

1129

LEASE AGREEMENT

between

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF CALERA**

and

IC PRODUCTS COMPANY

Dated as of October 1, 1982

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All right, title and interest of The Industrial Development Board of the Town of Calera in all "Pledged Revenues" (defined herein) and certain of its rights in this Agreement have been pledged and assigned to Marine Midland Bank, N.A., New York, New York, as Trustee under the Trust Indenture, dated as of even date herewith, from The Industrial Development Board of the Town of Calera, which secures \$2,610,000 in principal amount of The Industrial Development Board of the City of Calera Industrial Development Revenue Bonds (IC Products Company Project), Series 1982.

This instrument was prepared by:

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LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is entered into as of October 1, 1982 by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF CALERA (the "Issuer"), a public corporation created and existing under the laws of the State of Alabama, as lessor, and IC PRODUCTS COMPANY (the "Company"), a Delaware corporation, as lessee.

WITNESSETH:

WHEREAS, the Issuer has been incorporated pursuant to Act No. 648 enacted at the 1949 Regular Session of the Legislature of the State of Alabama as contained in the Code of Alabama 1975, Section 11-54-80, et seq., as amended (the "Act"), and

WHEREAS, the Issuer has been incorporated to promote industry, develop and further the agricultural products and natural and human resources of the State of Alabama, and the Act empowers the Issuer to issue its revenue obligations in accordance with the applicable provisions of the Act for the purpose of acquiring, constructing and installing any "project" (as defined in the Act) for lease to prospective tenants in furtherance of the public purpose for which it was created; and

WHEREAS, the Company has informed the Issuer that it wishes to acquire, construct and install an addition to an industrial facility (the "Project") in Calera, Alabama, and that the possibility of industrial development revenue bond financing has induced the Company to locate the Project in the area served by the Issuer; and

WHEREAS, the Department of Housing and Urban Development has agreed to make an Urban Development Action Grant under Section 119 of the Housing and Community Development Act of 1974 to the Town of Calera for use with respect to the Project in the amount of \$500,000 (the "UDAG Grant"); and

WHEREAS, in furtherance of the public purpose for which it was created, the Issuer proposes to acquire, construct and install the Project for the Company, and to lease the Project to the Company; and

WHEREAS, the Issuer has been informed by the Company that the amount necessary to finance the cost of the acquisition, construction and installation of the Project, including all expenses incidental thereto, but excluding that portion of the Project financed by the UDAG Grant, is in excess of \$2,610,000 and, by proper corporate action, the Issuer has duly authorized the issuance and sale of \$2,610,000 in aggregate principal amount of its The Industrial Development Board of the Town of Calera Industrial Development Revenue Bonds (IC Products Company Project), Series 1982 (the "Bonds"), the proceeds of which will be used to finance the cost of acquiring, constructing and installing the Project in anticipation of permanent financing for the Project; and

WHEREAS, after careful study and consideration, the Issuer has determined that financing the cost of the acquisition, construction and installation of the Project through the issuance and sale of its Bonds and the lease of the Project to the Company is in the best interest of the citizens of the area served by the Issuer and is in furtherance of the public purposes for which the Issuer was created; and

WHEREAS, the Issuer desires to enter into this Agreement with the Company under the terms of which the Issuer will agree to acquire, construct and install the Project with the proceeds of the sale of the Bonds and lease it to the Company in return for rentals and other payments sufficient to pay the principal of, and redemption premium (if any) and interest on, the Bonds as the same become due and payable; and

WHEREAS, the rentals and other payments to be received by the Issuer under the provisions of this Agreement will be assigned and pledged under the terms of a Trust Indenture, dated as of even date herewith (the "Indenture"), from the Issuer to Marine Midland Bank, N.A., New York, New York, a national banking association, as Trustee (the "Trustee"), together with certain of the Issuer's interests in this Agreement, as security for the payment of the principal of, redemption premium (if any) and interest on the Bonds; and

WHEREAS, as additional security for the payment of the Bonds, the Company will execute and deliver to the Trustee a Guaranty Agreement, dated as of even date herewith (the "Guaranty"), under which the Company will guarantee the payment of the interest on, redemption premium (if any) and principal of the Bonds when and as due; and

NOW, THEREFORE, THIS LEASE AGREEMENT WITNESSETH:

In consideration of the respective representations and agreements hereinafter contained, the Issuer and the Company **DO HEREBY AGREE**, as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part but shall be payable solely out of the "Pledged Revenues" as hereinafter defined and revenues derived from the sale of the "Bonds" referred to in Section 2.1 hereof):

(Article I commences on the following page.)

ARTICLE I.

DEFINITIONS AND CERTAIN RULES OF INTERPRETATION

Section 1.1. **Definitions.** In addition to the words and terms elsewhere defined herein, the following words and terms as used herein shall have the following meanings unless the context or use clearly indicates another or different meaning or intent, and any other words and terms defined in the Indenture shall have the same meanings when used herein as assigned them in the Indenture unless the context or use clearly indicates another or different meaning or intent:

"Act" means Act No. 648 enacted at the 1949 Regular Session of the Legislature of the State of Alabama (Code of Alabama 1975, Section 11-54-80, et seq.), as amended;

"Agreement" means this Lease Agreement as it now exists and as it may hereafter be amended pursuant to Article XIV of the Indenture;

"Authorized Company Representative" means the Person at the time designated to act on behalf of the Company by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by the chairman of the board, president or any vice president of the Company. Such certificate may designate an alternate or alternates;

"Authorized Issuer Representative" means the person at the time designated to act on behalf of the Issuer by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by its Chairman or Vice Chairman. Such certificate may designate an alternate or alternates and must be satisfactory to the Company and shall be replaced by the Issuer upon the written request of the Company.

"Bond Fund" means the Bond Fund created pursuant to Section 502 of the Indenture and within which have been established a general account and a special account. Any reference herein to the "Bond Fund" without further limitation or explanation shall be deemed to be a reference to the general account in the Bond Fund;

"bondholder" or "holder of the Bonds" means the bearer of any Bond not registered as to principal and the registered owner of any Bond registered as to principal;

"Bonds" means the industrial development revenue bonds of the Issuer in the aggregate principal amount of \$2,610,000 issued pursuant to the Indenture;

"Building" means those certain buildings and all other facilities and improvements forming a part of the Project located on the Project Land and not constituting part of the Project Equipment, as they may at any time exist;

"Code" means the Internal Revenue Code of 1954, as amended, and the applicable regulations thereunder;

"Company" means IC Products Company, a Delaware corporation, its successors and assigns, and any surviving, resulting or transferee corporation as permitted under Section 8.3;

"Completion Date" means the date of completion of the Project as that date shall be certified as provided in Section 4.5;

"Construction Fund" means the construction fund created pursuant to Section 602 of the Indenture and referred to in Article IV;

"Construction Period" means the period between the beginning of construction of the Project or the date of issuance and delivery of the Bonds (whichever is earlier) and the Completion Date;

"County" means Shelby County, Alabama;

"default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an event of default;

"event of default" means one of the events so denominated and described in Section 10.1;

"Financing Statements" means any and all financing statements (including continuation statements) filed for record from time to time to perfect the security interests created in the Indenture;

"Government Obligations" means (a) direct obligations of the United States of America the payment for which the full faith and credit of the United States of America is pledged, or (b) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of, premium, if any, and the interest on which is fully guaranteed as a full faith and credit obligation by the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par by anyone other than the holder;

"Guaranty" means the Guaranty Agreement, of even date herewith, from the Company to the Trustee;

"Indenture" means the Trust Indenture, of even date herewith, between the Issuer and the Trustee, pursuant to which the Bonds are to be issued and secured, including any indenture supplemental thereto;

"Independent Counsel" means an attorney, or firm thereof, duly admitted to practice law before the highest court of the State and not an employee on a full-time basis of either the Issuer or the Company (but who or which may be regularly retained by either);

"Independent Engineer" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of the State

and not an employee on a full-time basis of either the Issuer or the Company (but who or which may be regularly retained by either);

"Investment Obligations" means (i) any bonds or other obligations of the United States of America which as to principal and interest constitute direct obligations of the United States of America, or any obligations of subsidiary corporations of the United States of America fully guaranteed as to payment by the United States of America, (ii) obligations of the Federal Land Bank, (iii) obligations of the Federal Home Loan Bank, (iv) obligations of the Federal Intermediate Credit Bank, (v) obligations of the Central Bank for Cooperatives, (vi) Certificates of Deposit of banks or trust companies, including the Trustee, organized under the laws of the United States of America or any state thereof, which have a combined capital and surplus of at least \$25,000,000 (vii) commercial paper rated A-1 by Standard and Poor's Corporation or P-1 by Moody's Investors Service Inc., and (viii) any other investments to the extent at the time permitted by then applicable law for the investment of public funds.

"Issuer" means The Industrial Development Board of the Town of Calera, a public corporation organized under the Act, and its successors and assigns;

"Lease Term" means the duration of the leasehold interest created hereby as specified in Section 5.1;

"net proceeds", when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees and any Extraordinary Expenses of the Trustee as defined in the Indenture) incurred in the collection of such gross proceeds;

"payment in full of the Bonds" specifically encompasses the situations referred to in Section 901 of the Indenture;

"Permitted Encumbrances" means, as of any particular time,

(a) liens for ad valorem taxes and special assessments not then delinquent or permitted to exist as provided in Section 6.3;

(b) this Agreement, the Indenture and the security interests created in the Indenture;

(c) such utility, access or other easements and rights-of-way, restrictions, reservations, reversions and exceptions as do not, in the opinion of an Independent Engineer and the Company, materially interfere with or impair the operations being conducted in the Building (or, if no operations are being conducted therein, the operations for which the Building was designed or last modified) or elsewhere on the Project Land;

(d) unfiled and inchoate mechanics' and materialmen's liens for construction work in progress;

(e) architects', contractors', subcontractors', mechanics', suppliers', materialmen's, laborers', vendors', workmen's, repairmen's, carriers', land surveyors' and engineers' liens or other similar liens not then payable, and those permitted to exist as provided in Section 6.1; and

(f) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project and as do not, in the opinion of the Company, materially interfere with the Project or its operations;

"person" means natural persons, firms, associations, corporations and public bodies;

"Plans and Specifications" means the plans and specifications for the Project prepared by Abex Corporation, Facilities Engineering Department, as now or hereafter amended, a copy of which is on file with the Secretary of the Issuer.

"Plant" means the existing industrial facility of the Company located in the Town;

"Pledged Revenues" means and shall include:

(a) the rents required to be made by the Company under Section 5.3(a) of the Agreement, except for payments to be made to the Trustee for services rendered as Trustee under the Indenture and as Bond Registrar and paying agent for the Bonds and except for indemnification and other payments required to be made pursuant to Sections 6.5, 6.6 and 10.4 hereof,

(b) any proceeds which arise with respect to any disposition of the security interests, and

(c) any other revenues arising out of or in connection with the Issuer's ownership of the Project;

"principal", whenever used with reference to the Bonds or any portion thereof, shall be deemed to include "and the redemption premium (if any)";

"Project" means the Project Land, the Building and the Project Equipment, as they may at any time exist;

"Project Equipment" means those items of machinery, equipment and related property required herein to be acquired and installed in the Building or on the Project Land with proceeds from the sale of the Bonds or the proceeds of any payment by the Company pursuant to Section 4.6 and any item of machinery, equipment and related property acquired and installed in the Building or on the Project Land in substitution therefor and renewals and replacements thereof pursuant to the provisions of Sections 4.1(b), 6.2(a), 7.1 and 7.2, less such machinery, equipment and related property as may be released pursuant to Section 6.2(b) or taken by the exercise of the power of eminent domain as provided in Section 7.2, and is further defined as all property owned by the Issuer and to be leased to the Company pursuant to this Agreement which is not included in the definition of

Project Land or Building, but not including the Company's own machinery, equipment and related property installed under the provisions of Section 6.1(b). The Project Equipment insofar as it will be initially installed as a part of the Project is more fully described in Exhibit "B" attached hereto and by this reference made a part hereof;

"Project Land" means the real property and improvements described in Exhibit "A" attached hereto and by this reference made a part hereof, less such real property as may be released pursuant to Sections 8.6 and 11.4 or taken by the exercise of the power of eminent domain;

"security interest" or "security interests" shall refer to the security interest created in the Indenture and shall have the meaning set forth in the U.C.C.;

"State" shall mean the State of Alabama;

"Town" means the town of Calera, Alabama.

"Trustee" means Marine Midland Bank, N.A., a national banking association having its principal corporate trust office in the City of New York, New York, or any co-trustee or any successor trustee under the Indenture; and

"U.C.C." means the Uniform Commercial Code of the State, as now or hereafter amended.

