



RECORD

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**LEASE AGREEMENT**

between

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**

Dated as of December 1, 1982

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This Lease Agreement and all right, title and interest of The Industrial Development Board of the Town of Pelham in any and all "Pledged Revenues" (defined herein) derived under this Lease Agreement have been assigned to First Alabama Bank of Birmingham, as Trustee under the Mortgage and Trust Indenture, dated as of December 1, 1982, from The Industrial Development Board of the Town of Pelham which secures \$1,200,000 in principal amount of The Industrial Development Board of the Town of Pelham Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1982.

This instrument was prepared by:

Daniel J. O'Connor  
King & Spalding  
2500 Trust Company Tower  
Atlanta, Georgia 30303

Calvin Tate

# LEASE AGREEMENT

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## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is entered into as of December 1, 1982, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM** (the "Issuer"), a public corporation and instrumentality organized and existing under the laws of the State of Alabama, as Lessor, and **MOORE-HANDLEY, INC.** (the "Company"), a corporation organized and existing under the laws of the State of Delaware and formerly named M-H Acquisition Company, as Lessee;

### **WITNESSETH:**

In consideration of the respective representations and agreements hereinafter contained, the Issuer and the Company 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.**

#### **DEFINITIONS**

**Section 1.1. Definitions.** In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless the context or use 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. Such definitions shall be equally applicable to both the singular and plural forms of the words and terms herein defined:

**"Act"** means Act No. 648 enacted at the 1949 Regular Session of the Legislature 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, changed or modified pursuant to Article XIII of the Indenture.

**"Authorized Company Representative"** means the person or persons who at the time shall have been designated as such in or pursuant to the provisions of Section 4.3 hereof.



**"Bond Fund"** means the Bond principal and interest payment fund created by 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.

The term **"bondholder"**, **"bondholders"** or **"holder of the Bonds"** means the registered owner or owners of any Bond.

**"Bonds"** means the \$1,200,000 aggregate principal amount of The Industrial Development Board of the Town of Pelham Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1982, dated the date of issuance and delivery thereof and issued by the Issuer pursuant to the Indenture.

**"Business Day"** means a day other than a Saturday, Sunday or other day on which commercial banks in Birmingham, Alabama, are authorized or required by law to close.

**"City"** means the City of Pelham, Alabama, a municipal corporation of the State of Alabama.

**"Code"** means the Internal Revenue Code of 1954, as amended from time to time, and the applicable regulations thereunder.

**"Company"** means Moore-Handley, Inc., a Delaware corporation formerly named M-H Acquisition Company, its successors and assigns, including any surviving, resulting or transferee corporation as provided in Section 8.3 hereof.

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

**"Construction Fund"** means the Construction Fund created by Section 601 of the Indenture.

**"Construction Period"** means the period between the commencement of the acquisition, construction and installation of the Project or the date on which the Bonds are delivered to the first purchaser or purchasers thereof (whichever is earlier) and the Completion Date.

**"Financing Statements"** means any and all financing statements (including continuation statements) filed for record from time to time to perfect the security interests.

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

**"Indenture"** means the Mortgage and Trust Indenture between the Issuer and the Trustee, of even date herewith, pursuant to which the Bonds are authorized to be issued and the Issuer's interest in this Agreement and the Pledged Revenues are to be pledged and assigned as security for the payment of the principal of and interest on the Bonds, including any indenture supplemental thereto.

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**"Independent Counsel"** means an attorney or firm thereof duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia 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 of Alabama and who or which is not a full-time employee of either the Issuer or the Company.

**"Issuer"** means The Industrial Development Board of the Town of Pelham, a public corporation and instrumentality organized and existing under the Act, and its successors and assigns.

**"Lease"** means that certain Lease Agreement, dated as of July 1, 1963, by and between The Industrial Development Board of the Town of Alabaster, as lessor, and Moore-Handley, Incorporated, an Alabama corporation, as lessee, to whose interest Homecrafters Centers Inc. has succeeded by assignment.

**"Lease Term"** means the duration of the leasehold interest created by this Agreement as specified in Section 5.1 hereof.

**"Leased Building"** means those certain buildings and all other facilities and improvements forming a part of the Project and not constituting part of the Leased Equipment as they may at any time exist including the "Plant" as defined in the Lease and the improvements and fixtures described in Exhibit "F" attached hereto and by this reference made a part hereof.

**"Leased Equipment"** means those items of machinery, equipment and related personal property comprising a portion of the Project, as more fully described in Exhibit "B" attached hereto and by this reference made a part hereof, less such machinery, equipment and related property as may be released from this Agreement pursuant to Section 6.2 hereof or taken by the exercise of the power of eminent domain as provided in Section 7.2 hereof, and is further defined as all property owned or leased by the Issuer and leased or subleased to the Company which is not included in the definition of Leased Land or Leased Building, but not including the Company's own machinery, equipment and related property installed under the provisions of Section 6.1(b) hereof or any mobile equipment subject to that certain Equipment Security Agreement, between the Company and Manufacturers Hanover Commercial Corporation (Del.), dated December 30, 1981; the Leased Equipment includes any "Leased Equipment" as defined in the Lease.

**"Leased Land"** means the real property described in Exhibit "A" attached hereto and by this reference made a part of this Agreement, less such real property as may be taken by the exercise of the power of eminent domain as provided in Section 7.2 hereof; the Leased Land is the real property described as the "Leased Realty" in the Lease.

**"Leasehold Purchase Agreement"** means that certain Leasehold Purchase Agreement, dated as of December 30, 1981, by and between the Company and



Homecrafters Centers Inc., a Delaware corporation, pursuant to which the Company has agreed to purchase the leasehold interest of Homecrafters Centers Inc. in certain premises located in the City of Pelham, Alabama, which leasehold interest exists pursuant to the Lease.

