

M. D. HENRY COMPANY, INC.

4996

L E A S E

THIS LEASE AGREEMENT, made this            day of November, 1974,  
by and between M. D. HENRY COMPANY, INC., a corporation organized  
under the laws of the State of Alabama, (Lessor) and B E & K, INC.,  
a corporation organized under the State of Delaware, (Lessee).

WITNESSETH THAT:

Lessor in consideration of the rent herein reserved and agreed  
to be paid by Lessee does hereby demise and let unto the Lessee a  
certain parcel of real estate located in Pelham, Alabama, containing  
1.64 acres more or less and being more fully described on Exhibit "A"  
attached hereto and referred to herein as the "Premises". Together  
with all improvements located thereon, to have and to hold such  
premises, together with all rights, privileges and appurtenances  
thereto belonging or appertaining for the full term of this Lease,  
in accordance with the following terms and conditions:

TERM

1. The initial term of this lease shall be for a period of three  
(3) years, commencing on the 1st day of December, 1974, and  
ending on the 30th day of November, 1977, unless the same be  
renewed or shall sooner be terminated in accordance with the  
terms hereof.



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RENT

2. (a) Lessee agrees to pay to Lessor, during the three (3) years of said three (3) year term, a monthly rental in the amount of Four Hundred Dollars (\$400.00). The rent shall be paid on the first day of each month in advance.

OPTIONS TO RENEW

3. In addition to the said initial term of three (3) years, Lessee shall have the right to extend this lease for one (1) additional two (2) year term upon the same terms and conditions as contained herein except the amount of the monthly rental shall be increased after three (3) years on the initial term as follows. For the first one (1) year period for which the renewal option has been exercised (beginning December 1, 1977) the monthly rental shall be Four Hundred and Twenty Dollars (\$420.00). For the second one (1) year period (beginning December 1, 1978), the monthly rental shall be Four Hundred and Forty-One Dollars (\$441.00). To exercise the option to renew, Lessee must notify Lessor of its election in writing not less than ninety (90) days prior to the date on which the renewal term is to commerce.

PURCHASE OPTION CLAUSE

4. (a) In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged,

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the Lessor hereby gives Lessee the exclusive option to purchase from Lessor, on and subject to the terms and conditions hereinafter contained, the Premises, together with all improvements thereon, more fully described in Exhibit "A".

(b) This purchase option shall continue in effect until noon on November 30, 1977, unless the same shall be renewed as provided herein, and may be exercised at any time on or before its expiration. The purchase price for the Premises shall be Forty Thousand Dollars (\$40,000), against which no credit shall be given for any Lease payments made hereunder. The exercise of this purchase option must be by written notice in the manner prescribed in Paragraph 18.

(c) In the event that this Lease is renewed after three (3) years as provided in Paragraph 3, the purchase option shall also be renewed, provided however the purchase price for the first one (1) year period for which the renewal option has been exercised shall be Forty-Two Thousand (\$42,000); for the second one (1) year period Forty-Four Thousand One Hundred Dollars (\$44,100).

(d) Within ten (10) days after Lessee gives written notice of its intent to exercise the purchase option, the Lessor will deliver to the Lessee evidence of title to the Premises in the form of a title insurance binder issued by a title company acceptable to the Lessee agreeing to issue to the Lessee upon

the recording of the deed hereafter mentioned, its standard title insurance policy in the amount of the purchase price insuring the title of the Lessee to the Premises, free and clear of all liens and encumbrances, except taxes and assessments for the current year, and covenants and restrictions of record provided such covenants and restrictions do not prohibit the use of the real property for industrial or commercial purposes.

(e) If the evidence of title shall meet the requirements specified in sub-paragraph (d), the Lessee shall have 15 days after delivery thereof to exercise the purchase option by notifying Lessor in writing and by paying the applicable purchase price as specified in sub-paragraph (b) or (c).