"UDAG Grant Agreement" means the Grant Agreement between the Secretary of Housing and Urban Development, acting by and through the Assistant Secretary for Community Planning and Development, as representative of the United States of America, and the Town, numbered B-81-AB-01-0078, executed on behalf of the Secretary of Housing and Urban Development on June 11, 1981, including all amendments and supplements thereto; and

"UDAG Grant" means the grant in the principal amount of \$500,000 provided by the Department of Housing and Urban Development to the Town which will be used to finance facilities related to the Project as provided in the UDAG Grant Agreement, which grant is evidenced by that Letter of Credit, dated September 23, 1981, numbered 86-00-1913, issued by the Department of Treasury in favor of the Town.

Section 1.2. **Certain Rules of Interpretation.** The definitions set forth in Section 1.1 shall be equally applicable to both the singular and the plural forms of the terms therein defined and shall cover all genders.

"Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular Article, Section or subdivision hereof in which such word is used.

Reference herein to an Article number (e.g., Article IV) or a Section number (e.g., Section 6.8) shall be construed to be a reference to the designated Article number or Section number hereof unless the context or use clearly indicates another or different meaning or intent.

(End of Article I.)

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ARTICLE II.

REPRESENTATIONS

Section 2.1. **Representations by the Issuer.** The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) It is a public corporation, duly created and validly existing pursuant to the Constitution and laws of the State, including particularly the Act.

(b) It has the power to enter into the transactions contemplated by this Agreement and the Indenture and to carry out its obligations hereunder and thereunder.

(c) It is not in default in any material respect under any of the provisions of the laws of the State or under any agreement or other instrument to which it is a party or by which it is bound or under its Articles of Incorporation or By-laws.

(d) It has duly authorized the execution and delivery of this Agreement by all necessary action on its part, and such execution and delivery and the compliance by the Issuer with the provisions hereof will not conflict with or result in any breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of any lien on the property of the Issuer (other than as contemplated by the Indenture and the Agreement), pursuant to the Articles of Incorporation or By-laws of the Issuer or any agreement or other instrument to which the Issuer is a party or by which it is bound, or any license, judgment, decree, order, law, statute, ordinance or governmental rule or regulation applicable to the Issuer.

(e) It has determined that the issuance of the Bonds, the acquisition, construction and installation of the Project and the leasing of same to the Company will be in furtherance of the public purposes intended to be served by the Act.

(f) It has been induced to enter into this undertaking by the promise of the Company to locate the Project in the area served by the Issuer.

(g) By resolution adopted on January 29, 1981, the Issuer took affirmative official action providing for the financing of the Project through the issuance of the Bonds.

(h) It proposes to issue \$2,610,000 in aggregate principal amount of Bonds simultaneously with the execution and delivery hereof. The date, denomination, interest rate, maturity schedule, redemption provisions and other pertinent provisions with respect to the Bonds are set forth in the Indenture and by this reference thereto they are incorporated herein.

(i) The Bonds are to be issued under and secured by the Indenture, pursuant to which certain of the Issuer's right, title and interest herein and in the Pledged Revenues will be pledged and assigned to the Trustee as security for the payment of the principal of and the interest on the Bonds.

(j) The United States Department of Treasury has issued a Letter of Credit authorizing the drawdown of UDAG Grant funds in accordance with the provisions of the UDAG Grant Agreement. To the best knowledge of the Issuer, there is no default under the UDAG Grant Agreement.

(k) The Issuer is not subject to any charter, by-laws or contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Issuer from entering into this Agreement or performing any of its obligations hereunder, except to the extent such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly incorporated and in good standing under the laws of the State of Delaware, has the corporate power to enter into this Agreement and the Guaranty and to perform and observe all obligations and agreements contained herein, and, by proper corporate action, has authorized the execution, delivery and performance of this Agreement and the Guaranty.

(b) The issuance of the Bonds and the acquisition, construction and installation of the Project and the sale of the Project by the Issuer to the Company have induced the Company to locate the Project in the County, which is expected to directly result in an increase in employment opportunities in the County.

(c) The Company or one of its subsidiary or affiliate corporations presently intends to operate the Project from the Completion Date to the expiration or sooner termination of this Agreement as a "project" within the meaning of the Act.

(d) The Company is not subject to any charter, by-law or contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Company from entering into this Agreement or the Guaranty or from performing any of its obligations hereunder or thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, and the execution and delivery of this Agreement and the Guaranty and the fulfillment of or compliance with the terms and conditions hereof or thereof will not conflict with or result in a breach of the terms, conditions or provisions of any corporate restriction, charter document or by-law provision or constitute a default under any agreement or instrument to which it is a party or by which it is bound, and the Company agrees that, anything herein to

the contrary notwithstanding, so long as any of the Bonds are outstanding there shall be no abatement of the amounts payable by the Company as provided in Section 5.3(a).

(e) No moneys obtained by the Issuer or the Company from the sale of the Bonds will be used to reimburse the Issuer or the Company for expenditures made with respect to the Project prior to January 29, 1981, the date on which the Issuer took "official action" with respect to the issuance of the Bonds within the meaning of Section 103 of the Code.

(f) The Project consists of land and of property of a character subject to the allowance for depreciation under Section 167 of the Code. Substantially all of the proceeds of the sale of the Bonds will be used to finance the acquisition, construction and installation of the Project. No part of said proceeds is to be used by the Company, directly or indirectly, as working capital or to finance inventory.

(g) Based on current facts, estimates and circumstances, it is expected that:

(i) the acquisition, construction and installation of the Project and the expenditure of all Bond proceeds will be completed by December 31, 1982,

(ii) work on the Project has been completed,

(iii) the net proceeds from the sale of the Bonds are needed for the purpose of paying all or a part of the cost of the acquisition, construction and installation of the Project, and

(iv) the Company's interest in the Project will not be sold or disposed of, in whole or in part, prior to payment in full of the Bonds, except as contemplated by this Agreement.

(h) The information furnished by the Company and used by the Issuer in preparing the election which it will file with the Internal Revenue Service pursuant to Section 103(b)(6)(D) of the Code will be true and complete as of the date of filing of said election.

(i) The Project is located entirely within the incorporated limits of the Town of Calera, Alabama, and the only "principal user" of the Project is and has been the Company or a "related person" (as the terms "principal user" and "related person" are defined in Section 103(b)(6) of the Code).

(j) There have never been issued any obligations the proceeds of which are to be or have been used primarily with respect to "facilities" described in

Section 103(b)(6)(E) of the Code, which are located within the limits of the Town of Calera, Alabama or of Shelby County, Alabama, or which obligations should be taken into account in determining the aggregate face amount of the Bonds as provided in Section 103(b)(6)(A) of the Code.

(k) All representations, written statements and other information provided by the Company and its subsidiary or affiliate corporations and used by the Town in connection with the UDAG Grant Agreement were true, accurate and complete in all material respects as of the date of filing of the UDAG Grant Agreement and to the knowledge of the Company and its subsidiary or affiliate corporations, said Agreement and the representations, written statements and other information furnished in connection therewith do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading.

(l) The facilities constituting the Project are facilities with respect to which an Urban Development Action Grant has been made under Section 119 of the Housing and Community Development Act of 1974.

(m) The affiliate or subsidiary corporation of the Company who will be operating the Project will be qualified to do business in the State.

(n) Neither the Company nor any of its subsidiary or affiliate corporations is in default under the UDAG Grant Agreement, nor is there any litigation pending, or to the best knowledge of the Company, threatened against or affecting the Company, the Town or with respect to the UDAG Grant before any court or governmental board or body which could have a material adverse affect upon the Company or upon this Agreement or the availability of the UDAG Grant.

(o) The Project was completed and placed in service less than one year prior to the date of issuance of the Bonds.

(End of Article II.)

ARTICLE III.

LEASING CLAUSES AND WARRANTY OF TITLE

Section 3.1. **Lease of the Project.** In consideration hereof, the Issuer hereby leases to the Company, and the Company hereby leases from the Issuer, subject to Permitted Encumbrances, the Project at the rent set forth in Section 5.3(a) hereof and in accordance with the provisions hereof.

Section 3.2. **Warranty of Title.** The Issuer for itself, its successors and its assigns, warrants to the Company, its successors and its assigns, that it has good and insurable fee simple title in and to the Project Land free from all encumbrances except Permitted Encumbrances. Upon request of the Company, the Issuer agrees that it will furnish to the Company an opinion of the Issuer's Counsel or other Counsel satisfactory to the Company stating that the Issuer holds such title in and to the Project Land. If so requested by the Company prior to the delivery of the Bonds, the Issuer will also furnish an owner/mortgagee title insurance policy (or binder) issued by a title insurance company nominated by the Company insuring (or agreeing to insure) such title and interest, in a face amount not exceeding the estimated cost to the Issuer of the Project Land and Building.

Section 3.3. **Quiet Enjoyment.** The Issuer warrants and agrees that it will defend the Company in the quiet enjoyment and peaceable possession of the Project throughout the Lease Term, free from all claims of all persons whomsoever, so long as the Company shall perform the agreements to be performed by it hereunder, or so long as the period for remedying any failure in such performance shall not have expired.

(End of Article III.)

ARTICLE IV.

COMMENCEMENT AND COMPLETION OF THE PROJECT; ISSUANCE OF THE BONDS

Section 4.1. Agreement to Acquire and Construct the Project.
Subject to the provisions of Section 4.6, the Issuer agrees that:

(a) It will cause the Building to be constructed on the Project Land, wholly within the boundary lines thereof. It will acquire, construct and install other facilities necessary for the completion and commencement of operation of the Project. The aforesaid acquisition, construction and installation shall be substantially in accordance with Plans and Specifications. Any additions, modifications, revisions or changes to the Plans and Specifications shall also be filed with the Secretary of the Issuer and the Authorized Company Representative; provided, however, no addition, modification, revision or change shall be made to the Plans and Specifications which would change the nature of the Project as (i) property of a character subject to depreciation under Section 167 of the Code, or (ii) a "project" within the meaning of the Act. The Building shall be the property of the Issuer and subject to the terms hereof.

(b) It will cause to be acquired and installed in the Building or on the Project Land, the Project Equipment, to consist of machinery, equipment and related property described in the list attached hereto as Exhibit "B" and such other items of machinery, equipment and related property as in the Company's judgment may be necessary for the operation of the Project and as shall from time to time prior to the Completion Date be specified in written orders from the Company to the Issuer, all of which acquisitions and installations shall be made substantially in accordance with directions given by the Company. The Project Equipment shall be the property of the Issuer and subject to the terms hereof.

The Issuer agrees that only such changes (other than those requested by the Company, which shall be made as requested) will be made in the Plans and Specifications as may be specified by the Authorized Company representative. The Issuer agrees that it will enter into, or accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section, but that it will not execute any other contract or give any order for the construction of the Building or for the acquisition and installation of the Project Equipment unless and until the Authorized Company Representative shall have approved the same in writing.

The Issuer agrees to complete construction of the Building as promptly as practicable after receipt of the proceeds from the sale of the Bonds, to continue said construction with all reasonable dispatch and to use its best efforts to cause said construction to be completed as soon as practicable, delays incident to strikes, riots, acts of God or the public enemy beyond the reasonable control of the Issuer

only excepted, but if said construction is not completed within the time herein contemplated there shall be no resulting liability on the part of the Issuer and no diminution in or postponement or abatement of, the rents required in Section 5.3(a) hereof to be made by the Company. The Issuer agrees to effect the acquisition and installation of the Project Equipment as promptly as practicable after specification by the Company of the items to be installed and receipt of the installation schedule desired by the Company.

The Issuer hereby makes, constitutes and appoints the Company as its true, lawful and exclusive agent for the acquisition, construction and installation of the Project, and the Company hereby accepts such agency to act and do all things on behalf of the Issuer, to perform all acts and agreements of the Issuer provided in this Section, and to bring any actions or proceedings against any person which the Issuer might bring with respect thereto as the Company shall deem proper. The Issuer hereby ratifies and confirms all actions of the Company with respect to the Project prior to the date of delivery hereof. This appointment of the Company to act as agent and all authority hereby granted and conferred upon the Company are granted and conferred irrevocably until all activities in connection with the acquisition, construction and installation of the Project shall have been completed, and shall not be terminated prior thereto by act of the Issuer or of the Company. So long as the Company is not in default hereunder, upon the Completion Date (or at any time prior thereto upon request of the Company) the Issuer will assign to the Company all warranties and guaranties of all contractors, subcontractors, suppliers and engineers for the furnishing of labor, materials or equipment or supervision or design in connection with the Project and any rights or causes of action arising from or against any of the foregoing.

The Company agrees that, as agent for the Issuer, it will comply with the requirements of Article VIII hereof and all applicable laws, rules and regulations relating to the acquisition and installation of the Project, and will indemnify the Issuer with respect to any penalty or fine assessed against the Issuer as a result of any failure of the Company to so comply.

Section 4.2. Agreement to Issue Bonds; Application of Bond Proceeds. In order to provide funds for the payment of the cost of the acquisition, construction and installation called for in Section 4.1, the Issuer agrees that as soon as possible it will authorize, sell and cause to be delivered to the initial purchaser or purchasers thereof, the Bonds, bearing interest and maturing as set forth in Article II of the Indenture, at a price to be approved by the Company plus accrued interest (if any) to the date of delivery of the Bonds, and it will thereupon deposit all accrued interest (if any) received upon the sale of the Bonds in the Bond Fund and will deposit the balance of the proceeds from said sale in the Construction Fund.