**"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.

The term **"payment in full of the Bonds"** or **"paid in full"** when used in reference to the Bonds specifically encompasses the situations referred to in Section 902 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 hereof;

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

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

(d) unfiled and inchoate mechanics', materialmen's, architects', contractors', subcontractors', suppliers', laborers', vendors', workmen's, repairmen's, land surveyors', engineers' or other similar liens for construction work in progress;

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

(f) liens permitted under Section 6.3 hereof or granted under Section 8.6 hereof;

(g) liens, encumbrances, easements, rights-of-way, restrictions, reservations, exceptions, defects and irregularities described in any evidence as to the status of title furnished to the Company by the Issuer pursuant to Section 3.2 hereof;

(h) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties

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similar in character to the Project and as do not materially impair the property affected thereby for the purpose for which it was acquired or is held by the Issuer;

(i) Transmission Line Permit to Alabama Power Company as shown by Deed Book 101, Page 517 in the Probate Office of Shelby County, Alabama;

(j) Right-of-way granted to The Industrial Development Board of the Town of Alabaster for a spur track from the Atlantic Coast Line Railroad Company right-of-way to property described in Deed Book 226, Page 635 in the Probate Office of Shelby County, Alabama;

(k) Right-of-way to Plantation Pipe Line as shown by Deed Book 112, Page 217, Deed Book 145, Page 430 and Deed Book 169, Page 68 in the Probate Office of Shelby County, Alabama;

(l) Agreement in regard to pipe line other than natural or L.P. Gas between Atlantic Coast Line Railroad Company and The Industrial Development Board of the Town of Pelham, recorded in Deed Book 248, Page 154 in the Probate Office of Shelby County, Alabama;

(m) Title to all minerals within the underlying premises, together with all mining rights and other rights, privileges and immunities relating thereto, as shown by the assessment of Ruth Purvis Worrell in the Tax Assessors Office of Shelby County, Alabama;

(n) Subject to encroachments, easements, sewer lines, power, gas and telephone lines, spur tracks for railroads, right-of-way on southwesterly corner, all as shown on the survey of Allen Whitley, December, 1981, more particularly being a sanitary sewer line on all sides, except the northerly side, Alabama Power Company lines along the westerly and easterly sides, fire hydrants and gas valves as shown in drainage ditch with 48 inch pipes through easterly and southerly portions; and

(o) Lease Agreement between The Industrial Development Board of the Town of Alabaster and Moore-Handley, Incorporated dated July 1, 1963, and recorded in Deed Book 226, Page 639 in the Probate Office of Shelby County, Alabama.

"Permitted Investments" means (i) stocks, bonds, treasury notes, and other evidences of investment of, and those unconditionally guaranteed as to the payment of principal and interest by, the United States of America, (ii) bonds and notes of the Federal National Mortgage Association, (iii) obligations of the Federal Intermediate Credit Corporation, (iv) obligations of Federal Bank for cooperatives, (v) bonds and notes of federal home loan banks, or (vi) any other investments, including commercial paper and certificates of indebtedness issued by Commercial Banks, including the Trustee, to the extent then permitted by law. For the purpose



of this Agreement and the Indenture, any certificates of deposit purchased by the Trustee (provided investment in the same is permitted under applicable law) shall be deemed to be investments and not trust deposits.

**"Pledged Revenues"** means and shall include:

(a) the rents and other payments required to be made by the Company under this 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 certain payments required to be made pursuant to Sections 6.7, 6.8 and 6.9 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 to the extent provided for herein.

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

The term **"security interest"** or **"security interests"** shall refer to the security interest created herein and in the Indenture and shall have the meaning set forth in the Uniform Commercial Code of the State of Alabama as now or hereafter amended.

**"Series 1981 Agreement"** means that certain Lease Agreement, dated as of December 1, 1981, between the Issuer and the Company relating to the Series 1981 Bonds.

**"Series 1981 Bonds"** means the \$2,850,000 aggregate principal amount of The Industrial Development Board of the Town of Pelham Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1981.

**"Trustee"** means First Alabama Bank of Birmingham, Birmingham, Alabama, or any co-trustee or any successor trustee under the Indenture.

## 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) The Issuer is a public corporation and instrumentality duly organized and existing under the provisions of the Act by a certificate of incorporation duly filed for record in the Office of the Judge of Probate of Shelby County, Alabama. The Issuer is not in default under any of the



provisions contained in the laws of the State of Alabama and agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence. Under the provisions of the Act, the Issuer has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper corporate action, the Issuer has been duly authorized to execute and deliver this Agreement.

(b) The Project constitutes a "project" within the meaning of the Act, is located within twenty-five miles of the corporate limits of the City, and no part thereof is located within the corporate limits or the police jurisdiction of any other municipality or any county of any state other than Shelby County, Alabama.

(c) The Issuer has found and hereby declares that the issuance of the Bonds, the acquisition of the Project and the leasing or subleasing and the selling of same to the Company will be in furtherance of the public purposes expressed in the Act.

(d) Notwithstanding anything herein contained to the contrary, any obligation the Issuer may hereby incur for the payment of money shall not be a general debt on its part but shall be payable solely from the Pledged Revenues.

(e) The Issuer has been induced to enter into this undertaking by the promise of the Company to acquire certain facilities in the City, which facilities the Company will use in connection with certain warehouse, wholesale, commercial and industrial and office operations, and to acquire or undertake certain expansions, improvements and renovations to such facility in the future.

(f) To accomplish the foregoing, the Issuer proposes to issue the Bonds immediately following the execution and delivery of this Agreement to finance the acquisition of the Project. The date, denomination, interest rate or rates, maturity schedule, redemption provisions and other pertinent provisions with respect to the Bonds are set forth in the Indenture (particularly Articles II and III thereof) and by this reference thereto they are incorporated herein.

