interest Account, Account No. 1, referred to in said Bond Ordinance, to pay the principal, premium and accrued interest to the call date on one or more outstanding bonds of the issue. Notice of the call of bonds so selected for redemption and payment shall be given to the registered holders thereof at least thirty (30) days before the call date by registered or certified mail, which notice shall specify the bond numbers called, the effective date of call and the redemption price to be paid therefor. If this bond registered in the name of "Bearer" remains so registered at the time of call, such notice will be given to the original purchasers and published in the official paper of the state of Kansas published in Topeka, Kansas except where published notice is waived by bearer. Interest shall cease on any of said bonds so called

for redemption and payment as of the redemption date, provided funds are available to pay the same according to their terms; and thereafter all bonds so redeemed shall be cancelled.

This bond shall be registered in the office of the Trustee, the Union National Bank of Wichita, in the City of Wichita, Kansas. The City, its agents and the Trustee may deem and treat the person in whose name this bond is so registered, or the bearer where registered in name of "Bearer," as the absolute owner of this bond for the purpose of receiving payment thereof and interest due thereon and for all other purposes whatsoever, and the City, its agents and the Trustee shall not be affected by any notice to the contrary. A memorandum of the registered owner of this bond is shown on the reverse side hereof, the last name on such listing being the current holder; provided, however, in the event of a conflict between said memorandum and the books and records of the Trustee, such books and records of the Trustee shall control.

Upon certain terms and conditions specified in the Bond ordinance, the holders of not less than 75% in aggregate principal amount of these bonds at the time outstanding may modify or amend the provisions of this bond except as to extension of maturity of principal or interest or reduction in the principal amount or rate of interest.

This bond shall not be valid for any purpose until the Certificate of Authentication hereon shall have been signed by the Trustee.

AND IT IS HEREBY DECLARED AND CERTIFIED that all acts, conditions and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas and the ordinances of the City of Andover.

IN WITNESS WHEREOF, the City of Andover, in the State of Kansas, by its governing body, has caused this Bond to be signed by the facsimile signature of its Mayor and attested by its City Clerk, and the interest coupons thereto attached, to be signed with the facsimile signatures of said officers, and this Bond to be dated this First day of December, 1968.

(Facsimile)

MAYOR

ATTEST:

CITY CLERK

(City Clerk's Registration Certificate)

State of Kansas )  
County of Butler ) ss.

I, the undersigned, City Clerk of the City of Andover, Kansas, hereby certify that the within Industrial Revenue Bond Series I, 1968, of the City of Andover, Kansas, has been duly registered in my office according to law.

Witness my hand and official seal this \_\_\_\_\_ day of December, 1968.

(Facsimile)

CITY CLERK

TRUSTEE'S AUTHENTICATION CERTIFICATE

This Bond is one of those described in the within mentioned Ordinance No. \_\_\_\_\_ of the City of Andover, Kansas.

UNION NATIONAL BANK OF WICHITA

By \_\_\_\_\_  
Authorized Officer

(Bank Seal)

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MEMORANDUM OF REGISTRATION

The following is a memorandum of the name of the registered holder of this bond, as shown by the books and records of the Union National Bank of Wichita, in the City of Wichita, Kansas, the last name shown on this memorandum being the current registered holder hereof. In the event of conflict between this memorandum and the books and records of said bank, said books and records of said bank shall control.

[illegible]

(FORM OF COUPON)

Coupon No. \_\_\_\_\_

On the First day of September (March), 19\_\_\_\_, the City of Andover, Kansas, will pay bearer (unless the Bond to which this coupon is attached shall have been called for redemption and provision made for its payment), solely from money and revenue received from the Facility described in the within mentioned Bond and not from any other fund or source,

\_\_\_\_\_ Dollars in lawful money of the United States of America, at the office of the Union National Bank of Wichita, Wichita, Kansas, being \_\_\_\_\_ months' interest on its Industrial Revenue Bond, Series I, 1968, dated December 1, 1968.