Section 4.3. Disbursements from the Construction Fund. Pursuant to the terms of the Indenture, the Issuer will authorize and direct the Trustee to use the moneys in the Construction Fund for the following purposes but, subject to the provisions of Section 4.8, for no other purposes:

- (a) payment of the initial or acceptance fee of the Trustee and fees and expenses of its Counsel, the fees for recording the deeds whereby the

appropriate title in and to the Project Land has been conveyed and assigned to the Issuer, payments for any title examination and insurance, and any title curative documents that either the Company or the Issuer's Counsel may deem desirable to file for record in order to perfect or protect the title of the Issuer in and to the Project Land and the fees and expenses in connection with any actions or proceedings that either the Company or the Issuer's Counsel may deem desirable to bring in order to perfect or protect the title of the Issuer in and to the Project Land;

(b) payment to the Company or one of its affiliate or subsidiary corporations and the Issuer, as the case may be, of such amounts, if any, as shall be necessary to reimburse the Company or one of its affiliate or subsidiary corporations or the Issuer in full for all advances and payments made by them or either of them prior to or after the date of issuance and delivery of the Bonds for expenditures in connection with acquisition by the Issuer of appropriate title in and to the Project Land (including the cost of such acquisition and of any rights-of-way for the purpose of providing access to and from the Project Land), clearing the Project Land, site improvement, the preparation of Plans and Specifications (including any preliminary study or planning of the Project or any aspect thereof), the construction of the Building, the acquisition and installation of the Project Equipment and the acquisition, construction and installation necessary to provide utility services or other facilities including trackage to connect the Project with public transportation facilities, and all real or personal properties deemed necessary in connection with the Project, or any one or more of said expenditures (including architectural, engineering and supervisory services) with respect to any of the foregoing;

(c) payment of, or reimbursement of the Company or one of its affiliate or subsidiary corporations and the Issuer for, the legal and accounting fees and expenses, financial consultants' fees, financing charges (including underwriting or placement fees) and printing and engraving costs incurred in connection with the authorization, sale and issuance of the Bonds, the preparation of this Agreement, the Guaranty, the Indenture, the Financing Statements and all other documents in connection therewith (including computer charges) and in connection with the acquisition of appropriate title in and to the Project Land, including fees for recording this Agreement, the Indenture and the Financing Statements and payment of the premium for any title insurance policy or binder which may be obtained with respect to title in and to the Project Land;

(d) payment of, or reimbursement of the Company or one of its affiliate or subsidiary corporations and the Issuer for, labor, services, materials, supplies or equipment used or furnished in site improvement and in the construction of the Building, all as provided in the Plans and Specifications, payment for the cost of the acquisition and installation of the Project Equipment, payment for the cost of acquisition, construction and installation of utility services or other facilities including trackage to connect the Project with public transportation facilities, and all real and personal properties deemed necessary in connection with the Project and payment for the miscellaneous expenses incidental to any of the foregoing;

(e) payment of, or reimbursement of the Company or one of its affiliate or subsidiary corporations and the Issuer for, the fees, if any, for architectural, engineering and supervisory services with respect to the Project;

(f) payment of, or reimbursement of the Company or one of its affiliate or subsidiary corporations and the Issuer for, as such payments become due, the fees and expenses of the Trustee, the Bond Registrar, the paying agent(s) and the fees and expenses of their Counsel properly incurred under the Indenture that may become due during the Construction Period;

(g) to such extent as they shall not be paid by a supplier or contractor for construction or installation with respect to any part of the Project, payment of the premiums on all insurance required to be taken out and maintained hereunder during the Construction Period, or reimbursement thereof if paid by the Company or one of its affiliate or subsidiary corporations under Section 6.4;

(h) payment of the taxes, assessments and other charges, if any, referred to in Section 6.3 hereof that may become payable with respect to the Project during the Construction Period;

(i) payment of expenses incurred with approval of the Company or one of its affiliate or subsidiary corporations in seeking to enforce any remedy against any supplier, contractor or subcontractor in respect of any alleged default under a contract relating to the Project;

(j) payment of, or reimbursement of the Company or one of its affiliate or subsidiary corporations and the Issuer for any other legal and valid costs and expenses relating to the Project; and

(k) all moneys remaining in the Construction Fund (including moneys earned on investments made pursuant to the provisions of Section 4.8) after the Completion Date and payment in full of the costs of the construction of the Building and the acquisition and installation of the Project Equipment, and after payment of all other items provided for in the preceding subsections of this Section then due and payable, shall at the direction of the Company be (i) used by the Trustee for the redemption of Bonds or the purchase of Bonds for the purpose of cancellation, or (ii) paid into the Bond Fund, or (iii) a combination of (i) and (ii) as is provided in such direction, provided that amounts approved by the Authorized Company Representative and Authorized Issuer Representative shall be retained by the Trustee in the Construction Fund for payment of costs not then due and payable. Any balance remaining of such retained moneys after full payment of all such Project Costs shall be used by the Trustee as directed by the Company in the manner specified in clauses (i), (ii) or (iii) of this subsection. The Issuer and the Company agree with each other for the benefit of the holders of the Bonds and the interest coupons (if any) appertaining thereto that substantially all of the Bond proceeds will be used for the purposes set out in Section 103(b)(6) of the Code to the end that the interest on the Bonds shall be and remain exempt from Federal income taxation. Should Bond proceeds remain in the Construction

Fund after the Completion Date and after full payment of all such Project Costs in an amount in excess of \$130,500, no such excess shall be transferred to the Bond Fund unless an opinion of a firm of nationally recognized bond attorneys is obtained stating that such transfer will not impair the exemption of the interest on the Bonds from Federal income taxation pursuant to Section 103(b) of the Code.

The payments specified in subsections (a) through (j) of this Section (other than the payment of interest on the Bonds accruing prior to the Completion Date) shall be made by the Trustee only upon receipt of the following:

(1) a written requisition for such payment signed by (i) the Authorized Issuer Representative, and (ii) the Authorized Company Representative;

(2) a certificate by the persons signing such requisition certifying:

(i) that an obligation or expense in the stated amount has been incurred by or on behalf of the Issuer;

(ii) that such obligation or expense is a proper charge against the Construction Fund and has not been the basis of any previous withdrawal from the Construction Fund, and specifying the purpose and circumstances of such obligation in reasonable detail and to whom such obligation is owed;

(iii) that they have no notice of any vendors', materialmen's, mechanics', suppliers' or other similar liens or right to liens, chattel mortgages or conditional sales contracts, or other contracts or obligations (other than those being contested in good faith as permitted in Section 6.1(c)) which should be satisfied or discharged before payment of such obligation is made; and

(iv) that such requisition contains no request for payment on account of any portion of such obligation or expense which the Issuer is, as of the date of such requisition, entitled to retain under retained percentage agreements; and

(v) that such requisition contains no item for which any payment obligation or expense was incurred and no item, the construction, acquisition or fabrication of which was begun prior to the taking of official action by the Issuer with respect to the Bonds on January 29, 1981;

(vi) that payment of the obligation or expense represented by the requisition will not result in less than substantially all of the net proceeds of the Bonds expended as of the date of such requisition being spent on land or property of a character subject to the allowance for depreciation; and

(3) with respect to any such requisition for payment for labor, services, material, supplies or equipment, an additional certificate, signed by

the Authorized Company Representative, certifying that insofar as such obligation was incurred for work, material, supplies or equipment in connection with the acquisition, construction and installation of the Project, such labor or services were actually performed in a satisfactory manner and such material, supplies or equipment were actually used in or about the construction or delivered at the site of the Project for that purpose. In addition, if any such requisition for material, supplies or equipment requires reimbursement for such item to the Company or one of its affiliate or subsidiary corporations, such requisition shall include any bill of sale necessary to convey title in and to such item to the Issuer.

In approving or certifying any requisition under this Section, the Issuer may rely as to the completeness and accuracy of all statements in such requisition upon the approval of or certification to such requisition by the Authorized Company Representative, and the Company hereby agrees to indemnify and save harmless the Issuer, its members, officers, agents and employees from any liability incurred in connection with any requisition so approved or certified.

In making any such payment from the Construction Fund, the Trustee may rely on any such requisition and any such certificates delivered to it pursuant to this Section and the Trustee shall be relieved of all liability with respect to making such payments in accordance with such requisitions and such supporting certificate or certificates without inspection of the Project or any other investigation.

The Issuer and the Company agree for the benefit of each other and for the benefit of the holders of the Bonds that the proceeds of the Bonds will not be used in any manner which would result in the loss of the exemption from Federal income taxation of the interest on the Bonds.

Section 4.4. Obligation of the Parties to Cooperate in Furnishing Documents to Trustee. The Issuer and the Company agree to cooperate with each other in furnishing to the Trustee the documents referred to in Section 4.3 that are required to effect payments out of the Construction Fund, and to cause such requisitions and certificates to be directed by the Authorized Issuer Representative and the Authorized Company Representative to the Trustee as may be necessary to effect such payments. Such obligation of the Issuer and the Company is subject to any provisions hereof or of the Indenture requiring additional documentation with respect to payments and shall not extend beyond the moneys in the Construction Fund available for payment under the terms of the Indenture.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating that, except for amounts retained by the Trustee for Project costs not then due and payable as provided in Section 4.3(k),

(a) construction of the Building has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials, supplies or equipment used in such construction have been paid for,

(b) all other facilities necessary in connection with the Project have been acquired, constructed and installed substantially in accordance with the

Plans and Specifications and all costs and expenses incurred in connection therewith have been paid,

(c) the Project Equipment has been acquired and installed to his satisfaction, the Project Equipment so acquired and installed together with any other machinery, equipment and related property provided and installed in the Building or on the Project Land by the Company or one of its affiliate or subsidiary corporations is suitable and sufficient for the efficient operation of the Project and all costs and expenses incurred in the acquisition and installation of the Project Equipment and other machinery, equipment and related property have been paid,

(d) a certificate of occupancy, if required, and any other permissions required of governmental authorities for the occupancy of the Project have been obtained, and

(e) substantially all of the proceeds of the Bonds have been used to provide facilities described in the Plans and Specifications.

Notwithstanding the foregoing, such certificate by the Authorized Company Representative shall state that it is given without prejudice to any rights against third parties which exist on the date of such certificate or which may subsequently come into being. The Issuer and the Company agree to cooperate one with the other in causing such certificate to be furnished to the Trustee.

Section 4.6. Company Required to Pay Project Costs If Construction Fund Insufficient. If the moneys in the Construction Fund available for payment of the costs of the Project should not be sufficient to pay the costs thereof in full, the Company agrees to complete the Project and to pay all that portion of the costs of the Project as may be in excess of the moneys available therefor in the Construction Fund. The Issuer does not make any warranty, either express or implied, that the moneys which will be paid into the Construction Fund and which, under the provisions hereof, will be available for payment of the costs of the Project, will be sufficient to pay all the costs which will be incurred in connection with the acquisition, construction and installation of the Project. The Company agrees that, if after exhaustion of the moneys in the Construction Fund, the Company should pay any portion of the costs of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer or from the Trustee or from the holders of any of the Bonds, nor shall it be entitled to any diminution in or postponement or abatement of the rents payable under Section 5.3(a) hereof.

Section 4.7. Issuer to Pursue Remedies Against Suppliers, Contractors and Subcontractors and Their Sureties. At the direction and sole cost of the Company (to the extent that such cost is not payable and actually paid from the Construction Fund), the Issuer will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Issuer against any defaulting supplier, contractor or subcontractor and against any surety therefor, for the performance of any contract made in connection with the Project. If the Company shall so notify the Issuer, the Company may, in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action

involving any such supplier, contractor, subcontractor or surety which the Company deems reasonably necessary, and in such event the Issuer agrees to cooperate fully with the Company and to take all action necessary, to the extent it might lawfully do so, to effect the substitution of the Company for the Issuer in any such action or proceeding. Any actions commenced by the Issuer hereunder shall be solely at the expense of the Company, and the Company hereby agrees to indemnify and save the Issuer harmless from any costs, fees, judgements or awards in connection therewith. In addition, the Issuer recognizes that it may be entitled to a refund of certain sales, use or other taxes levied and paid on goods and merchandise which are used in the construction of the Project and which become an integral part thereof. The Issuer agrees that it will, at the request and expense of the Company, take all necessary action to obtain any such refund to which, in the opinion of Independent Counsel, it is entitled. Any moneys recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing prior to the Completion Date shall be paid into the Construction Fund and after the Completion Date shall be paid into the Bond Fund.

If any action is to be commenced as provided herein by the Company in the name of the Issuer, the Company will, prior to the commencement thereof, notify the Issuer of such proposed action in the manner provided in Section 13.1 hereof.