(g) By resolution duly adopted November 18, 1981, the Issuer took official action providing for the acquisition, leasing and selling of the Project and the financing of a substantial portion of the Project through the issuance of one or more series of its revenue bonds.

(h) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Issuer's right, title and interest in this Agreement and the Pledged Revenues will be pledged and pursuant to which a security interest in the aforesaid will be created as security for the payment of the principal of and interest on the Bonds. The security interest in the Leased Equipment which the Company grants herein to the Issuer to secure payment of the rents and other payments hereunder will likewise be pledged and assigned to the Trustee pursuant to the Indenture. In addition, the Issuer's leasehold interest

in and to the Leased Land and the Leased Building will be mortgaged to the Trustee by the Indenture as further security for the payment of the principal of and interest on the Bonds.

**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 under the laws of the State of Delaware, is in good standing under its corporate charter and the laws of the State of Delaware, is in good standing under the laws of the State of Alabama, has the power to enter into this Agreement and perform all obligations contained herein, and has, by proper corporate action, been duly authorized to execute, deliver and perform this Agreement.

(b) The issuance of the Bonds, the acquisition of a leasehold interest in the Project and the leasing or subleasing, as the case may be, of the Project by the Issuer to the Company has induced the Company to acquire the Project. The Project, together with the "Project" as defined in the Series 1981 Agreement, will provide approximately 22-25 new employment opportunities in such area.

(c) The Company intends to operate the Project from date of the acquisition thereof by the Issuer to the expiration or sooner termination of this Agreement as an authorized 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 performing any of its obligations hereunder except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and the execution and delivery of this Agreement and the fulfillment of or compliance with the terms and conditions hereof 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 covenants that, anything in this Agreement to the contrary notwithstanding, so long as any of the Bonds are outstanding there shall be no abatement or reduction of the rents payable by the Company except as provided in Section 9.6 hereof.

(e) The Project consists of an interest in land and property of a character subject to the allowance for depreciation under Section 167 of the Code. Substantially all of the proceeds of sale of the Bonds will be used to finance the acquisition 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, excepting the permitted transfer of Bond proceeds from the Construction Fund to the Bond Fund pursuant to Section 4,3(k) hereof.



(f) As of November 18, 1981, no final or unconditional contracts had been awarded or entered into with respect to any components of the Project and none of said components had been acquired.

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

(1) the acquisition, construction and installation of the Project and the expenditure of all Bond proceeds will be completed by December 31, 1983,

(2) the Company has entered into a contract providing for the acquisition of the Project and the amounts required to be paid under said contract exceeds 2 1/2% of the estimated total cost of the Project,

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

(4) work on the Project will proceed with due diligence to completion, and

(5) except as contemplated herein, the Project will not be sold or disposed of, in whole or in part, prior to the maturity or payment in full of the Bonds, whichever shall first occur.

(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.

### ARTICLE III.

#### LEASING CLAUSES AND WARRANTY OF TITLE

Section 3.1. **Lease of the Project.** The Issuer hereby leases or subleases, as described below, to the Company, and the Company hereby leases from the Issuer, the Project at the rent set forth in Section 5.3 hereof and in accordance with the provisions of this Agreement. Pursuant to this Agreement, the Issuer hereby subleases to the Company (i) that portion of the Leased Building which is leased by the Issuer pursuant to the Lease, (ii) the Leased Land, and (iii) that portion of the Leased Equipment defined as "Leased Equipment" in the Lease (such property is hereinafter collectively referred to as the "Subleased Property"). Pursuant to this Agreement, the Issuer hereby leases to the Company (i) that portion of the Leased Building described in Exhibit "F" hereto and (ii) all the Leased Equipment other than that portion thereof known as the "Leased Equipment" in the Lease (such property is hereinafter collectively referred to as the "Leased Property").



**Section 3.2. Warranty of Title.** The Issuer for itself, its successors and assigns, warrants to the Company, its successors and assigns, that it has a valid and enforceable leasehold interest in and to the Leased Land described in Exhibit "A" free from all encumbrances except Permitted Encumbrances. The Issuer, for its successors and assigns, will not create, suffer or place on the Project any liens, encumbrances, exceptions or other defects, subject, however, to Permitted Encumbrances. The Issuer will furnish, at the Company's expense, a mortgagee title insurance policy or binder issued by a title insurance company nominated by the Company insuring that the Indenture conveys a first lien on the Issuer's leasehold interest in the Leased Land, subject only to this Agreement and the other Permitted Encumbrances as defined in this Agreement, in a face amount not less than the estimated cost to the Issuer of the Leased Land and the Leased Building.

**Section 3.3. Quiet Enjoyment.** (a) Throughout the Lease Term, the Issuer covenants and agrees that, so long as the Company is not in default hereunder, the Company shall be entitled to possess, occupy, use, enjoy and operate the Project as a facility for warehouse, wholesale, commercial and industrial and office operations and other commercial purposes, free from molestation, hindrance, eviction or disturbance by the Issuer or by any other person or persons lawfully claiming through or under the Issuer. Such possession, occupation, use, enjoyment and operation of the Project by the Company or any permitted sublessee shall be exclusive. The Issuer warrants and covenants that it will defend the Company in the quiet enjoyment and peaceable possession of the Leased Property, free from all claims of all persons whomsoever, throughout the Lease Term, so long as the Company shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not have expired.

(b) With respect to the Subleased Property, the Company and the Issuer hereby acknowledge that this Agreement is subject and subordinate to the Lease. The Issuer has delegated the performance of all of its duties under the Lease to the Company pursuant to Section 6.11 of this Agreement. The Issuer shall not permit or suffer to exist any "event of default" or "default" under the Lease, except such as may result from a default by the Company hereunder.