No. \_\_\_\_\_

\_\_\_\_\_  
(Facsimile)

MAYOR

Attest:

\_\_\_\_\_  
(Facsimile)

City Clerk

Bond No. \_\_\_\_\_

March 1, 19\_\_\_\_

September 1, 19\_\_\_\_

\_\_\_\_\_  
City of Andover,  
Kansas

Industrial Revenue  
Bond

Series I, 1968

\_\_\_\_\_  
\$ \_\_\_\_\_



SECTION 6. The principal of and interest and premium, if any, on the Industrial Revenue Bonds, Series I, 1968, herein authorized, shall be paid by the City solely and only from the money and revenue received from the Facility, and not from any other fund or source (except to the extent paid out of money attributable to Bond proceeds). Said Bonds shall not in any respect be a general obligation of the City, nor shall they be payable in any manner by taxation. Said Bonds and the coupons, if any, affixed thereto shall be registered on the official records of the City of Andover, Kansas, and shall be registered by the Trustee.

SECTION 7. The Mayor and City Clerk are hereby authorized and directed to prepare and execute in the manner hereinbefore specified the Industrial Revenue Bonds, Series I, 1968, of the City herein authorized, to cause said Bonds to be authenticated, and to deliver said Bonds to the purchasers thereof on payment of the purchaser price to the Trustee, Union National Bank of Wichita, Wichita, Kansas, hereby so designated.

SECTION 8. There is hereby authorized and ordered to be established in the hands of the Trustee a separate fund hereby designated as the "ENMAR CONSTRUCTION FUND" or "CONSTRUCTION FUND" and three separate accounts described in Section 9 hereof. In the CONSTRUCTION FUND shall be deposited the proceeds from the sale of the Bonds. All money in the CONSTRUCTION FUND shall be used (a) to complete the Facility in the manner specified in the Lease and Agreement, (b) to reimburse Enmar, Inc., for sums previously expended by it for the purchase of real estate and the design, development and construction of the Facility more particularly set forth in the Lease and Agreement, and (c) to pay all such charges, fees, costs and expenses reasonably required in connection with the Lease and Agreement and this Ordinance as more fully set forth in the Lease and Agreement and this Ordinance, and (d) to pay the interest due on the Bonds during construction.

The Trustee is hereby authorized to pay from the CONSTRUCTION FUND on orders signed by the Project Manager designated in the Lease and Agreement, such sums as may be necessary to pay any of the foregoing items in this SECTION 8. The Trustee may rely upon orders of the Project Manager and shall not be required to determine whether there has been a proper application of funds. Following the completion of said Facility and the payment of all construction expenses, which completion and payment shall be evidenced by the certificate of the Project Manager, any balance remaining in the CONSTRUCTION FUND shall be transferred by the Trustee to the PRINCIPAL AND INTEREST ACCOUNT, ACCOUNT NO. 1.

SECTION 9. There are hereby authorized and ordered to be established in the hands of the Trustee three separate accounts as follows:

- (1) "ENMAR PRINCIPAL AND INTEREST ACCOUNT, ACCOUNT NO. 1," herein referred to as the "PRINCIPAL AND INTEREST ACCOUNT," or as "ACCOUNT NO. 1,"
- (2) "ENMAR BOND RESERVE ACCOUNT, ACCOUNT NO. 2," herein referred to as the "BOND RESERVE ACCOUNT," or as "ACCOUNT NO. 2,"
- (3) "ENMAR SURPLUS ACCOUNT, ACCOUNT NO. 3," herein referred to as the "SURPLUS ACCOUNT," or as "ACCOUNT NO. 3," and,

the City covenants and agrees that from and after the delivery of any of the Bonds herein authorized, and continuing so long as any of said Bonds shall remain outstanding, said City will maintain said accounts and each of them with the Trustee. All moneys due under said lease between the City and Tenant, dated

as of December 1, 1968, shall be paid to and deposited with said Union National Bank of Wichita, Wichita, Kansas, as Trustee and shall be applied and allocated by said Trustee on the first day of each month beginning with the month of August 1, 1969, and continuing on the first day of each month thereafter so long as any of the revenue bonds herein authorized remain outstanding and unpaid, as follows:

(a) At the time of the delivery of and payment for the bonds there shall be and the Trustee is hereby directed to transfer from the CONSTRUCTION FUND to the PRINCIPAL AND INTEREST ACCOUNT the sum of \$44,100.00 and also transfer to the PRINCIPAL AND INTEREST ACCOUNT the accrued interest provided for in Section 8 hereof. There shall first be credited to and deposited in said PRINCIPAL AND INTEREST ACCOUNT: (1) Beginning August 1, 1969, and on the first day of each month thereafter an amount not less than  $1/6$  of the amount required to pay the interest on said bonds becoming due on the next succeeding interest payment date; and (2) on the first day of August 1, 1969, and on the first day of each month thereafter an amount not less than  $1/12$  of the amount required to pay the principal amount of the bonds herein authorized becoming due on the next succeeding bond maturity date.

All amounts credited to and deposited in said PRINCIPAL AND INTEREST ACCOUNT shall be expended and used by the Trustee for the sole purpose of paying the interest on and principal of the revenue bonds herein authorized as and when the same become due.

(b) There shall next be credited to and deposited in said BOND RESERVE ACCOUNT the balance of monthly payments of basic rent, beginning August 1, 1969, and continuing on the first day of

each month until a total amount of \$105,000.00 shall have accumulated in said BOND RESERVE ACCOUNT. All amounts credited to and deposited in said BOND RESERVE ACCOUNT shall be expended and used by the Trustee solely to prevent any default in the payment of interest on or principal of the revenue bonds of this Series, dated December 1, 1968, herein authorized, if the moneys in the PRINCIPAL AND INTEREST ACCOUNT in the hands of said Trustee are insufficient to pay said principal or interest on said bonds as and when the same become due and also to pay the fees and expenses of the Trustee. After said monthly payments into said BOND RESERVE ACCOUNT aggregate the principal amount of \$105,000.00, the Trustee shall not be required to make further deposits into said account, but if the Trustee shall ever be compelled to use and expend any part of said BOND RESERVE ACCOUNT for the purpose of paying the interest on or principal of the revenue bonds herein authorized or other authorized purposes and such expenditure shall reduce the amount of said BOND RESERVE ACCOUNT below the sum of \$105,000.00, then the Trustee, after making all deposits or credits at the time required to be made under the provisions of paragraph (a) of this Section 9, shall thereafter credit to and deposit in said BOND RESERVE ACCOUNT all remaining balances of monthly rental payments until said BOND RESERVE ACCOUNT aggregates \$105,000.00. Said BOND RESERVE ACCOUNT may be used by the Trustee upon instruction of said City at the direction of the Tenant, for the purpose of redeeming and paying the revenue bonds herein authorized prior to their respective maturities, provided all of such outstanding bonds are called for payment and funds are available to pay the same according to their terms.

(c) After all deposits required by paragraphs (a) and (b) of this Section 9 shall have been made, the Trustee shall deposit the balance of all rental payments in said SURPLUS ACCOUNT. Monies in said SURPLUS ACCOUNT shall be paid out by the Trustee for the purpose of making emergency repairs to the Facility aforesaid, for extensions and improvements to the same, for replacements