Section 4.8. Investment of Construction Fund and Bond Fund Moneys Permitted. Any moneys held in the Construction Fund and the Bond Fund shall be invested or reinvested by the Trustee upon the written request and direction of the Company in Investment Obligations and Government Obligations, respectively. The Trustee may make any and all such investments through its own bond department.

(End of Article IV.)

ARTICLE V.

EFFECTIVE DATE OF THIS AGREEMENT;
DURATION OF LEASE TERM; RENTAL PROVISIONS

Section 5.1. **Effective Date of This Agreement; Duration of Lease Term.** This Agreement shall become effective upon its execution and delivery and the leasehold interest created hereby shall then begin, and subject to the other provisions hereof (including particularly Articles X, XI and XII), shall expire at midnight, October 1, 2012, or sooner upon payment in full of the Bonds.

Section 5.2. **Delivery and Acceptance of Possession.** The Issuer does hereby agree to deliver to the Company or one of its affiliate or subsidiary corporations exclusive possession, use and enjoyment of the Project (subject to the right of the Trustee to enter thereon for inspection purposes and to the other provisions of Section 8.2) on the Completion Date and the Company agrees to accept possession of the Project upon such delivery; provided, however, that the Company shall be permitted such possession of the Project prior to the Completion Date as shall not interfere with the construction of the Building or the installation of the Project Equipment, and the Company may install and maintain its own equipment during the Construction Period.

Section 5.3. **Rents and Other Amounts Payable.** (a) The Company hereby agrees to make the payments required hereunder directly to the Trustee for the account of the Issuer in the following manner: At least one (1) business day prior to each April 1 and October 1 in each year, commencing one business day prior to April 1, 1983, until the principal of and the interest on the Bonds shall have been paid in full, the Company shall pay to the Trustee as rent for the Project (i) if such date is one business day prior to October 1, a sum of money equal to the amount payable on October 1 as principal of and interest on the Bonds, as provided in the Indenture, and (ii) if such date is one business day prior to April 1, a sum of money equal to the amount payable on April 1 as interest on the Bonds, as provided in the Indenture. In any event, each payment under this Section shall be sufficient to pay the total amount of principal and interest payable on such semiannual interest payment date, and if at any semiannual interest payment date, the amount of money available in the Bond Fund is insufficient to make required payments of principal and interest on such date, the Company shall forthwith pay to the Trustee the amount of any such deficiency. All amounts paid to the Trustee by the Company shall be in immediately available funds.

(b) Anything herein to the contrary notwithstanding, any amount of money at any time held by the Trustee in the Bond Fund shall be credited against the next succeeding payment and such credit shall reduce the payment to be made by the Company; and, further, if the amount held by the Trustee in the Bond Fund should be sufficient to pay at the times required the principal of and the interest on the Bonds then remaining unpaid, the Company shall not be obligated to make any further payments under the provisions of this Section.

(c) The Company agrees to pay directly to the Trustee until the principal of, redemption premium (if any) and the interest on the Bonds shall have been paid

in full (i) an amount equal to the annual fee of the Trustee for the Ordinary Services of the Trustee rendered and its Ordinary Expenses incurred under the Indenture, (ii) the reasonable fees and charges of the Trustee and any other paying agent for acting as paying agent as provided in the Indenture, as and when the same become due, and (iii) the reasonable fees and charges of the Trustee for Extraordinary Services rendered by it and Extraordinary Expenses incurred by it, as and when the same become due; provided, that the Company may, without precipitating an event of default hereunder, withhold such payment to contest in good faith the necessity for any such Extraordinary Services and Extraordinary Expenses and the reasonableness of any such fees, charges or expenses.

Section 5.4. Place of Rental Payments. The rents provided for in Section 5.3(a) shall be paid directly to the Trustee for the account of the Issuer and will be deposited in the Bond Fund. The other payments provided for in Section 5.3(c) shall be paid directly to the Trustee for its own use or for disbursement to any other paying agent(s), as the case may be.

Section 5.5. Obligations of Company Hereunder Absolute and Unconditional. Subject to the provisions of Section 9.6, the obligations of the Company to make the payments required in Section 5.3(a) and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional. Until such time as the principal of and the interest on the Bonds shall have been paid in full the Company (a) will not suspend or discontinue any payments provided for in Section 5.3(a) except to the extent the same have been prepaid, (b) will perform and observe all of its other agreements contained herein, and (c) except as provided in Sections 11.1, 11.2, 11.3 and 12.2, will not terminate the Lease Term for any cause, including, without limiting the generality of the foregoing, failure of the Issuer to complete the Project, failure of the Issuer's title in and to the Project or any part thereof, any acts and circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected herewith or with the Indenture. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained; and if the Issuer should fail to perform any such agreement, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance or recover its damages for nonperformance so long as such action shall not do violence to the agreements on the part of the Company contained in the preceding sentence. The Company may, however, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third persons which the Company deems reasonably necessary in order to insure the acquisition, construction and completion of the Project or to secure or protect its right of possession, occupancy and use hereunder, and in such event the Issuer hereby agrees to cooperate fully with the Company and to take all lawful action which is required to effect the substitution of the Company for the Issuer in any such action or proceeding if the Company shall so request.

Nothing contained herein shall be construed to be a waiver of any rights which the Company may have against the Issuer under this Agreement, or against other persons under this Agreement, the Indenture, or otherwise, or under any provision of law.

Section 5.6. Company Consent to Assignment of Agreement and Execution of Indenture. The Company understands that certain of the Issuer's rights in this Agreement and the Pledged Revenues will be pledged and assigned to the Trustee, for the benefit of the bondholders, to the extent provided in the Indenture, and the Company hereby consents to such pledge and assignment. The Company acknowledges that it has received a copy of the Indenture and consents to the execution of the same by the Issuer.

Section 5.7. Company's Performance Under Indenture. The Company agrees, for the benefit of the bondholders, to do and perform all acts and things contemplated in the Indenture to be done or performed by it.

(End of Article V.)

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ARTICLE VI.

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1. Maintenance and Modification of Project by Company.

(a) Throughout the Lease Term, the Company or one of its affiliate or subsidiary corporations shall at its own expense (i) keep the Project in as reasonably safe condition as the operation thereof will permit, (ii) keep the Building and the Project Equipment and all other improvements forming a part of the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof and (iii) operate the Project in a proper and prudent manner, having due regard for all rules, regulations, laws, ordinances, orders and directives applicable to the Project or its operation; provided, however, the Company or one of its affiliate or subsidiary corporations shall not be required to operate, repair or maintain any portion of the Project after a determination is made by the Company or one of its affiliate or subsidiary corporations that such portion is no longer useful in the business of the Company or one of its affiliate or subsidiary corporations and provided further, the obligation of the Company herein shall not prevent the Company from merging or consolidating with another Company as provided in Section 8.3. Title to any replacement property, if not purchased directly by the Issuer in the name of the Issuer shall be conveyed to the Issuer by bill of sale.

(b) The Company or one of its affiliate or subsidiary corporations may, from time to time, in its sole discretion and at its own expense, make any additions, modifications or improvements to the Project, including installation of additional machinery, equipment and related property in the Building or on the Project Land, which it may deem desirable for its business purposes; provided that all such additions, modifications and improvements do not adversely affect the structural integrity of the Building or diminish the value of the Project and are located wholly within the boundary lines of the Project Land. All machinery, equipment and related property so installed by the Company or one of its affiliate or subsidiary corporations shall become a part of the Project; provided, that any machinery, equipment, furniture or fixtures installed by the Company on the Project and with respect to which the Company has made direct payment of the cost thereof to the suppliers thereof (and not by advancing funds to the Issuer for the purchase thereof), and which machinery, equipment, furniture or fixtures do not constitute a part of the Project Equipment, may be modified or removed at any time while there exists no event of default hereunder; and provided further, that any damage to the Project occasioned by such modification or removal shall be repaired by the Company or one of its affiliate or subsidiary corporations at its own expense.

(c) The Company or one of its affiliate or subsidiary corporations shall not permit any mechanics', materialmen's, suppliers', vendors' or other similar lien to be established or remain against the Project for labor or materials furnished or services rendered in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it; provided, that the Company or one of its affiliate or subsidiary corporations may in good faith contest any mechanics', materialmen's, suppliers', vendors' or other similar lien filed or established against

the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Issuer or the Trustee shall notify the Company that, in the opinion of Independent Counsel, by nonpayment of any such items the lien or security interests afforded by the Indenture as to the Project or the Pledged Revenues will be materially endangered or will be subject to loss or forfeiture, in which event the Company shall promptly pay or bond (if legally permissible) and cause to be satisfied and discharged all such unpaid items. The Issuer will cooperate fully with the Company or one of its affiliate or subsidiary corporation in any such contest.

Section 6.2. Removal and Substitution of Project Equipment. The Issuer shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary Project Equipment. If the Company or one of its affiliate or subsidiary corporations, in its sole discretion, determines that any such items of Project Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary for its purposes at such time, the Company or one of its affiliate or subsidiary corporations may remove such items from the Building and the Project Land and (on behalf of the Issuer) sell, trade in or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Issuer or the Trustee therefor, provided that the Company or one of its affiliate or subsidiary corporations shall either:

(a) substitute (either by direct payment of the costs thereof or by advancing to the Issuer the moneys necessary therefor) and install anywhere in the Building or on the Project Land other machinery, equipment or related property having equal or greater utility (but not necessarily having the same function or value) in the operation of the Project as an industrial facility (provided such removal and substitution shall not impair operating unity), all of which substituted machinery, equipment or related property shall be free of all liens and encumbrances (other than Permitted Encumbrances) but shall become a part of the Project Equipment; or

(b) not make any such substitution and installation, provided (i) that in the case of the sale of any such machinery, equipment or related property to anyone other than itself or in the case of the scrapping thereof, the Company shall pay into the Bond Fund the proceeds from such sale or the scrap value thereof, as the case may be, (ii) that in the case of the trade-in of such machinery, equipment or related property for other machinery, equipment or related property not to be installed in the Building or on the Project Land, the Company or one of its affiliate or subsidiary corporations shall pay into the Bond Fund the amount of the credit received by it in such trade-in, and (iii) that in the case of the sale of any such machinery, equipment or related property to the Company or one of its affiliate or subsidiary corporations or in the case of any other disposition thereof, the Company shall pay into the Bond Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting principles.

The removal from the Project of any portion of the Project Equipment pursuant to the provisions of this Section shall not entitle the Company to any diminution in or postponement or abatement of the rents payable under Section 5.3(a) hereof.

The Company or one of its affiliate or subsidiary corporations shall promptly report to the Trustee each such removal, substitution, sale, trade-in or other disposition and shall pay to the Trustee such amounts as are required by the provisions of the preceding subsection (b) of this Section to be paid into the Bond Fund promptly after the sale, trade-in or other disposition requiring such payment; provided, however, that no such report and payment need be made until the amount to be paid into the Bond Fund on account of all such sales, trade-ins or other dispositions not previously reported aggregates at least \$250,000. The Company or one of its affiliate or subsidiary corporations shall not remove or permit the removal of any item of Project Equipment except in accordance with the provisions of this Section.

The Company or one of its affiliate or subsidiary corporations shall deliver to the Issuer appropriate documents conveying to the Issuer title to any machinery, equipment or related property installed or placed in the Building or upon the Project Land pursuant to this Section, and upon the request of the Company or one of its affiliate or subsidiary corporations, the Issuer shall deliver or cause or direct the Trustee to deliver to the Company or one of its affiliate or subsidiary corporations appropriate documents conveying to the Company title to any property removed or to be removed from the Project pursuant to this Section and releasing the same from the provisions of this Agreement.

Section 6.3. Taxes, Other Governmental Charges and Utility Charges. The Issuer and the Company acknowledge that under present law no part of the fee simple title in and to the Project owned by the Issuer is subject to ad valorem taxation by the State or by any political or taxing subdivision thereof, and that under present law the income and profits (if any) of the Issuer from the Project are not subject to either Federal or State taxation. The Company shall pay or shall cause one of its affiliate or subsidiary corporations to pay, as the same become lawfully due and payable,

(a) all taxes and governmental charges of any kind whatsoever upon or with respect to the interest held by the Company hereunder,

(b) all taxes and governmental charges of any kind whatsoever upon or with respect to the Project or any machinery, equipment or related property installed or brought by the Company or one of its affiliate or subsidiary corporations therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or profits of the Issuer from the Project which, if not paid, will become a charge on the Pledged Revenues prior to or on a parity with the security interest therein and the pledge or assignment thereof created and made in the Indenture),

(c) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and

(d) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project;

provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated to pay only such installments as are required to be paid during the term of this Agreement.

The Company may, at its own expense and in its own name and behalf or in the name and behalf of the Issuer, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Issuer or the Trustee shall notify the Company that, in the opinion of Independent Counsel, by nonpayment of any such items the lien or security interests afforded by the Indenture as to the Pledged Revenues will be materially endangered, in which event such taxes, assessments or charges shall be paid promptly. The Issuer shall cooperate fully with the Company in any such contest. If the Company shall fail to pay any of the foregoing items required by this Section to be paid by the Company, the Issuer or the Trustee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Company to the one making the advancement, which amounts, together with interest thereon at the rate of interest per annum announced by the Trustee at its principal corporate trust office as its prime rate from the date thereof, the Company agrees to pay.