**Section 3.4. Execution, Delivery and Escrowing of Assignment of Lease Agreement.** The Issuer agrees to execute an assignment of the Issuer's interest in and to the Lease and a bill of sale relating to the Project to the Company and to deliver the same to the Trustee to be held in escrow for delivery to the Company at the expiration or sooner termination of the Lease Term following the payment in full of the Bonds. Said assignment and bill of sale shall be in the form of that which is attached hereto as Exhibit "C" and by this reference thereto incorporated herein. Upon the expiration or sooner termination of the Lease Term following the payment in full of the Bonds, the Trustee shall deliver to the Company the above-referenced assignment and bill of sale the same to be recorded, and the Issuer agrees to execute such other instruments and documents as the Company may reasonably request to perfect the transfer of title to the Project to the Company.

**ARTICLE IV.**

**COMMENCEMENT AND COMPLETION OF THE PROJECT;**  
**ISSUANCE OF THE BONDS**

**Section 4.1. Agreement to Acquire and Construct the Project.** Not later than the delivery hereof the Issuer will have acquired a leasehold interest in and to the Leased Land and, subject to the provisions of Section 4.6, the Issuer agrees that:

(a) It will cause the improvements to the Leased Land to be constructed on the Leased Land or the "Leased Land" (as defined in the Series 1981 Agreement), 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.

(b) It will cause to be acquired and installed in the Leased Building or on the Leased Land or in the "Leased Building" or on the "Leased Land" (as such terms are defined in the Series 1981 Agreement), that portion of the Leased Equipment to be acquired with the proceeds of the Bonds, 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. Such portion of the Leased Equipment shall be the property of the Issuer and subject to the terms hereof.

The Issuer, to the maximum extent permitted by law, 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 of the Issuer hereinbefore provided in this Section 4.1, 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, and assumes and adopts all contracts entered into by, the Company with respect to the Project prior to the date hereof. This appointment of the Company to act as agent and all authority hereby conferred or granted is conferred and granted 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.

The Company agrees to acquire, construct and install the Project with all reasonable dispatch and to use its best efforts to cause said acquisition, construction and installation to be completed as soon as practicable, delays incident to strikes, riots, acts of God or the public enemy or any other causes beyond the reasonable control of the Company only excepted, but if said acquisition, construction and installation is not completed within the time herein contemplated there shall be no resulting liability on the part of the Company and no diminution in or postponement or abatement of the rents required in Section 5.3 to be paid by the Company.



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 of a leasehold interest in the Subleased Property and 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 issuance and 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.** The Issuer will in the Indenture 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 instruments whereby the Issuer acquired a leasehold interest in the Subleased Property, payments for 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 leasehold interest of the Issuer in and to the Leased 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 leasehold interest of the Issuer in and to the Leased Land;

(b) payment to the Company and the Issuer, as the case may be, of such amounts, if any, as shall be necessary to reimburse the Company and 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 the leasehold interest in and to the Leased Land (other than that portion of the Leased Land subleased by the Company to Homecrafters Centers Inc., a Delaware corporation, as provided in Section 4.3(d) of this Agreement), the acquisition and installation of the Leased 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 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, and all other documents in connection therewith and in connection with the acquisition of the leasehold interest in and to the Leased Land, including fees for recording this Agreement and the Indenture and payment of the premium for any title insurance policy or binder which may be obtained with respect to the Leased Land;



(d) payment of, or reimbursement of the Company and the Issuer for, subject to the proviso below, expenditures in connection with the acquisition by the Issuer of the leasehold interest in the Leased Land, labor, services, material, supplies and/or equipment used or furnished in site improvement and in the construction of improvements to the Leased Land, all as provided in the plans and specifications therefor, payment for the cost of the acquisition and installation of the Leased 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; provided, however, that, no part of the moneys on deposit in the Construction Fund shall be used to pay or reimburse the Company for the cost of acquiring a leasehold interest in any portion of the Leased Land so long as such portion is subject to a sublease from the Company to Homecrafters Centers Inc., a Delaware corporation;

(e) payment of, or reimbursement of the Company 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 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 under Section 6.4;

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

(i) payment of expenses incurred with approval of the Company 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 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 acquisition, construction and installation of the Project, 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 to acquire, construct

and install additions, extensions and improvements to the Project, (ii) used by the Trustee for the redemption of Bonds at the earliest date permitted by the Indenture or the purchase of Bonds for the purpose of cancellation at any time prior to the earliest date permitted by the Indenture for the redemption of Bonds, or (iii) a combination of (i) and/or (ii) as is provided in such direction, provided that amounts approved by the Authorized Company 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. Amounts directed by the Company to be used by the Trustee to redeem Bonds or to purchase Bonds for the purpose of cancellation shall not, pending such use, be invested at a yield which exceeds the yield on the Bonds. Amounts in excess of 5% of the net proceeds of the sale of the Bonds shall not be directed by the Company to be used for the purposes described in clauses (i), (ii) or (iii) without providing the Trustee with an opinion of a firm of nationally recognized bond counsel acceptable to the Trustee stating that such use 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 shall be made by the Trustee only upon receipt of the following:

- (1) a written requisition for such payment signed by the Authorized Company Representative;
- (2) a certificate by the persons signing such requisition certifying:
  - (i) that an obligation in the stated amount has been incurred by or on behalf of the Issuer;
  - (ii) that such obligation 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, accompanied by a bill or statement of account for such obligation;
  - (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;
  - (iv) that such requisition contains no request for payment on account of any portion of such obligation which the Issuer is, as of the date of such requisition, entitled to retain under retained percentage agreements;