(f) If the evidence of title shall not meet the requirements specified in sub-paragraph (d), and the Lessee shall so notify the Lessor in writing within 15 days after delivery, specifying the defects, the Lessor shall have 20 days after receipt of that notice to cure the defects, and will in good faith exercise due diligence to do so. If the defects are cured within that time and notice thereof given to the Lessee, the Lessee shall have ten days after receipt of such notice to pay the purchase price. If the defects are not cured within that time, the Lessee shall have ten days after the expiration of that time to exercise the option to purchase notwithstanding the defects by notifying the Lessor in writing and by paying

the purchase price; and if the Lessee shall not do so within that time, the Lessee shall have the right to terminate this lease agreement in its entirety.

(g) Upon receipt of the purchase price within the time allowed, the Lessor will promptly execute and deliver to the Lessee a good and sufficient warranty deed, with proper documentary stamps affixed thereto, conveying the Premises to the Lessee, and shall at the same time deliver possession of the Premises to the Lessee.

(h) The following shall be prorated as of the date the purchase price is paid: real property taxes for the current year, insurance premiums on transferable policies and current rent of all tenants.

(i) The Lessor warrants and represents that he has the authority to grant this option and that he now holds good title to the real property.

#### USE OF PREMISES

Lessee may use the leased premises for any lawful business purpose. Lessee will comply at all times and in all respects with all applicable governmental ordinances and regulations

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regulating the use and occupation of the leased Premises and the streets and highways abutting thereon, and Lessee will not, by any act or omission, render Lessor liable for any violation thereof.

LESSEE'S UNDERTAKING FOR INSURANCE

6. (a) The Lessee shall during the term hereof, at its sole expense, provide and keep in force the following insurance coverage:

1. Insurance on the buildings against loss or damage by fire and extended coverage, with no deductible provisions, in an amount at all times equal to the full insurable value, or \$20,000, whichever is greater, such insurance to be carried in the name of Lessor, Lessee and real estate mortgages as their interest may appear.

2. General public liability insurance protecting and indemnifying the Lessee and the Lessor against all claims insured thereunder for damages to person or property or for loss of life or of property occurring upon, in, or about the leased property, the streets, gutters, sidewalks or curbs adjacent thereto, to such limits as the Lessor may reasonably, from time to time, require in respect to injuries to anyone person, in



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respect to any one accident or disaster or incident of negligence, and in respect to property damage. Limits of \$300,000 in respect to injuries to any one person, \$500,000 in respect to any one accident or disaster or incident of negligence, and \$100,000 in respect to property damage are deemed reasonable as of the date hereof.

(b) All insurance provided for in Paragraph (a) hereof shall be effected under standard form policies issued by insurers of recognized responsibility and which are well noted by national rating organizations. Certificates of such insurance shall be furnished by Lessee to Lessor.

#### CASUALTY

7. In the event the building on the leased Premises should be damaged or injured by fire or other insurable casualty, then, in that event Lessee shall restore said building to substantially the same condition it was in before said fire or other casualty occurred. All of the proceeds from insurance coverage referred to in Paragraph 6(a)(1) shall be utilized in such restoration and Lessee shall bear the burden of any additional cost of such restoration provided such additional costs were caused by the negligence of the Lessee.

#### ALTERATIONS AND REPAIRS

8. Lessee shall have the right, at its own expense, to erect and construct on the leased Premises any buildings, driveways,

posts, signs, billboards or equipment of any description whatsoever and/or to alter, add to, reconstruct or paint any of the buildings or property of Lessor and/or to rearrange the parking lot, which Lessee may deem necessary. Lessor shall not be required to make any repairs or do any work on or about said premises.