Section 6.4. Insurance Required. Throughout the term of this Agreement, the Company or one of its affiliate or subsidiary corporations shall keep the Project properly insured, but the Company or one of its affiliate or subsidiary corporations shall be the sole judge of the type and adequacy of such insurance; provided, however, that the amount of insurance carried by the Company with respect to damage or destruction of the Project shall not be less than the amount of principal and interest outstanding with respect to the Bonds from time to time. The Company further agrees that during the Construction Period and throughout the term of this Agreement, the Company or one of its affiliate or subsidiary corporations shall maintain, or cause to be maintained, in connection with the Project, Workmen's Compensation Coverage required by then applicable law.

Section 6.5. Other Issuer Expenses. Anything to the contrary herein notwithstanding, the Company shall pay any reasonable and necessary expenses not specifically mentioned herein which are incurred by the Issuer in connection with the Project, this Agreement, the Indenture, the Financing Statements or the Bonds, and which are not payable from the Construction Fund pursuant to Section 4.3.

Section 6.6. Indemnification of Issuer. The Company shall indemnify and save the Issuer harmless against and from all claims by or on behalf of any person arising from the conduct or management of, or from any work or thing done on, the Project during the term of this Agreement, and against and from all claims arising during the term of this Agreement from:

- (a) any condition of the Project caused by the Company or one of its affiliate or subsidiary corporations,

(b) any failure on the part of the Company or one of its affiliate or subsidiary corporations in the performance of any of its obligations hereunder individually, and as agent of the Issuer,

(c) any contract entered into in connection with the acquisition, construction and installation of the Project,

(d) any act of negligence of the Company, or of any of its agents, contractors, servants, employees or licensees,

(e) any act of negligence of any assignee of the Company, or of any agent, contractor, servant, employee or licensee of any assignee of the Company, and

(f) any violation by the Company or one of its subsidiary or affiliate corporations of any safety, fire, labor, building, zoning, environmental or other law, rule, regulation, lawful decision or order.

The Company shall indemnify and save the Issuer and the Trustee harmless from and against all costs and expenses incurred in or in connection with any action or proceeding brought thereon, and upon notice from the Issuer or the Trustee, the Company shall defend them or either of them in any such action or proceeding. The Company shall indemnify and save the Trustee harmless from and against any loss, liability, expense or advance incurred or made without gross negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trusts established under the Indenture and this Agreement, including the costs and expenses of defending itself against any claim of liability in the premises.

The Company agrees to pay to the Trustee any and all sums of money required to be paid by the Issuer pursuant to Section 1102 of the Indenture.

Section 6.7. Investment Credit. The Issuer agrees that any investment tax credit with respect to the Project or any part thereof shall be made available to the Company or one of its affiliate or subsidiary corporations, and the Issuer will fully cooperate with the Company in any effort by the Company to avail itself of any such investment tax credit, but, neither the Issuer nor the Trustee shall have any responsibility or liability for the Company's failure to receive any such investment tax credit. The Issuer agrees to cause the Trustee to cooperate in making any investment tax credit available to the Company. In the event that any action must be taken by the Issuer to secure for the Company any investment tax credit, the Company hereby agrees to indemnify the Issuer against any costs arising therefrom.

(End of Article VI.)

ARTICLE VII.

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1. **Damage and Destruction.** Unless the Company shall have elected to exercise its option to purchase the Project pursuant to Section 11.2(a) hereof, in the event prior to Payment in Full of the Bonds that the Project shall be damaged or destroyed by fire or other casualty, the Company shall promptly give written notice thereof to the Issuer and the Trustee and shall proceed to repair, rebuild or restore the property damaged or destroyed to the same condition as existed prior to the event causing such damage with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company or one of its affiliate or subsidiary corporations and as will not impair the operation or productive capacity of the Project or change the character of the Project to such extent that its ownership by the Issuer would not be permitted under the Act; provided, however, the Company shall not be required to rebuild, repair or restore any portion of the Project which the Company or one of its affiliate or subsidiary corporations determines is no longer useful in the business of the Company or one of its affiliate or subsidiary corporations. All net proceeds of insurance resulting from claims for such losses shall be paid to the Company or one of its affiliate or subsidiary corporations.

Section 7.2. **Condemnation.** Unless the Company shall exercise its option to purchase the Project pursuant to the provisions of Section 11.2(b), if the title in and to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any other person acting under governmental authority, the Company shall be obligated to continue to pay the rents specified in Section 5.3(a). The Issuer shall cause the net proceeds received by it and the Trustee, from any award made in such eminent domain proceeding, to be applied in one or more of the following ways as shall be directed in writing by the Company:

(a) the restoration of the improvements of the Project to substantially the same condition as existed prior to the exercise of such power of eminent domain;

(b) the acquisition, by construction or otherwise, by the Issuer of other improvements suitable for the Company's or its affiliate or subsidiary corporation's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company or its affiliate or subsidiary corporations without the payment of any rent other than herein provided to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the Issuer subject to no liens, security interests or encumbrances, other than Permitted Encumbrances;

(c) redemption of the Bonds at par together with accrued interest thereon to the date of redemption; provided, that no part of any such condemnation award may be applied for such redemption unless (i) all of the Bonds are to be redeemed in accordance with the Indenture upon the exercise

of the option to purchase provided by Section 11.2(b) or (ii) if less than all of the Bonds are to be redeemed, the Company shall furnish to the Issuer and the Trustee a certificate of an engineer selected by Company stating (A) that the property forming a part of the Project that was taken in such eminent domain proceeding is not essential to the Company's use or occupancy of the Project, (B) that the Project has been restored to a condition substantially equivalent to its condition prior to the taking in such eminent domain proceeding, or (C) that improvements have been acquired which are suitable for the Company's operations at the Project as contemplated by the foregoing subsection (b) of this Section.; or

(d) payment into the Bond Fund or, if payment in full of the Bonds has been made, to the Company.

Unless the Company shall have elected to exercise its option provided by Section 11.2(b), within ninety (90) days from the date of entry of a final order in any eminent domain proceeding granting condemnation, the Company shall direct the Issuer and the Trustee in writing as to which way or ways specified in this Section the Company elects to have the condemnation award applied. The Trustee may conclusively rely upon such direction and shall have no liability for payments made pursuant to this Section in reliance thereon.

The Issuer shall cooperate fully with the Company in the handling and conduct of any prospective or pending eminent domain proceeding with respect to the Project or any part thereof and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the Issuer. In no event will the Issuer voluntarily settle, or consent to the settlement of, any prospective or pending eminent domain proceeding with respect to the Project or any part thereof without the written consent of the Company.

Section 7.3. Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damages to or takings of its own property or for damages on account of the taking of or interference with the Company's or its subsidiary or affiliate corporation's rights to possession, use or occupancy of the Project.

(End of Article VII.)

ARTICLE VIII.

SPECIAL AGREEMENTS

Section 8.1. **No Warranty of Condition or Suitability by the Issuer.** THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROJECT OR THAT IT WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS. The Company releases the Issuer from, agrees that the Issuer shall not be liable for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever, except loss, damage, injury or death occasioned by the willful act or negligence of the Issuer, pertaining to the Project or the use thereof.

Section 8.2. **Inspection of the Project.** The Company agrees that the Issuer and the Trustee and their duly authorized agents shall have the right at reasonable times during business hours, subject to the Company's usual safety and security requirements for persons on the Project Land, to enter upon the Project Land and to examine and inspect the Project without interference or prejudice to the Company's or its subsidiary or affiliate corporation's operations; provided, however, that any such right of inspection shall be solely (a) in the case of the Issuer, for the purpose of determining the Company's or its subsidiary or affiliate corporation's compliance with this Agreement, and (b) in the case of the Trustee, for the purpose of (i) determining the Company's or its subsidiary or affiliate corporation's compliance with this Agreement, and (ii) enforcing the rights of the bondholders pursuant to the Trustee's responsibilities under the Indenture. Before exercising any such right of inspection, the Issuer or the Trustee, as the case may be, shall first give notice, written or oral, to the Company at least twenty-four (24) hours prior to making the requested inspection of the Project.

The Company further agrees that the Issuer and its authorized agents who are acceptable to the Company shall have such rights of access to the Project as may be reasonably necessary to cause to be completed the acquisition, construction and installation of the Project.

Section 8.3. **Company to Maintain Its Corporate Existence; Exceptions Permitted.** The Company agrees that so long as any Bonds remain outstanding, it shall maintain its corporate existence and shall not merge or consolidate with any other corporation and shall not transfer or convey all of its property, assets and licenses, or any substantial portion thereof; provided, however, the Company may, without violating any provision hereof, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States of America or the District of Columbia) or permit one or more other domestic corporations to consolidate with or merge into it, or transfer all or substantially all of its assets to another domestic corporation, but only on condition that the assignee corporation or the corporation resulting from or surviving such merger (if other than the Company) or consolidation or the corporation to which such transfer is made is in compliance with the terms of Section 8.4 and shall expressly assume in writing and agree to perform all of the Company's obligations hereunder.

Section 8.4. Qualification in the State. The Company warrants (except as may be otherwise permitted pursuant to the provisions of Section 8.3) that its affiliate or subsidiary corporation which shall be operating the Project is and throughout the term hereof will continue to be a corporation either organized under the laws of the State or qualified to do business in the State.

Section 8.5. Financial Information. The Company agrees to furnish the Trustee, the Issuer and any holder of a majority in aggregate principal amount of the then outstanding Bonds who shall have filed his name and address with the Trustee for the purpose of receiving such financial information and whose name and address shall have been transmitted to the Company by the Trustee a copy of each of its Form 10-K Annual Reports and Form 10-Q Quarterly Reports within five days after the date that such reports are transmitted for filing to the Securities and Exchange Commission.

Section 8.6. Granting of Easements. If no event of default shall have happened and be continuing, the Company may at any time or times cause to be granted easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project and such grant will be free from any lien or security interest created by the Indenture or the Company may cause to be released existing easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project with or without consideration and the Issuer agrees that it shall execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege upon receipt of:

- (a) a copy of the instrument of grant or release, and
- (b) a written application signed by the president or any vice president of the Company requesting the execution and delivery of such instrument and stating
 - (i) that such grant or release is not detrimental to the proper conduct of the business of the Company or its affiliate or subsidiary corporation which shall be operating the Project, and
 - (ii) that such grant or release will not impair the effective use or interfere with the operation of the Project and will not materially weaken, diminish or impair the security intended to be given by or under the Indenture.

Section 8.7. Release of Certain Land. Notwithstanding any other provision hereof, the parties hereto reserve the right to amend this Agreement at any time and from time to time by mutual agreement for the purpose of effecting the release of and removal of (a) any unimproved part of the Project Land (on which neither the Building nor any Project Equipment is located but on which parking, transportation or utility facilities may be located) on which the Issuer proposes to construct improvements for lease under another and different lease agreement, or (b) any part of the Project Land with respect to which the Issuer proposes to convey a fee, interest or other title to a railroad or other public or private carrier or to any

public utility or public body in order that transportation facilities or services by rail, water, road or other means or utility services for the Project may be provided, increased or improved; provided, that if at the time any such amendment is made any of the Bonds are outstanding, there shall be deposited with the Trustee the following:

(i) a copy of such amendment as executed;

(ii) a resolution of the Issuer (A) stating that the Issuer is not in default under any of the provisions hereof or of the Indenture and that the Company is not to the knowledge of the Issuer in default under any of the provisions hereof, (B) giving an adequate legal description of that portion of the Project Land to be released, (C) stating the purpose for which the Issuer desires the release, (D) stating that the improvements which will be constructed or the facilities and services which will be provided, increased or improved will be such as will promote at least one of the public purposes of the Issuer, and (E) requesting such release;

(iii) a resolution of the board of directors of the Company or the executive committee of said board (if permitted under the Company's by-laws) approving such amendment together with an officer's certificate stating that the Company is not in default under any of the provisions hereof;

(iv) a copy of the agreement between the Issuer and Company wherein the Issuer agrees to construct improvements on the portion of the Project Land so requested to be released and agrees to lease the same to the Company, and wherein the Company agrees to lease from the Issuer, or a copy of the instrument conveying the title or other interest to a railroad, public utility or public body; and

(v) a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of such amendment and stating that, in the opinion of the person signing such certificate, (A) the portion of the Project Land so proposed to be released is necessary or desirable for railroad, utility services or roads to benefit the Project or is not otherwise needed for the operation of the Project for the purposes hereinabove stated, and (B) the release so proposed to be made will not impair the utility of the Project and will not destroy the means of ingress thereto and egress therefrom.

No release effected under this Section shall entitle the Company to any diminution in or postponement or abatement of the rents payable under Section 5.3(a).