(v) that such obligation is for an item which is properly chargeable to the capital account of the Company for Federal income tax purposes or would be so chargeable either with a proper election by the Company or but for a proper election by the Company to deduct the costs and that payment of such obligation will not result in less than substantially all of the net proceeds of the sale of the Bonds expended at such time being used to provide land or property of a character subject to the allowance for depreciation under Section 167 of the Code; and

(vi) that such requisition contains no request for payment on account of any obligation paid or incurred prior to November 18, 1981; and

(3) with respect to any such requisition for payment for labor, services, material, supplies and/or equipment, an additional certificate, signed by the Authorized Company Representative, certifying that insofar as such obligation was incurred for labor, material, supplies and/or equipment in connection with the acquisition, construction and installation of the Project, (i) such labor and/or services were actually performed in a satisfactory manner, and (ii) such material, supplies and/or equipment were actually used in or about the construction or delivered at the site of the Project for that purpose. If any such requisition for material, supplies or equipment requires reimbursement for such item to the Company, such requisition shall include any bill of sale necessary to convey title in and to such item to the Issuer. Such requisition and certification shall be in substantially the form attached hereto as Exhibit "D" and by this reference thereto made a part hereof.

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 directors, 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 Trustee and 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 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 improvements to the Leased Land has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials, supplies and/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 therefor and all costs and expenses incurred in connection therewith have been paid,

(c) that portion of the Leased Equipment to be acquired with the proceeds of the Bonds has been acquired and installed to his satisfaction, the Leased Equipment so acquired and installed together with any other machinery, equipment and related property provided and installed in the Leased Building or on the Leased Land by the Company is suitable and sufficient for the efficient operation of the Project and all costs and expenses incurred in the acquisition and installation of such Leased Equipment and other machinery,

(d) substantially all of the net proceeds of the sale of the Bonds have been used to acquire land or property of a character subject to the allowance for depreciation under Section 167 of the Code and such costs representing proceeds so used are properly chargeable to the capital account of the Company for Federal income tax purposes or would be so chargeable either with a proper election by the Company or but for a proper election by the Company to deduct the costs, and

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

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 and shall be in substantially the form attached hereto as Exhibit "E" and by this reference thereto made a part hereof. 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 that connection. 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.

**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. 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 of the Project. 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 used as authorized by Section 4.3(k).

**Section 4.8. Investment of Bond Fund and Construction Fund Moneys Permitted.** Any moneys held in the Bond Fund or the Construction Fund shall be invested or reinvested by the Trustee upon the written request and direction of the Company in Permitted Investments, to the extent permitted by the laws of the State. Such investments shall be made upon written direction of the Authorized Company Representative and shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from the Bond Fund or the Construction Fund. The Trustee may make any and all such investments through its own bond department. Any interest or gain received from such investments shall be credited to and held in the Bond Fund or the Construction Fund and any loss from such investments shall be charged against the Bond Fund or the Construction Fund and paid by the Company.



## ARTICLE V.

### TERM OF THIS AGREEMENT; RENTAL PROVISIONS

Section 5.1. **Term of this Agreement.** This Agreement shall become effective upon its delivery and the leasehold interest created by this Agreement shall then begin, and, subject to the other provisions of this Agreement (including particularly Articles X, XI and XII hereof), shall expire at midnight, December 1, 1997, or if at said time and on said date all of the Bonds have not been paid in full, then on such date as such payment shall have been made.

Section 5.2. **Delivery and Acceptance of Possession.** The Issuer agrees to deliver to the Company sole and exclusive possession of the Project (subject (i) to the rights of the lessor under the Lease and (ii) to the right of the Trustee to enter thereon for inspection purposes and to the other provisions of Section 8.2 hereof) simultaneously with this Agreement becoming effective as provided in Section 5.1 hereof and the Company agrees to accept possession of the Project upon such delivery.

Section 5.3. **Rents and Other Amounts Payable.** The rental payments due hereunder shall be payable in monthly installments on the last Business Day of each month during the term of this Agreement, the first of such installments being due and payable on the last Business Day of the month following the month in which this Agreement becomes effective, as provided in Section 5.1 hereof. Each monthly installment of rental shall be equal to the sum of the amounts specified in clauses (a) and (b) below:

(a) (i) Beginning January 1983, and in each month thereafter to and including May 1983, one-fifth of the interest payable on the Bonds on June 1, 1983, and (ii) beginning June 1983 and in each month thereafter until the Bonds shall have been paid in full, one-sixth of the interest payable on the Bonds on the next ensuing interest payment date and

(b) (i) Beginning January 1983, and in each month thereafter to and including November 1983, one-eleventh of the principal payable on the Bonds maturing on December 1, 1983, and (ii) beginning December 1983 and in each month thereafter until the Bonds shall have been paid in full, one-twelfth of the next maturing installment of principal of the Bonds (whether at stated maturity or by mandatory sinking fund redemption as provided in Section 305 of the Indenture).

Each monthly installment of rental shall be increased as may be necessary in any month to make up any previous deficiency in any of the required monthly payments and to make up any deficiency or loss in the Bond Fund, and if at any semiannual interest payment date or any other date upon which principal and/or interest on the Bonds becomes due and payable the amount of money available in the Bond Fund is insufficient to make required payments of principal (whether at stated maturity or by mandatory sinking fund redemption as provided in Section 305 of the Indenture) and interest becoming due and payable on such date, the Company shall forthwith pay to the Trustee the amount of any such deficiency. Such rental payments provided for in this paragraph are included in Pledged Revenues.

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Anything herein to the contrary notwithstanding, any amount at any time held by the Trustee in the Bond Fund that is attributable to earnings on the investment of moneys from time to time held in the Bond Fund shall be credited against the next succeeding rental payment required to be made by the Company under the provisions of this Section 5.3 and shall reduce the payment to be then 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 interest on the Bonds then remaining unpaid, the Company shall not be obligated to make any further rental payments under the provisions of this Section.