#### INDEMNITY

9. The Lessee will indemnify and save harmless the Lessor of and from all fines, suits, claims, demands and actions of any kind or nature, by reason of any breach, violation or nonperformance of any condition hereof on the part of Lessee. Lessee will indemnify, protect and save harmless the Lessor herein from any loss, cost, damage or expense caused by bodily injuries to persons or property, while in, on or about said Premises, herein leased, and any and all property of said Lessee which may be located or stored either in the demised Premises or the building on which the demised Premises forms a part shall be at the risk of said Lessee, provided that such damage or expense is caused by the negligence of Lessee.

#### TAXES

10. Lessor agrees to pay before they become delinquent all general and special taxes, assessments and obligations which

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are or may become a lien on the real estate described herein, but it is expressly understood that Lessee will, in addition to the fixed monthly rental provided for herein, reimburse Lessor for the full amount of such taxes not later than thirty (30) days after the payment thereof. Lessor agrees to pay any special taxes, assessments and obligations due before the term of this lease and indemnify Lessee therefrom.

DEFAULT BY LESSEE

11. Upon the happening of any one or more of the events as expressed below in (a) to (f) inclusive, Lessor shall have the right, at the option of Lessor, to either annul and terminate this Lease, upon two (2) days written notice to Lessee, and thereupon to re-enter and take possession of said Premises; or the right, upon two (2) days written notice to Lessee to re-enter and re-let said Premises from time to time, as agents of Lessee, and such re-entry and/or re-letting shall not discharge Lessee from any liability or obligation hereunder, except that net rents (that is, gross rents less the expense of collecting and handling and less commissions) collected as a result of such re-letting shall be a credit on the Lessee's liability for rents under the terms of this Lease. Nothing herein, however, shall be



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construed to require Lessor to re-enter and re-let in such event, nor shall anything herein be construed to postpone the right of Lessor to sue for rents, whether matured by acceleration or otherwise, but on the contrary, Lessor is hereby given the right to sue therefor at any time after default:

- (a) In the event Lessee should fail to pay any one or more of said monthly installments of rent as and when the same becomes due, and such default should continue for ten (10) days after written demand for the payment thereof is made by Lessor upon Lessee;
- (b) In the event an execution or other legal process is levied upon the goods, furniture, effects or other property of Lessee brought on said Premises, or upon the interest of the Lessee in this Lease;
- (c) In the event a petition in bankruptcy is filed by or against Lessee (or either of them, if more than one), Lessee is adjudged a bankrupt;
- (d) In the event an assignment for the benefit of creditors is made by Lessee;
- (e) In the event of the appointment of a receiver of Lessee's property;
- (f) In the event Lessee, before the expiration of said term and without the written consent of Lessor, vacates said Premises or abandons the possession thereof.

#### QUIET POSSESSION

12. Lessor covenants that so long as Lessee is not in default under this Lease, it will hold Lessee in possession of said Premises during the term of this Lease. Lessee will, upon

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the expiration or termination of this Lease, surrender the quiet and peaceful possession of the leased Premises to Lessor, free of all liens, claims and encumbrances other than taxes or other obligations of Lessor.

COLLECTION

13. Lessee will pay Lessor a reasonable attorney's fee in the event Lessor employs an attorney to collect any rents due hereunder by Lessee, or to protect the interest of Lessor in the event Lessee is adjudged a bankrupt, or legal process is levied upon the goods, furniture, effects or personal property of Lessee upon the said Premises, or upon the interest of the Lessee in this Lease or in said Premises, or in the event the Lessee violates any of the terms, conditions or covenants on the part of Lessee herein contained.

NO WAIVER

The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no



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waiver by Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor.

HOLDING OVER

15. Should Lessee continue to occupy the Premises after the expiration of the said term or after the forfeiture incurred, whether with or against the consent of Lessor, such tenancy shall be a tenancy at sufferance and in no event a tenancy from month to month or from year to year.