Section 8.8. Representations and Agreements of Company and Issuer with Respect to Capital Expenditures. The Bonds are being issued by the Issuer in compliance with the conditions necessary for the interest income on the Bonds to be exempt from Federal income taxation pursuant to the provisions of Section 103(b)(6)(D) of the Code relating to "industrial development bonds" issued as part of an issue the aggregate authorized face amount of which is \$10,000,000 or less and substantially all of the proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation under Section 167 of the Code. Based on

the representation of the Company contained in Section 2.2(k), in determining the aggregate face amount of the Bonds for the purpose of establishing compliance with the limitation contained in Section 103(b)(6)(D) of the Code, there may properly be excluded for purposes of applying Section 103(b)(6)(D)(ii) capital expenditures of an amount not to exceed \$10,000,000. It is the intention of the parties hereto that the interest on the Bonds be and remain free from Federal income taxation and to that end the Issuer and the Company do hereby covenant and agree with each other and with the Trustee for the benefit of the holders of any Bonds, present and future, as follows:

(a) that neither of them will cause or permit the proceeds of the Bonds to be used in a manner which will cause the interest on the Bonds to lose the exemption from Federal income taxation conferred by Section 103(b)(6)(D) of the Code and the applicable Income Tax Regulations thereunder.

(b) The Issuer and the Company agree that during the three-year period immediately following the date of the issuance and delivery of the Bonds, neither of them shall make or cause or permit to be made any capital expenditures (other than those mentioned in Section 103(b)(6)(F) of the Code) with respect to "facilities" described in Section 103(b)(6)(E) of the Code which are located in the Town of Calera, which would cause the interest payable on the Bonds to be or become subject to Federal income taxation.

(c) The Company further agrees that should the circumstances set forth in Sections 103(b)(6)(D) and (E) of the Code occur (during the six-year period referred to therein), either through the fault of the Company or through circumstances beyond the Company's control, and there shall occur a Determination of Taxability as defined in Section 8.9, the Company shall promptly purchase the Project as provided for in Section 12.2 and the Company and the Issuer hereby agree that the Issuer will use moneys received from such purchase for the immediate redemption of all outstanding Bonds and otherwise as provided in Section 8.9.

(d) The Company further agrees to provide the Trustee within ten (10) days following the first three anniversary dates of the closing of the issuance and delivery of the Bonds, and any registered holder of a majority in aggregate principal amount of any then outstanding Bonds, a certificate of the chief financial officer of the Company within ninety (90) days of the said first three anniversary dates stating that during the period beginning three years prior to the date of the issuance and delivery of the Bonds and extending through the applicable date such certificate is to cover, capital expenditures (including as capital expenditures for this purpose, the principal amount of the Bonds) in excess of \$10,000,000 (or any such larger amounts as may be hereafter permitted by law) excluding such amounts as are properly excludable pursuant to Section 103(b)(6)(I) of the Code, have not been paid or incurred with respect to "facilities" described in said Section 103(b)(6)(E) of the Code which are located in the Town of Calera, Alabama.

(e) The Issuer and the Company further agree to fully comply, during the term hereof, with all effective rules, rulings and regulations promulgated by the Department of Treasury or the Internal Revenue Service with respect

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to bonds issued under said Section 103(b)(6)(D) of the Code so as to maintain the tax-exempt status of the interest payable on the Bonds.

(f) The Company agrees to fully comply with all effective rules, regulations and other restrictions with respect to the UDAG Grant during the term of this Agreement and with covenants and agreements contained in the UDAG Grant Agreement.

Section 8.9. Event of Taxability; Determination of Taxability. If there occurs a "Determination of Taxability" ("Determination"), as hereinafter defined, not later than forty-five (45) days following the date of such Determination the Company shall accelerate the payments due under Section 5.3(a) of this Agreement and shall pay to the Trustee as the purchase price of the Project for deposit in the Bond Fund, the following:

(a) For application by the Trustee to the redemption of Bonds which are outstanding on the date of such Determination and which will not mature or otherwise be redeemed prior to the redemption date provided for in this Section:

(i) the principal amount of such Bonds plus accrued interest on the principal amount of such Bonds to such redemption date; plus

(ii) an additional amount equal to 2% of the principal amount of such Bonds for each three month period, or any part thereof, which elapses from the date of the related "Event of Taxability" (an "Event") as hereinafter defined, to and through such redemption date.

(b) To be paid by the Trustee to the holders of Bonds outstanding on the date of the Event which are no longer outstanding on the redemption date provided for in this Section 8.9, an amount equal to 2% of the principal amount of such Bonds for each three-month period, or any part thereof, which shall have elapsed from the date of the Event to and through the date of stated maturity of such Bonds or through the date of redemption of such Bonds, whichever shall have first occurred.

The amount to be paid to the Trustee hereunder shall also include expenses of redemption and the fees and expenses of the Trustee and the paying agent(s).

An "Event" shall mean (a) the incurring of capital expenditures in excess of those permitted in Section 103(b)(6)(D) of the Code, or the taking of any action by the Company (or the failure to take any action), or the making by the Company of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Bonds or in the UDAG Grant Agreement or in connection with the UDAG Grant, which has the effect of causing the interest payable on the Bonds to become includable in the gross income of the holders of the Bonds (other than a holder who is a "substantial user" or "related person" as such terms are used in Section 103(b) of the Code); or (b) any event causing interest on the Bonds to become taxable, including, but not limited to the following: any

amendment, modification, addition, or change shall be made in Section 103 or any other provision of the Code or in any regulation or proposed regulation thereunder; or any ruling shall be issued or revoked by the Internal Revenue Service; or any other action shall be taken by the Internal Revenue Service, the Department of the Treasury or any other governmental agency, authority or instrumentality; or any opinion of any Federal Court or of the United States Tax Court shall be rendered.

A "Determination of Taxability" shall be deemed to have occurred on the first to occur of the following:

(a) on that date when the Company files (in compliance with its obligations under this Agreement) any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations Section 1.103-10(b)(2)(vi), as the same may be amended or supplemented, or otherwise) which discloses that an Event shall have in fact occurred (a "Supplemental Statement");

(b) on that date when the Company shall be advised in writing by the Commissioner or any District Director of Internal Revenue that, based upon the filings of the Company under this Agreement, or upon any review or audit of the Company, or upon any other ground whatsoever, an Event shall have occurred;

(c) on that date when the Company shall receive notice from the Trustee in writing that the Trustee (i) has been advised by the Commissioner or any District Director of Internal Revenue that the interest on the Bonds is includable in the gross income of any taxpaying bondholder due to the occurrence of an Event, or (ii) has been presented with evidence satisfactory to the Trustee that the Internal Revenue Service has assessed as includable in the gross income of any bondholder the interest on his Bonds due to the occurrence of an Event;

(d) on that date when the Company is advised in writing by the Commissioner or any District Director of Internal Revenue that there has been issued a public ruling or a private ruling requested by the Company of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service in which the Company has participated or has been given the opportunity to participate, that the interest on the Bonds is includable in the gross income of any taxpaying bondholder due to the occurrence of an Event; or

(e) on that date when the Company is advised in writing that a final Determination from which no further right of appeal exists by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Company has been given written notice and an opportunity to participate and defend that the interest on the Bonds is includable in the gross income of any taxpaying bondholder due to the occurrence of an Event;

provided, however, no Determination of Taxability shall occur under subparagraph (b), (c), (d) or (e) of this paragraph unless the Company has been afforded the

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opportunity, at its expense, to contest any such assessment and, further, no Determination shall occur until the final determination of such contest, if made.

The Company shall give prompt written notice to the Issuer and the Trustee of (a) the filing by the Company of any Supplemental Statement and (b) its receipt of any written advice from the Internal Revenue Service that an Event shall have occurred. The Company further agrees to provide the Issuer and the Trustee with copies of any notices or amendments made with respect to the UDAG Grant or the UDAG Grant Agreement promptly upon their receipt by the Company.

The Trustee shall, promptly upon learning of a Determination (whether or not the same is being contested), cause notice thereof to be given to the bondholders in the same manner as is provided in the Indenture for notices of redemption. The Trustee may, in such notice to bondholders, make provisions for obtaining advice from bondholders, in such form as shall be deemed appropriate, respecting relevant assessments made on such bondholders by the Internal Revenue Service, so as to be able, if appropriate, to verify the existence, present or future, of a Determination.

Not later than 45 days after the date of a Determination, the Company shall instruct the Trustee to apply the purchase price paid by the Company as a result of such Determination of Taxability, on the earliest possible date after the giving of the required notice of redemption under the Indenture, to the redemption of Bonds or to the payment to the holders of Bonds which have matured or have been redeemed or which will mature or will be redeemed prior to the redemption date provided for in this Section 8.9, all in accordance with the requirements hereinbefore set forth in this Section 8.9. A copy of such instructions shall be forwarded by the Company to the Issuer.

Upon the redemption date provided for in this Section 8.9, and provided there has been deposited with the Trustee the total amount as required, such amount shall constitute the total compensation due the Issuer and the holders of the Bonds as a result of an occurrence of a Determination and the Company shall not be deemed to be in default under this Agreement by reason of the occurrence of such Determination and Event.

Section 8.10. Arbitrage Covenant. The Issuer and the Company jointly and severally certify to and agree with each other and for the benefit of the purchasers and holders of the Bonds from time to time outstanding that so long as any of the Bonds remain outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 103(c) of the Code.

Section 8.11. UDAG Grant. The Company covenants and agrees that it shall comply with all of the terms and conditions contained in the UDAG Grant Agreement which are applicable to it or which are contemplated by the UDAG Grant Agreement to be applicable to the Company.

Section 8.12. **Filing of Continuation Statements.** The Company covenants and agrees to file from time to time continuation statements as provided in Section 1114 of the Indenture. The Issuer agrees to cooperate with the Company in executing any continuation statements submitted to the Issuer by the Company.

(End of Article VIII.)

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ARTICLE IX.

**ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING;
REDEMPTION; RENT PREPAYMENT AND ABATEMENT**

Section 9.1. **Assignment and Subleasing.** This Agreement may be assigned and the Project may be subleased by the Company subject, however, to the following conditions:

(a) no assignment (other than pursuant to Section 8.3) or sublease shall relieve the Company from primary liability for any of its obligations hereunder, and if any such assignment or sublease occurs, the Company shall continue to remain primarily liable for payment of the rents required to be made pursuant to Section 5.3(a) and for performance and observance of the other agreements on its part herein provided to be performed and observed by it;

(b) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased; and

(c) the Company shall, prior to such assignment or sublease, furnish notice of such assignment or sublease to the Issuer. No consent of the Trustee or the Issuer to such assignment or sublease shall be required.

Section 9.2. **Assignment of Lease to Trustee.** The Issuer will assign and pledge and create a security interest in its interest in the Pledged Revenues under the terms of the Indenture, as security for the payment of the principal of and the interest on the Bonds, but said assignment and pledge shall be subject and subordinate to this Agreement.

Section 9.3. **Restrictions on Sale of Project by Issuer.** The Issuer agrees that, except as otherwise permitted under the terms of this Agreement or the Indenture, it shall not (a) mortgage, encumber, sell, assign, transfer or convey the Project during the Lease Term, (b) create or suffer to be created any debt, lien or charge on the Pledged Revenues, or (c) take any other action which might reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Project or on its title in and to the Project. If the laws of the State at the time permit such action to be taken, nothing contained in this Section shall prevent the consolidation of the Issuer with, or the merger of the Issuer into, or the transfer of the Project as an entirety to, any public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of owning and leasing the Project; provided, (i) that no such action shall be taken without the prior written consent of the Company, unless such action shall be required by law, and (ii) that upon any such consolidation, merger or transfer, the due and punctual payment of the principal of and the interest on the Bonds, and the due and punctual performance and observance of all the agreements hereof to be kept and performed by the Issuer, shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety.

Section 9.4. Redemption of Bonds. The Issuer or the Trustee, at the request at any time of the Company and if the same are then redeemable, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or any portion of the Bonds, as may be specified by the Company, on the earliest redemption date on which such redemption may be made under such applicable provisions or upon the date set for the redemption by the Company pursuant to Section 7.1, 7.2 or 11.2. As long as the Company is not in default hereunder and the Issuer is not obligated to call Bonds pursuant to the terms of the Indenture, neither the Issuer nor the Trustee shall redeem any Bond prior to its stated maturity unless requested to do so in writing by the Company.

Section 9.5. Prepayment of Rents. There is expressly reserved to the Company the right, and the Company is authorized and permitted, at any time it may choose, so long as it is not in default hereunder, to prepay all or any part of the rents payable under Section 5.3(a), and the Issuer agrees that the Trustee may accept such prepayment when the same is tendered by the Company. All prepaid rents shall be credited on the rents specified in Section 5.3(a), in the chronological order of their due dates, or at the election of the Company shall be used for the redemption or purchase of Bonds in the manner and to the extent provided in the Indenture.