The Trustee has agreed in the Indenture that, within fifteen Business Days following the first Business Day of June and December of each year so long as the Bonds are outstanding, the Trustee shall calculate the amount of the monthly installments of rental that will be due from the Company under the Agreement for each month during the semiannual period commencing on the first day of such June or December, as the case may be, and shall notify the Issuer and the Company thereof; provided, however, that at least fifteen Business Days prior to the date upon which the final installment of rental during such semiannual period is due, the Trustee shall determine the amount held by the Trustee that is attributable to earnings on the investment of moneys from time to time held in the Bond Fund during such semiannual period or is otherwise available in the Bond Fund for payment of such final installment and shall notify the Issuer and the Company thereof. The final installment of rental for such semiannual period shall be reduced by such amount. Unless the Issuer or the Company, prior to the payment of any installment of rental contests the amount calculated by the Trustee to be due on such date, the amount of rental as calculated by the Trustee shall become final and shall be binding upon the Issuer, the Company and the Bondholder. From and after payment of any installment of rental, neither the Issuer, the Company nor the Bondholder shall have the right to contest the Trustee's calculation of the amount of such installment of rental.

The Company agrees to pay to the Trustee until the principal of and 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 by it, as such terms are defined in the Indenture, (ii) the reasonable fees and charges of the Trustee and any other paying agents on the Bonds for acting as Paying Agent and as Bond Registrar (including the payment of any cost incurred in connection with the initial exchange of any fully registered Bond) and the reasonable fees of Trustee's Counsel 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 such terms are defined in the Indenture, as and when the same become due; provided, that the Company may, without creating a 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.

If the Company should fail to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Company until the same shall have been fully paid, and the Company agrees to pay the same with interest thereon at the rate of fifteen per centum (15%) (or the



maximum rate of interest then permitted by applicable law, whichever is less) per annum until paid. The provisions of this Section shall be subject to the provisions of Sections 9.5 and 9.6 hereof.

**Section 5.4. Place of Rental Payments.** The rents provided for in Section 5.3 hereof and the interest on delinquent rents 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 hereof shall be paid directly to the Trustee for its own use or for disbursement to any other Paying Agent on the Bonds, as the case may be.

**Section 5.5. Obligations of Company Hereunder Absolute and Unconditional.** Subject to the provisions of the second paragraph of Section 5.3 hereof and Section 9.6 hereof, the obligations of the Company to make the payments required in Section 5.3 hereof 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 interest on the Bonds shall have been paid in full the Company (i) will not suspend or discontinue any payments provided for in Section 5.3 hereof except to the extent the same have been prepaid, (ii) will perform and observe all of its other agreements contained in this Agreement, and (iii) except as provided in Sections 11.1 and 12.2 hereof, will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Issuer's leasehold interest in or title in and to the Project or any part thereof, any acts or 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 of Alabama or any political subdivision of either thereof 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 in connection with this Agreement or 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, but such action shall not excuse the Company from the performance of the obligations 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 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.

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## **ARTICLE VI.**

### **MAINTENANCE, MODIFICATION, TAXES AND INSURANCE**

#### **Section 6.1. Maintenance and Modification of Project by Company.**

(a) Throughout the term of this Agreement the Company shall at its own expense (i) keep the Project in as reasonably safe condition as prevailed on the date hereof, and (ii) keep the Leased Building and the Leased Equipment and all other improvements forming a part of the Project in as good repair and operating condition as prevailed on the date hereof, subject to ordinary wear and tear and conditions prevailing on the date hereof, making from time to time all necessary repairs thereto and renewals and replacements thereof.

(b) The Company may from time to time, in its sole discretion and at its own expense, make any additions, modifications or improvements to the Project, including the installation of machinery, equipment, and related property in the Leased Building or on the Leased Land, which are not prohibited by the terms of the Lease and which the Company may deem desirable for its business purposes; provided that all such additions, modifications and improvements do not adversely affect the structural integrity of the Leased Building and are located wholly within the boundary lines of the Leased Land or on any adjacent land in which the Issuer has a fee or leasehold interest. All machinery, equipment and related property so installed by the Company shall not constitute Leased Equipment or fixtures as to the Leased Land and the Leased Building and shall remain the sole property of the Company in which neither the Issuer nor the Trustee shall have any interest and may be modified or removed at any time while the Company is not in default under this Agreement; provided that any damage to the Project occasioned by such modification or removal shall be repaired by the Company at its own expense.

(c) The Company shall not permit any mechanics' liens, materialmen's liens or other liens to remain unpaid 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 if the Company shall first notify the Trustee of its intention so to do, the Company may in good faith contest any mechanics' liens, materialmen's liens or other liens 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, 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 this Agreement or the Indenture as to any part of the Project or the revenues from the Project will be materially endangered or the Project or any part thereof or the revenues from the Project 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 in any such contest.

**Section 6.2. Removal and Substitution of Leased Equipment.** The Issuer shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary items of

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**Leased Equipment.** In any instance where the Company in its sole discretion determines that any such items of Leased Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary for their purposes at such time, the Company may remove such items from the Leased Building and the Leased Land and sell, trade-in, exchange 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 removal from the Project of any item of Leased Equipment pursuant to the provisions of this Section shall not entitle the Company to any diminution in or postponement or abatement of the amount of the rents payable under Section 5.3 hereof.

Upon the request of the Company, the Issuer shall deliver and cause or direct the Trustee to deliver to the Company appropriate documents conveying to the Company title to any property removed from the Project pursuant to this Section 6.2, and releasing the same from the lien of the Indenture and cancelling any security interest with respect thereto.