CONDEMNATION

16. (a) If the whole of the leased property, or such portions as will make the leased property unsuitable for the purpose herein leased, is condemned, then this Lease and the purchase option herein shall cease from the time when possession is taken and rental thereupon shall cease. Such termination shall be without prejudice to the rights of either the Lessor or Lessee to recover compensation from the condemning authority for any loss or damage caused by such condemnation. If a portion of the leased property is taken by condemnation and the property remains suitable for the purpose leased, then the rent shall be abated pro rata to the value of the property taken.

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(b) All compensation awarded or paid upon such a total or partial taking of the leased property shall belong to and be the property of Lessor without any participation by Lessee; provided, however, that nothing contained herein shall be construed to preclude the Lessee from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, or depreciation to, damage to, or cost of removal of, or for the value of stock, trade fixtures, furniture and other personal property belonging to Lessee; provided, however, that no such claim shall diminish or otherwise adversely affect the Lessor's award or the award of any fee mortgagee. Lessee is to have refund of unearned rent, if any, upon a taking by condemnation or destruction by fire.

#### IMPROVEMENTS

All improvements and additions to the leased Premises shall adhere to the leased Premises, and become the property of the Lessor, with the exception of such additions as are classed as major permanent improvements which are to remain the property of the Lessee, and may be removed by the Lessee provided all terms, conditions and covenants of this Lease have been complied with by Lessee and provided Lessee restores

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the building and Premises to its original condition, normal wear and tear excepted. Overhead cranes (but not craneways) shall be classed as major permanent improvements.

#### NOTICE

18. Any notice required to be given by the terms of this Lease, in writing, to Lessor shall be deemed to have been delivered to Lessor if delivered in person or if mailed to the Lessor, properly stamped and addressed to P. O. Box 395, Pelham, Alabama 35124. Any notice required by the terms hereof to be delivered to Lessee shall be deemed to have been delivered to Lessee if deposited in the United States mail, properly stamped and addressed to the Lessee at P. O. Box 2332, Birmingham, Alabama 35201. If the mailing address of either party is changed during the term of this Lease, the party whose address is changed will give prompt notice of such change to the other party, and thereafter, any notice required to be sent shall be sent to such new mailing address.

#### ASSIGNMENT

19. Lessee may sublet all or any part of the Premises and may assign this Lease (including an assignment by operation of law), but no assignment by Lessee shall be effective as to

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Lessor until Lessee has furnished Lessor with an executed copy of the instrument of assignment, and no other transfer shall be effective as to Lessor until Lessee has furnished Lessor with a true copy of the instrument, order or proceedings giving rise to an assignment by operation of law, and in each instance has furnished Lessor with the post office address of the assignee or the new owner of the leasehold. Lessee shall not be relieved of liability hereunder because of any such subletting or assignment, and Lessee shall not be relieved of liability by Lessor's acceptance of performance from an assignee or sublessee (except to the extent of the performance made by such assignee or sublessee), but Lessee shall be and remain liable for the full performance of this Lease during the term hereof.

CLEAN PREMISES UPON TERMINATION

The Lessee hereby agrees that upon the expiration or prior termination of this Lease, the Lessee will promptly remove from the leased Premises all signs, trash, debris and property of the Lessee, and the Lessee will leave the Premises as clean as it is possible to clean them by means of the use of broom and shovel.

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IN WITNESS WHEREOF, the parties have signed and sealed  
this Lease.

M. D. HENRY COMPANY, INC.

ATTEST:

By:

Its

By:

Its

B E & K, INC.

ATTEST:

By:

Its

By:

Its

STATE OF ALABAMA

COUNTY OF JEFFERSON

Before me, the undersigned Notary Public in and for said County in said State, personally appeared Melvin D. Henry, whose name as President of M. D. HENRY COMPANY, INC., a corporation, signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

GIVEN under my hand and Notarial Seal this 9<sup>th</sup> day of November, 1974.

Barbara A. Handley  
Notary Public

(NOTARIAL SEAL)

My Commission Expires: My Commission Expires September 11, 1976

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

1975 JUN -5 PM 8:47

Conceded  
JUDGE OF PROBATE