to any equipment located therein and for payment of ad valorem taxes. The Trustee is authorized to make any such payments upon an appropriate certificate executed by Tenant setting out the purpose for which the funds are to be expended and certifying that such expenditure comes within the provisions of this Ordinance, but subject to paragraph (d) of this Section 9. Monies in said SURPLUS ACCOUNT shall be used by the Trustee for the purpose of paying the principal of or interest on the Bonds herein authorized in the event that no other monies are available for said purpose. Monies in said SURPLUS ACCOUNT may also be used by the Trustee for the purpose of purchasing for cancellation, at not to exceed their call price, the Bonds herein authorized, prior to their respective maturities, provided there has been no default in the payment of principal and interest and that \$105,000.00 is on deposit in the BOND RESERVE ACCOUNT, and for the purpose of calling any of the Bonds which are then subject to call for redemption and payment prior to their respective maturities. Monies in the SURPLUS ACCOUNT shall not be paid out by the Trustee for any of the purposes herein set forth (except to pay the principal of or interest on bonds herein authorized) unless the Trustee has been furnished with a written order from Tenant. Unless the City shall have consented to each such disbursement, the Trustee shall notify the City Clerk of the City of such proposed disbursement and shall proceed to make such disbursement, unless within ten (10) days after notice to the City Clerk the City notifies the Trustee that it objects to such disbursement.

(d) Monies in the CONSTRUCTION FUND and in the three Accounts shall be kept invested by the Trustee in direct obligations of the United States of America maturing at times on or before when monies are required to be used, but not to exceed one year from date of such purchase. All interest earnings shall remain with the Fund or Account except that when the CONSTRUCTION FUND is closed out as is provided in Section 8



hereof, interest earnings shall be transferred to ACCOUNT NO. 1; when ACCOUNT NO. 1 has sufficient monies to pay the next succeeding interest and principal payment, interest earnings (together with any other monies) in ACCOUNT NO. 1 shall be transferred to ACCOUNT NO. 2; and when ACCOUNT NO. 2 has a balance of \$105,000, interest earnings (together with any other monies) in ACCOUNT NO. 2 shall be transferred to ACCOUNT NO. 3.

SECTION 10. When monies accumulated in said PRINCIPAL AND INTEREST ACCOUNT, in said BOND RESERVE ACCOUNT, and in said SURPLUS ACCOUNT shall aggregate an amount sufficient to pay the principal of all of said Bonds then outstanding, together with all interest thereon, together with the premium required to pay the same upon call for redemption and payment, said City, but only if directed by the Tenant, shall proceed to give notice of such redemption in the manner herein specified. Any balance in said Fund and accounts not required for said purpose shall be returned to Tenant.

SECTION 11. The City of Andover covenants with each of the purchasers and owners of any of the Bonds herein authorized that as long as any of said Bonds remain outstanding and unpaid:

(a) It will cause the Tenant to maintain the Facility in good repair, so that the Tenant shall surrender the Facility at the expiration or termination of the Lease and Agreement in as good a condition as when Tenant was put in possession thereof, loss by fire and other casualty, obsolescence, acts of God, alterations permitted by Section 10 of the Lease and Agreement, and ordinary wear and tear excepted.

(b) It will not sell, lease or encumber (except for the pledge of the Facility to the Trustee and except for the sale to the Tenant pursuant to Tenant's option to purchase as provided in the Lease and Agreement) the Facility or any part thereof except

to or with the prior written consent of the Trustee for the benefit of the bondholders in the event of default by Tenant as provided in the Lease and Agreement.

(c) It will cause the Tenant to pay any Impositions, all as provided in the Lease and Agreement.

(d) It will cause the term of the Lease and Agreement to be enforced against the Tenant in the interest of the bondholders.

(e) The City will not issue any other obligations secured by the pledge of the Facility or the net earnings therefrom. In connection with any additional bonds the City covenants that the Tenant will unconditionally agree to pay additional rents sufficient to cover all debt service, expenses and fees required so that none of the revenues pledged under this Ordinance shall be required to be used in connection with such additional bonds. Nothing herein shall prevent the City from issuing other industrial revenue bonds secured by the rentals or other revenues from property leased to the Tenant and which is not a part of the Facility.