**Section 6.3. Taxes, Other Governmental Charges and Utility Charges.** The Issuer represents, warrants and acknowledges that under present law no part of the interest of the Issuer in and to the Project will be subject to ad valorem taxation by the State of Alabama 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 Alabama taxation. The Company shall pay, as the same become lawfully due and payable, (i) all taxes and governmental charges of any kind whatsoever upon or with respect to the interest held by the Company under this Agreement, (ii) 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 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 lien on the Project prior to or on a parity with the security interest granted by this Agreement or a charge on the Pledged Revenues prior to or on a parity with the security interest therein created and made in the Indenture), (iii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iv) 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 Lease Term.

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 this Agreement or the Indenture as to any part of the Project or the Pledged Revenues will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, 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 fifteen per centum (15%) (or the maximum rate of interest than permitted by applicable law, whichever is less) per annum from the date thereof, the Company agrees to pay.

**Section 6.4. Insurance Required.** Throughout the Lease Term the Company shall keep or shall cause another to keep the Project continuously insured against such risks as are customarily insured against by businesses of like size and type in the Birmingham, Alabama, area (other than business interruption insurance), paying (except as provided in Section 4.3(g) hereof) as the same become due all premiums in respect thereto, including, but not necessarily limited to:

(a) insurance to the full insurable replacement cost, without deduction for depreciation or obsolescence, against (i) loss from damage by fire and lightning, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Alabama (provided that such insurance may provide for a deductible provision of not in excess of \$10,000 direct damage applicable to each separate instance of loss insured against), and (ii) in time of war in which the United States of America is a belligerent, against loss from the risks and hazards of war, if such insurance is then obtainable and generally carried by owners of facilities of like nature in the State of Alabama; and

(b) boiler and pressure vessel (including pressure pipes) explosion insurance in an amount at least equal to replacement value (with deductible provisions not to exceed \$100,000) against loss from damage with respect to all boilers and pressure vessels and pressure pipes which may be installed in the Project; and

(c) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Project and the adjoining streets, sidewalks, and passageways, such insurance to afford protection of not less than \$500,000 with respect to bodily injury to any one person, not less than \$500,000 with respect to bodily injury to two or more persons in any one accident, and not less than \$250,000 with respect to property damage resulting from any one occurrence and the policies evidencing such insurance may provide that the Company may be self-insured to the extent of \$100,000 in connection with each separate claim insured against. Such self-insurance may, at the Company's option, be taken directly as a deductible or indirectly under any type of retrospective rating arrangement between the Company and such insurer as it may select; and

(d) workmen's compensation coverage required by then applicable law.

**Section 6.5. Application of Net Proceeds of Insurance.** The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof



shall be applied as follows: (i) the Net Proceeds of the insurance required in Section 6.4(a) and (b) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required in Section 6.4(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 6.6. Additional Provisions Respecting Insurance.** All insurance required in Section 6.4 hereof shall be taken out and maintained in generally recognized responsible insurance companies selected by the Company and authorized to do business in the State of Alabama. All policies evidencing such insurance shall provide for payment of the losses for coverage required by Section 6.4(a) and (b) to the Issuer, the Company and the Trustee as their respective interests may appear, and the policies required by Section 6.4(a) and (b) shall contain standard mortgage clauses requiring that so long as any of the Bonds are outstanding all Net Proceeds of insurance resulting from any claim for loss or damage covered thereby shall be paid to the Trustee if the amount of Net Proceeds when added to any applicable deductible amount relating to said claim exceeds \$100,000; provided, however, that all claims regardless of amount may be adjusted by the Company with the insurers, subject to approval of the Trustee, which approval shall not be unreasonably withheld, as to settlement of any claim which is an amount which would require payment to the Trustee as aforesaid. The insurance hereby required may be contained in blanket policies now or hereafter maintained by the Company.

All such policies or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Trustee and shall contain a provision that such policy may not be cancelled unless the Trustee is notified at least thirty (30) days prior to cancellation; and at least thirty (30) days prior to expiration of any such policy, the Company shall furnish the Trustee with evidence satisfactory to the latter that the policy has been renewed or replaced or is no longer required by this Agreement.

**Section 6.7. Other Issuer Expenses.** Anything to the contrary herein notwithstanding, the Company shall pay any reasonable expenses not specifically mentioned herein which are necessarily incurred by the Issuer in connection with the Project, this Agreement, the Indenture, the Financing Statements or the Bonds.

**Section 6.8. Advances by Issuer or Trustee.** If the Company fails to maintain the full insurance coverage required by this Agreement or fails to keep the Project in as reasonably safe condition as prevailed on the date hereof, or fails to keep the Leased Building and the Leased Equipment in good repair and operating condition as prevailed on the date hereof, subject to ordinary wear and tear and conditions prevailing on the date hereof, the Issuer or the Trustee may (but unless satisfactorily indemnified shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements; and all amounts so advanced therefor by the Issuer or the Trustee will become an additional obligation of the Company to the one making the advancement, which amounts, together with interest thereon at the rate of fifteen per centum (15%) (or the maximum rate of interest then permitted by applicable law, whichever is less) per annum from the date thereof, the Company agrees to pay.

**Section 6.9. Indemnification of Issuer and Trustee.** The Company shall indemnify and save the Issuer and the Trustee harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Project during the Lease Term, and against and from all claims arising during the Lease Term from (a) any condition of the Project caused by the Company, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Agreement, (c) any contract entered into in connection with the acquisition of the Project, (d) any act of negligence of the Company or of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company; provided that the indemnity provided in this sentence shall be effective only to the extent of any loss that may be sustained by the Issuer or the Trustee in excess of the net proceeds actually received by the Issuer from any insurance carried with respect to the loss sustained, and provided further, that the indemnity shall not be effective for any claim that results from the gross negligence or wilful misconduct of the Issuer or the Trustee or their respective agents or employees. 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.