Section 9.6. Rent Abatements If Bonds Paid Prior to Maturity. If at any time the moneys in the Bond Fund are sufficient to retire, in accordance with the terms of the Indenture, all of the outstanding Bonds and to pay all fees and charges of the Trustee due or to become due through the date on which the last of the Bonds is to be retired, under circumstances not resulting in termination of the Lease Term, and if the Company is not at the time otherwise in default hereunder, the Company shall be entitled to use and occupy the Project from the date on which such moneys are in the Bond Fund to and including midnight on October 1, 2012, without the payment of rent during that interval (but otherwise on the terms and conditions hereof).

Section 9.7. Reference to Bonds Ineffective After Bonds Paid. Upon payment in full of the Bonds and all fees and charges of the Trustee, all references herein to the Bonds and the Trustee shall be ineffective and neither the Issuer, the Trustee nor the holders of any of the Bonds shall thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested and any right of the Issuer or the Trustee to indemnification under Sections 6.5 and 6.6 and 10.4, which right shall survive the payment of the Bonds and the termination of this Agreement. Reference is hereby made to Section 902 of the Indenture which sets forth the conditions upon the existence or occurrence of which payment in full of the Bonds shall be deemed to have been made.

Section 9.8. Issuer's Election to Issue Bonds Pursuant to Section 103(b)(6)(D) of the Code. Prior to the date of issuance and delivery of the Bonds, the Issuer will have made all necessary filings to effect an election with respect to the Bonds under Section 103(b)(6)(D) of the Code.

(End of Article IX.)

ARTICLE X.

EVENTS OF DEFAULT AND REMEDIES

Section 10.1. **Events of Default Defined.** The following shall be "events of default" under this Agreement and the term "event of default" shall mean, whenever it is used herein, any one or more of the following events:

(a) failure by the Company to make the payments as required under Section 5.3(a) when the same become due and payable and the continuance of such failure for a period of one (1) business day;

(b) failure of the Company to observe or perform its agreements contained in Section 12.2 hereof;

(c) failure by the Company or one of its affiliate or subsidiary corporations which shall be operating the Project to observe and perform any of its agreements contained herein (other than the agreement of the Company contained in Sections 5.3 and 12.2 hereof) for a period of thirty (30) days after written notice (unless the Company and the Trustee shall agree in writing to an extension of such time prior to its expiration) specifying such failure and requesting that it be remedied, given by the Issuer or the Trustee to the Company, or in the case of any such default which can be cured with due diligence but not within such thirty-day period, the Company's failure to proceed promptly to cure such default and thereafter to prosecute the curing of such default with due diligence;

(d) the Company shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of the Company or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against the Company in an involuntary case under said Federal Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; and

(e) a proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or readjustment of debts, of the Company, as the case may be, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the Company, as the case may be, or of all or any substantial part of its assets, (iii) similar relief in respect of the Company, as the case may be, under any

law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days from commencement of such proceeding or case, or an order for relief against the Company shall be entered in an involuntary case under said Federal Bankruptcy Code; or

(f) the occurrence of an "event of default" under the Indenture or the Guaranty.

The foregoing provisions of this Section are subject to the following limitations: If by reason of "force majeure" the Company is unable in whole or in part to carry out the agreements on its part herein contained, other than the agreements on the part of the Company contained in Article V and Sections 6.3, 6.4, 8.3, 8.9 and 12.2, the failure to perform such agreements due to such inability shall not constitute an event of default nor shall it become an event of default upon appropriate notification to the Company or the passage of the stated period of time. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company. The Company agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Company from carrying out such agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Company, unfavorable to the Company.

Section 10.2. Remedies. Whenever any event of default shall have happened and be continuing, the Issuer, or the Trustee as provided in the Indenture, may take any one or more of the following remedial steps:

(a) the Issuer or the Trustee may, at its option, declare all installments of rent payable under Section 5.3(a) for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Issuer or the Trustee elects to exercise the remedy afforded in this subsection (a) and accelerates all rents payable under Section 5.3(a) for the remainder of the term of this Agreement, the amount then due and payable by the Company as accelerated rents shall be the sum of (i) the aggregate principal amount of the outstanding Bonds, and (ii) all interest on the Bonds then due and to become due to maturity whether by acceleration or otherwise. Such sums as may then become payable shall be paid into the Bond Fund, and after the Bonds and accrued interest thereon have been fully paid and any costs occasioned by such event of default have

been satisfied, any excess moneys in the Bond Fund shall be returned to the Company as an overpayment of rents;

(b) the Issuer or the Trustee may re-enter and take possession of the Project without terminating the Lease Term and without any liability to the Company or any of its affiliate or subsidiary corporations for such entry and repossession, and sublease the Project for the account of the Company, holding the Company liable for the difference in the rents and other amounts payable by such sublessee in such subleasing and the rents and other amounts payable by the Company hereunder;

(c) the Issuer or the Trustee may terminate the Lease Term, exclude the Company or any of its affiliate or subsidiary corporations from possession of the Project and use its best efforts to lease the Project to another for the account of the Company, holding the Company liable for all rents and other amounts payable by the Company hereunder up to the effective date of such lease;

(d) the Issuer or the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the rents then due and thereafter to become due, or to enforce performance and observance of any agreement of the Company hereunder; and

(e) the Trustee may exercise any remedies provided for in the Indenture.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture and after payment in full of the Bonds and the payment of any costs occasioned by an event of default hereunder, shall be paid to the Company as an overpayment of rent.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice or notices as may be herein expressly required. Such remedies as are reserved to the Issuer in this Article shall also extend to the Trustee, and the Trustee and the holders of the Bonds shall be deemed third-party beneficiaries of all agreements herein contained.

Section 10.4. Agreement to Pay Attorneys' Fees and Expenses. If there should occur an event of default hereunder and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of rents or the enforcement of performance or observance of any agreement on the part of the

Company herein contained, the Company agrees that it will on demand therefor pay to the Issuer or the Trustee the reasonable fee of such attorneys and such other reasonable expenses so incurred by the Issuer or the Trustee.

Section 10.5. Waiver of Events of Default. If, in compliance with the requirements of Section 1010 of the Indenture, the Trustee shall waive any Event of Default as therein defined and its consequences and rescind any declaration of acceleration of payments of the principal of and interest on the Bonds, such waiver shall also waive any event of default hereunder and its consequences and such rescission of a declaration of acceleration of principal and interest on the Bonds shall also rescind any declaration of any acceleration of rent payments hereunder. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of such event of default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Company, the Trustee and the holders or owners of the Bonds shall be restored to their former positions and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other event of default or impair any right consequent thereon.

Section 10.6. No Additional Waiver Implied by One Waiver. If any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7. Waiver of Appraisement, Valuation, etc. If there should occur an event of default hereunder, the Company agrees to waive, to the extent it may lawfully do so, the benefit of all appraisement, valuation, stay, extension or redemption laws now or hereafter in force, and all right of appraisement and redemption to which it may be entitled.

(End of Article X.)

ARTICLE XI.

OPTIONS IN FAVOR OF COMPANY

Section 11.1. **Options to Terminate the Lease Term.** The Company shall have the following options to terminate the Lease Term:

(a) before payment in full of the Bonds, the Company may terminate the Lease Term by giving the Issuer notice in writing of such termination and by paying to the Trustee an amount of money which, when added to the moneys in the Bond Fund, will be sufficient to pay, retire and redeem all of the outstanding Bonds in accordance with the provisions of the Indenture (including, without limiting the generality of the foregoing, principal, interest to maturity or earliest applicable redemption date, as the case may be, redemption premium (if any), expenses of redemption and the Trustee's and paying agents' fees and expenses), and, in case of redemption, making arrangements satisfactory to the Trustee for the giving of the required notice of redemption; or

(b) after payment in full of the Bonds, the Company may terminate the Lease Term by giving the Issuer notice in writing of such termination and such termination shall forthwith become effective.

Section 11.2. **Option to Purchase Project Under Certain Conditions.** The Company shall have, and is hereby granted, the option to terminate the Lease Term and to purchase the Project and direct redemption of the Bonds prior to the expiration of the Lease Term, if any of the following events shall have occurred:

(a) the Project or the Plant shall have been damaged or destroyed to such an extent that, in the judgment of the Company, (i) it cannot be reasonably restored within a period of three (3) months to the condition thereof immediately preceding such damage or destruction, (ii) the Company or its affiliate or subsidiary corporation which shall be operating the Project or Plant is thereby prevented from carrying on its normal operations at the Project or Plant for a period of three (3) months, (iii) it would not be economically feasible for the Company to replace, repair, rebuild or restore the same;

(b) title in and to, or the temporary use of, all or substantially all of the Project or the Plant shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person acting under governmental authority (including such a taking as, in the judgment of the Company, results in the Company or its affiliate or subsidiary corporation which shall be operating the Project or Plant being thereby prevented from carrying on its normal operations at the Project or Plant for a period of three (3) months);

(c) as a result of any changes in the Constitution of the State or the Constitution of the United States of America or by legislative or administrative action (whether State or Federal) or by final decree, judgment

or order of any court or administrative body (whether State or Federal), this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein;

(d) unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the Company or its affiliate or subsidiary corporation which shall be operating the Project or the Plant with respect to the operation of the Project or the Plant, including, without limitation, Federal, State or other ad valorem, property, income or other taxes (not being imposed on the date hereof) which, in the judgment of the Company, would prevent the Company or its affiliate or subsidiary corporation which shall be operating the Project or the Plant from carrying on its normal operations at the Project or the Plant for a period of three (3) months;

(e) a change in the economic availability of raw materials, energy sources, operating supplies or transportation or other facilities necessary for the operation of the Project or the Plant or such technological or other changes which in the judgment of the Company render the Project or Plant uneconomic.

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To exercise any such option, the Company shall, within ninety (90) days following the event giving rise to the Company's desire to exercise such option, or at any time during the continuation of the condition referred to in subsection (e) above, give written notice to the Issuer and to the Trustee, if any of the Bonds shall then be outstanding, and shall specify therein the date of closing of such purchase, which date shall be not less than forty-five (45) days nor more than ninety (90) days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price which shall be paid to the Trustee by the Company upon its exercise of the option granted in this Section shall be the sum of the following:

(i) an amount of money which, when added to the moneys in the Bond Fund, will be sufficient to pay and redeem all of the then outstanding Bonds on the earliest applicable redemption date including, without limitation, principal plus accrued interest thereon to said redemption date, plus

(ii) an amount of money equal to the Trustee's and the paying agents' fees and expenses under the Indenture accrued and to accrue until such final payment and redemption of the Bonds, plus

(iii) the sum of TEN DOLLARS (\$10.00) which shall be paid by the Trustee to the Issuer.

Upon the exercise of the option granted in this Section any net proceeds of insurance or condemnation awards shall be paid to the Company.

Section 11.3. **Additional Option to Prepay.** The Company shall have, and is hereby granted, the additional option to prepay the rents and cause the Bonds to be called for redemption at the earliest date permitted under the Indenture by paying to the Trustee an amount which, when added to the amount on deposit in the

Bond Fund, will be sufficient to pay and redeem all the outstanding Bonds in accordance with the provisions of the Indenture (including, without limiting the generality of the foregoing, principal, interest to maturity or earliest applicable redemption date, as the case may be, expenses of redemption and Trustee's and paying agents' fees and expenses), and the Trustee shall be requested to give the required notice of redemption at the earliest date permitted under the Indenture, and to make other arrangements satisfactory to the Trustee in connection with such redemption.

Section 11.4. Option to Purchase Unimproved Land. The Company shall have, and is hereby granted, an option to purchase any unimproved portion of the Project Land (on which neither the Building nor any Project Equipment is located but on which parking, transportation or utility facilities may be located) at any time and from time to time at a purchase price equal to \$1,000 per acre of the portion of the Project Land to be purchased, provided that it furnishes the Issuer with the following:

(a) a written notice containing (i) an adequate legal description of that portion of, or interest in, the Project Land with respect to which such option is to be exercised, (ii) a statement that the Company intends to exercise its option to purchase such portion of, or interest in, the Project Land on a date stated, which shall not be less than forty-five (45) days nor more than ninety (90) days from the date of such notice, and (iii) a statement that the use to which it is intended that such portion of, or interest in, the Project Land is to be devoted will promote at least one of the public purposes of the Issuer;

(b) a certificate of an Independent Engineer, dated not more than ninety (90) days prior to the date of the purchase and stating that, in the opinion of the person signing such certificate, (i) the portion of, or interest in, the Project Land with respect to which the option is exercised is not needed for the operation of the Project for the purpose hereinabove stated or that sufficient right and title is reserved to the Issuer to fulfill said needs, and (ii) the purchase will not impair the utility of the Project for the purposes for which it was designed to be used or most recently modified and will not destroy the means of ingress thereto and egress therefrom; and

(c) an amount of money equal to the purchase price computed as provided in this Section.