SECTION 12. The Union National Bank of Wichita, Wichita, Kansas; is hereby designated as Trustee hereunder and said Trustee shall have all the powers of the City as herein described upon the filing with the City Clerk of the City of a written acceptance of the office of Trustee. Said Trustee may enforce in the name of the City or in its own name, the Lease and Agreement and each and every part thereof and in the name of the City or in its own name the terms of this Ordinance. Should said Trustee fail to accept such office or should it later resign as Trustee, the City reserves the right by ordinance to select and designate a successor Trustee, which shall be a bank or trust company having combined capital accounts of not less than \$3,000,000.00 and which shall have all of the powers and duties of Trustee hereunder upon acceptance of the office of Trustee in the manner herein provided for and should no Trustee accept said office, the City shall perform all the duties and have all of the powers of the Trustee herein until a new Trustee shall have been designated and accepted said office.

The Trustee shall have no duties except those specifically provided for in the Lease and in this Ordinance. The Trustee, in administering the trust herein created, shall be entitled to the advice of counsel and shall be protected for any action taken in good faith in reliance upon such advice. The Trustee shall be entitled to rely fully upon any reports, certificates or opinions furnished to it by the Project Manager pursuant to the provisions of the lease. The Trustee shall not be liable for any action reasonably taken or omitted to be taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it by this instrument, or be responsible for the consequences of any oversight or error of judgment reasonably made by it, and the Trustee shall be answerable only for its own acts, receipts, neglects, and defaults, and not for those of any person, firm or corporation employed and selected with reasonable care.

Whenever, after a reasonable request by the Tenant, the Landlord shall fail, refuse or neglect to give any direction to the Trustee or require the Trustee to take any other action which the Landlord is required to have the Trustee take pursuant to the provisions of the Lease and Agreement or the Ordinance, the Trustee is hereby authorized to take such action for and on behalf of Landlord or in the name of Landlord, if so directed by the Tenant.

SECTION 13. The City hereby pledges the Facility and the net earnings from the Facility to the Trustee to secure the payment of the principal of the Bonds issued hereunder and secured hereby, all interest thereon, all call premiums, if any, and all expense of the City in connection therewith. If the Tenant defaults under the Lease and Agreement, the City, after consultation with the Trustee, shall use its best efforts to utilize the Facility so as to provide for the payment of the Bonds and any unpaid interest and premiums thereon.

SECTION 14. The City hereby assigns to the Trustee herein designated the lease to Tenant of the Facility. Such assignment shall continue only so long as any of the Bonds (including interest and premium thereon) authorized hereunder shall be outstanding and unpaid, and when said Bonds (including interest and premium thereon) shall have all been paid or provision shall have been made for their payment, the lease shall automatically be reassigned to the City.

SECTION 15. The provisions of the Bonds authorized by this Ordinance, and the provisions of this Ordinance may be modified or amended at any time by the City, but only with the prior written consent of the Tenant and of the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds herein

authorized at the time outstanding; provided, however, that no such modification or amendment shall permit or be construed as permitting (a) the extension of the maturity of the principal of any of the Bonds issued hereunder, or the extension of the maturity of any interest on any Bonds issued hereunder, or (b) a reduction in the principal amount of any Bonds or the rate of interest thereon or the call premium thereon, if any, or (c) a reduction in the aggregate principal amount of Bonds, the consent of the holders of which is required for any such amendment or modification, and provided further that if and when such consent shall have been obtained, no notice of such amendment or waiver shall be required to be given to any other bondholder. Any provision of the Bonds or of this Ordinance may, however, be modified or amended in any respect with the prior written consent of the Tenant and of the holders of all of the Bonds then outstanding. Every amendment or modification of a provision of the Bonds or of this Ordinance to which the written consent of the bondholders is given as above provided shall be expressed in an ordinance of the City amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. It shall not be necessary to note on any of the outstanding Bonds any reference to such amendment or modification, if any. A certified copy of every such amendatory or supplemental ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk and shall be made available for inspection by the holder of any Bond or prospective purchaser or holder of any Bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or of this Ordinance will be sent by the City Clerk to any such bondholder or prospective bondholder.

The provisions of the lease may be amended by the City and the Tenant and the City may waive any provision of the Lease and Agreement, but no such amendment or waiver shall be made which



would conflict with any provision of this Ordinance or which would impair the obligations of the Bonds or result in funds not being available to meet payments of principal or interest or redemption premiums, if any, as the same may become due on the Bonds without the prior written consent of not less than one hundred per cent (100%) in aggregate principal amount of the Bonds herein authorized at the time outstanding; and no notice of either such amendment or waiver shall be required to be given to any bondholder.

SECTION 16. In the event there shall be paid to the Trustee any proceeds of insurance or any award for the taking of less than all of the Facility in any proceedings in eminent domain, and Tenant shall not exercise its option to purchase as set forth in the Lease and Agreement, there shall be created a separate and special account appropriately labeled and used solely and exclusively for making repairs and replacements reasonably necessary to place the Facility in operating condition. Expenditures may be made from such separate and special account to the Tenant as is required to reimburse the Tenant for repair and rebuilding of the Facility (as certified by a financial officer of Tenant) and the Trustee shall not be required to see to the proper expenditure of funds. Following the completion of repair or replacements and the payment of all expenses in connection therewith, which completion and payment shall be evidenced by a certificate signed by a financial officer of Tenant, the Trustee shall close out such special and separate account and transfer the balance to the PRINCIPAL AND INTEREST ACCOUNT and such balance may be used as is provided in Section 9 of this Ordinance.

SECTION 17. The lease between the City of Andover, Kansas, and Enmar, Inc. covering the Facility, dated as of December 1, 1968, and herein referred to, is hereby authorized to be executed by the Mayor, attested by the City Clerk and shall constitute the act and deed of the City and is hereby incorporated into this Ordinance in full by reference the same as if said lease were set out in this Ordinance in full.

SECTION 18. This Ordinance shall constitute and be a contract between the City and the owners and holders of the Bonds issued hereunder and shall be binding upon and inure to the benefit of the Trustee and all successor Trustees, and the owners of all of the Bonds regardless of when such Bonds are acquired.

SECTION 19. When all principal, interest and any redemption premiums then due on the Bonds or to become due on the Bonds to the maturity date thereof or to a date on which the Bonds may be redeemed, have been paid to and deposited with the Trustee, and, in the case of a redemption of the Bonds, the City, upon direction of Tenant, shall have irrevocably called the Bonds for redemption and directed the Trustee to give notice of such redemption as herein provided, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Ordinance. There shall also be deemed to be such due payment when there has been deposited in trust with the Trustee an amount sufficient (including the known minimum yield from Federal Securities as hereinafter defined in which such amount wholly or in part may be invested) to meet all requirements of principal, interest and any redemption premiums, if any, due at the time said amount is placed in trust and as the same shall become due to the final maturity of the Bonds or upon any prior redemption date or dates as of which the City shall have then exercised its right to call or shall have then obligated itself to exercise its prior option by a call of the Bonds for redemption or payment. Federal Securities, as used herein, shall mean bills, certificates of indebtedness, notes, bonds or similar securities which are direct obligations of, or the principal and interest of which are unconditionally guaranteed by, the United States of America. The Federal Securities shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and the Trustee at the time of the

creation of such escrow or trust, or the Federal Securities shall be subject to redemption at the option of the holders thereof to insure such availability as so needed to meet such schedule.

SECTION 20. If any one or more of the covenants, agreements or provisions of this Ordinance or of said lease shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds or the lease.

SECTION 21. This Ordinance shall take effect and be in force from and after its passage and publication in the official city paper.

PASSED AND APPROVED at Andover, Kansas, this 17<sup>th</sup>  
day of November, 1968.

Ual Baker

MAYOR

ATTEST:

Charles E. Glog

CITY CLERK