The Issuer agrees that upon receipt of the notice, certificate and money required in this Section to be furnished to it by the Company, the Issuer will promptly deliver the same to the Trustee for deposit in the Bond Fund and secure from the Trustee a release from the liens or security interests afforded by the Indenture of such portion of, or interest in, the Project Land with respect to which the Company shall have exercised the option granted to it in this Section, subject to any right and title reserved in and to the Issuer, and that thereafter such portion or interest shall not be deemed to be Project Land. If the Company shall exercise the option granted to it under this Section, the Company shall not be entitled to any diminution in or postponement or abatement of the rental payments and other payments required to be made pursuant to Section 5.3(a).

If the Company purchases any unimproved part of, or interest in, the Project Land pursuant to this Section, the Company and the Issuer agree that all walls presently standing or hereafter erected on or contiguous to the boundary line of the portion of, or interest in, the Project Land so purchased shall be party walls and each party grants the other a 10-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction. If the Company utilizes any party wall for the purpose of tying-in construction that will be utilized under common control with the Project, the Company may also tie in to the utility facilities on the Project Land for the purpose of serving the new construction and may remove any non-loadbearing wall panels in the party wall; provided, however, that if the property so purchased ceases to be operated under common control with the Project, the Company agrees that it will install non-loadbearing wall panels similar in quality to those that have been removed and will provide separate utility services for the new construction. No wall may be so utilized by the Company unless prior thereto the Issuer has been furnished with a certificate of an Independent Engineer stating that the proposed utilization will not impair the usefulness of the Project for the purposes for which it was designed to be used or most recently modified.

Section 11.5. Conveyance on Purchase. At the closing of the purchase pursuant to Article XII hereof or pursuant to the exercise of any option to purchase granted herein, the Issuer will upon receipt of the purchase price deliver to the Company documents conveying to the Company good and marketable fee simple title in and to the property with respect to which such purchase is being consummated, as such property then exists, subject to the following: (i) those liens, security interests and encumbrances (if any) to which such title in and to said property was subject when conveyed to the Issuer, (ii) those liens, security interests and encumbrances created by the Company or to the creation or suffering of which the Company consented in writing, (iii) those liens, security interests and encumbrances resulting from the failure of the Company to perform or observe any of its agreements contained herein, (iv) Permitted Encumbrances other than the Indenture and this Agreement and (v) if said purchase is consummated pursuant to the exercise of an option granted in Section 11.2(b), the rights and title of the condemning authority.

Section 11.6. Relative Position of Options and Indenture. The options granted to the Company in this Article, except under Section 11.4, shall be and remain prior and superior to the Indenture and may be exercised whether or not there exists an event of default hereunder, provided that the existence of such event of default will not result in nonfulfillment of any condition to the exercise of any such option.

(End of Article XI.)

ARTICLE XII.

OBLIGATION OF COMPANY

Section 12.1. **Obligation to Purchase Project.** The Company agrees to purchase, and the Issuer agrees to sell, the Project for TEN DOLLARS (\$10.00) at the expiration or sooner termination of the Lease Term following payment in full of the Bonds. The obligation specified in this Section shall be and remain prior and superior to the Indenture and may be exercised whether or not there exists an event of default hereunder provided that the existence of such event of default will not result in nonfulfillment of any condition to this obligation.

Section 12.2. **Obligation of Company to Purchase Project Under Certain Circumstances.** The Company shall be obligated to purchase the Project prior to the expiration of this Agreement and prior to payment in full of the Bonds (or prior to making provision for payment thereof in accordance with the Indenture) if there should occur a "Determination of Taxability", as defined in Section 8.9. Within forty-five days after the Company receives notice of such Determination of Taxability, the Company hereby agrees to purchase the Project and the Issuer hereby agrees to sell the Project. The purchase price which shall be paid to the Trustee by the Company shall be the amounts set forth in Section 8.9.

Upon the occurrence of a Determination of Taxability, any options of the Company to purchase the Project or to have the Issuer redeem the Bonds under any other redemption provision of the Indenture shall be superseded by its obligation to purchase the Project under this Section for the purchase price herein set forth.

(End of Article XII.)

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ARTICLE XIII.

MISCELLANEOUS

Section 13.1. **Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed, as follows:

- | | | | |
|-----|-------------------|---|--|
| (a) | If to the Issuer | - | The Industrial Development Board
of the Town of Calera
Attention: _____

Calera, Alabama |
| (b) | If to the Company | - | IC Products Company
Attention: Treasurer
111 East Wacker Drive
Chicago, Illinois 60601 |
| | With a copy to | - | General Counsel
IC Products Company
111 East Wacker Drive
Chicago, Illinois 60601 |
| (c) | If to the Trustee | - | Marine Midland Bank, N.A.
Attention: Corporate Trust
Department
250 Park Avenue
New York, New York 10177 |

A duplicate copy of each notice, approval, consent, request or other communication given hereunder by the Issuer, the Company or the Trustee to any one of the others shall also be given to all of the others. The Issuer, the Company and the Trustee may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

Section 13.2. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns.

Section 13.3. **Severability.** If any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.4. **Amounts Remaining in Bond Fund.** Subject to and in accordance with the terms and conditions of Section 509 of the Indenture, certain

surplus moneys remaining in the two accounts in the Bond Fund shall belong to and be paid to the Company by the Trustee as an overpayment of the purchase price for the Project.

Section 13.5. **Amendments, Changes and Modifications.** Except as otherwise provided herein or in the Indenture, subsequent to the date of issuance and delivery of the Bonds and prior to their payment in full, this Agreement may not be effectively amended or terminated without the written consent of the Trustee.

Section 13.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 13.7. **Captions.** The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions hereof.

Section 13.8. **Recording of Agreement.** This Agreement and every assignment (other than the assignment in the Indenture to the Trustee) and modification hereof shall be recorded in the office provided by law as the proper place for recordation.

Section 13.9. **Law Governing Construction of Agreement.** This Agreement shall be governed by, and construed in accordance with, the laws of the State.

Section 13.10. **Net Lease.** The Company's obligation hereunder shall be a "net lease" and the Company shall pay absolutely net during the Lease Term the rents specified herein, without abatement, deduction or set-off other than those herein expressly provided.

Section 13.11. **Limited Obligation.** The obligations and agreements of the Issuer contained herein shall be deemed obligations and agreements of the Issuer and not of any member, officer, agent or employee of the Issuer (other than the Company) in his individual capacity, and the members, officer, agents and employees of the Issuer shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in any respect hereof, or of any transaction contemplated hereby. The obligations and agreements of the Issuer contained herein shall not constitute an obligation of the State or any political subdivision thereof. The Bonds do not constitute an indebtedness of the State, or any political subdivision thereof, and the Bonds shall be payable solely from the revenues promised herein for the payment thereof. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledge to the payment of the Bonds.

(End of Article XIII.)

IN WITNESS WHEREOF, the Issuer and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be affixed hereto and attested by their authorized officers, all as of the date first above written.

THE INDUSTRIAL DEVELOPMENT
BOARD OF THE TOWN OF CALERA

By: William M. Smith
Chairman

(CORPORATE SEAL)

Attest:

James P. Carter
Secretary

As to the Issuer, signed and
sealed in the presence of:

William R. Justice
Witness

Eleanora A. Sear
Notary Public

My commission expires: _____

(NOTARIAL SEAL)

(Execution by the Company follows on the next page.)

IC PRODUCTS COMPANY

(CORPORATE SEAL)

Attest:

By: *[Signature]*

Vice President-Finance and
Assistant Treasurer

[Signature]
Assistant Secretary

As to the Company, signed and
sealed in the presence of:

Carol L. Green
Witness

Manasse C. Olson
Notary Public

My commission expires: *July 20, 1986*

(NOTARIAL SEAL)

ACKNOWLEDGMENT OF ISSUER

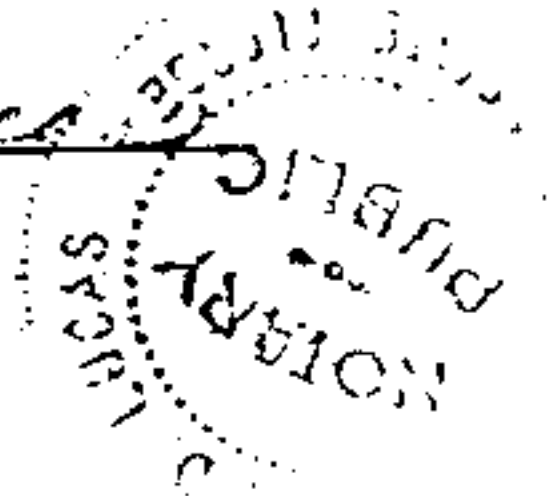
STATE OF ALABAMA

COUNTY OF SHELBY

On the 9th day of November, 1982, before me personally came William M. Schroeder and James L. Carden, to me known, who, being by me duly sworn, did depose and say that they reside at Calera, Alabama and Calera, Alabama, respectively; that they are Chairman and Secretary, respectively, of The Industrial Development Board of the Town of Calera, the Issuer described in and which executed the above instrument; that they know the seal of said Issuer; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of said Issuer, and that they signed their names thereto by like authority.

Eleanore L. Lucas
Notary Public

(SEAL)



ACKNOWLEDGMENT OF COMPANY

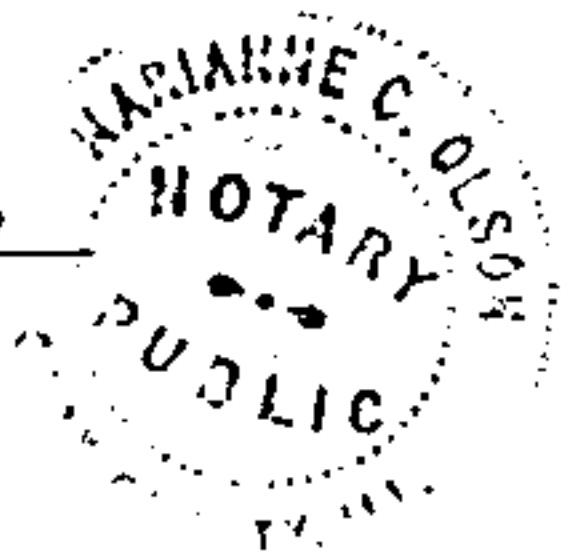
STATE OF ILLINOIS

COUNTY OF COOK

One the 9th day of November, 1982, before me personally came J.T. Grade and Eugene H. Cahill, to me known, who, being by me duly sworn, did depose and say that they reside at IC Industries, Inc., Chicago, and they are Vice President-Finance and Assistant Treasurer and Assistant Secretary, respectively, of IC Products Company, the Company described in and which executed the above instrument; that they know the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said Company, and that they signed their names thereto by like authority.

Marianne C. Olson
Notary Public

My Commission Expires July 20, 1986
(SEAL)



BOOK 343 PAGE 552

EXHIBIT "A"

to

LEASE AGREEMENT
between
THE INDUSTRIAL DEVELOPMENT BOARD OF
THE TOWN OF CALERA
and
IC PRODUCTS COMPANY,
dated as of October 1, 1982

DESCRIPTION OF PROJECT LAND:

Commencing at a point of intersection of the East side of a public road and North side of the Southern Railroad Main Line right-of-way, 100 feet wide; being the Southwesterly corner of the Abex Corporation Wheel Plant property; thence along the North side line of the Railroad right-of-way, North 65 degrees 26 minutes East, a distance of 1005.62 feet to the point of beginning of the parcel being conveyed; continuing along the North side of the Railroad right-of-way, North 65 degrees 26 minutes East a distance of 1200.00 feet to a point; thence North 24 degrees 34 minutes West a distance of 255.00 feet to a point being the Northeast corner of the formerly recorded Woodbine Avenue, 80.00 feet wide, which is now closed; thence by the North side of former Woodbine Avenue South 65 degrees 26 minutes West, a distance of 700.00 feet to a point; thence North 24 degrees 34 minutes West a distance of 125.00 feet to a point thence South 65 degrees 26 minutes West a distance of 500.00 feet to a point; thence South 24 degrees 34 minutes East a distance of 380.00 feet to the point of beginning of the parcel being described, containing 8.4596 acres. Situated in Shelby County, Alabama.

BOOK 343 PAGE 553

EXHIBIT "B"

to

LEASE AGREEMENT
between
THE INDUSTRIAL DEVELOPMENT BOARD OF
THE TOWN OF CALERA
and
IC PRODUCTS COMPANY,
dated as of October 1, 1982

PROJECT EQUIPMENT LIST:

BOOK 343 PAGE 554

Custom Axle washing/cleaning device
Snyder Vertical wheel finish boring machine and chip conveyor
Wheel conveyors, vertical and horizontal
Custom axle conveyors
Seven (7) monorail and jib handling systems
Axle measuring device
Automatic Wheel Premount device
Chambersburg wheel mounting press (300 ton)
railroad bearing press (100 ton)
5 ton 80' span outdoor bridge crane with 250 feet of A frame runway
30 HP rotary screw air compressor

1982 NOV -9 AM 10:13

Thomas A. Lawrence, Jr.
JUDGE OF THE PEACE

Need Tax - Exempt

Rec. 93.00
Ord. 1.00
94.00