**Section 6.10. Investment Credit.** The Issuer covenants and agrees that any investment tax credit with respect to the Project or any part thereof shall be made available to the Company, 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 covenants and agrees that it will cause the Trustee to cooperate in making any investment tax credit available to the Company.

**Section 6.11. Company's Performance Under the Lease.** The Issuer hereby delegates to the Company, which delegation the Company hereby accepts, the performance of the Issuer's obligations as lessee under the Lease. The Issuer hereby agrees to provide or make available to the Company or permit the Company to exercise, the Issuer's rights and benefits under the Lease (including, without limitation, the right to cure for and on behalf of the Issuer any "event of default" or "default" under the Lease) to the extent (i) permitted by and in a manner consistent with the Lease and (ii) necessary or appropriate, in the Company's good faith judgment, to effect the purposes of or transactions contemplated by this Agreement. The Company hereby agrees to perform all the Issuer's obligations pursuant to the Lease and otherwise to maintain the Lease in full force and effect for and on behalf of the Issuer. To the extent that the obligations imposed upon the Company by this Agreement duplicate the obligations assumed by the Company under the Lease, the Company's performance of the obligation under either this Agreement or the Lease shall constitute performance of such obligation under the other. Notwithstanding the foregoing, the Issuer shall have the right to cure any "event of default" or "default" under the Lease that the Company shall fail to cure within a reasonable time after receiving notice of the existence thereof.



Section 6.12. **Payment for Police and Fire Protection.** Annually throughout the Lease Term so long as the Project is exempt from ad valorem taxes, the Company shall pay to or for the benefit of the City of Pelham, Alabama, the sum of \$5,280 as a payment that is calculated to defray the costs incurred by said City in providing police and fire protection to the Project and any Improvements. The Company shall pay said sum on or before the last Business Day of November of each year during the term of this Agreement by mailing its check in said amount to the Treasurer of the City of Pelham, City Hall, Pelham, Alabama 35124.

## **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 the provisions of Section 11.2(a), if prior to payment in full of the Bonds the Project is damaged by fire or other casualty to such extent that the claim for loss (including any deductible amount pertaining thereto) resulting from such damage is not greater than \$100,000, the Company shall be obligated to continue to make the rental payments and other payments specified in Section 5.3 hereof. In such event, the Company, or the Issuer at the Company's direction,

(i) shall, except to the extent such damaged property is, in the opinion of the Company, no longer necessary to the operating unity or character of the Project, promptly replace, repair, rebuild or restore the property damaged to substantially 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 and as will not result in an "event of default" under the Lease, impair operating unity or productive capacity of the Leased Building or change its character to such an extent that its ownership by the Issuer would not be permitted under the laws pursuant to which the Issuer was created, and

(ii) shall apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses, as well as any additional moneys of the Company necessary therefor. All Net Proceeds of insurance resulting from claims for such losses not in excess of the amount hereinabove specified in this paragraph and not used to pay expenses incurred under (i) above shall be paid to the Company.

Unless the Company shall have elected to exercise its option to purchase the Project pursuant to the provisions of Section 11.2(a), if prior to payment in full of the Bonds the Project is destroyed or is damaged by fire or other casualty to such extent that the claim for loss resulting from such destruction or damage is in excess of the amount specified in the preceding paragraph, the Company shall be obligated to continue to make the rental payments and other payments specified in Section 5.3 hereof. In the event of such damage or destruction, the Company shall promptly give written notice thereof to the Trustee, and all Net Proceeds of insurance resulting from claims for such losses in excess of the amount specified in the

preceding paragraph shall be paid to and held by the Trustee in a trust account and invested in Permitted Investments, whereupon

(i) the Company, or the Issuer at the Company's direction, shall, except to the extent such damaged property is, in the opinion of the Company, no longer necessary to the operating unity or character of the Project, proceed promptly to replace, repair, rebuild or restore the property damaged or destroyed to substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company and as will not result in an "event of default" or "default" under the Lease, impair operating unity or productive capacity of the Leased Building or change its character to such an extent that its ownership by the Issuer would not be permitted under the laws pursuant to which the Issuer was created, and

(ii) the Trustee shall apply so much as may be necessary of the Net Proceeds of such insurance to the payment of the costs of such replacement, repair, rebuilding or restoration, either on completion thereof or as the work progresses, as directed by the Company. Each such direction of the Company shall be accompanied by a certificate of an architect or engineer (who shall be selected by the Company and satisfactory to the Trustee) in charge of the replacing, repairing, rebuilding or restoring, dated not more than thirty (30) days prior to such direction, setting forth in substance that

(a) the sum then directed to be applied either has been paid by the Company, or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons who shall have rendered services or furnished materials or improvements for the replacing, repairing, rebuilding or restoring therein specified; the names of such persons; a brief description of such services or materials or improvements and the several amounts so paid or due to each of such persons; and, a statement that none of the costs of the services or materials or improvements described in such certificate has been or is being made the basis of any previous or then pending direction for payment under this Section 7.1 and that the sum then directed to be applied does not exceed the value of the services or materials or improvements described in the certificate, and

(b) that, except for the amount, if any, stated (pursuant to (a) preceding) in such certificate to be due for services or materials or improvements, there is not outstanding any indebtedness known to the persons signing such certificate which is then due for labor, services, wages, materials, supplies or services in connection with the replacing, repairing, rebuilding or restoring which, if unpaid, might become the basis of recorded vendors', mechanics', laborers', materialmen's or other liens (other than those being contested in good faith as permitted in Section 6.1(c) hereof) upon the Project or any part thereof. The Trustee may conclusively rely upon such direction and shall have no liability or responsibility for payments made pursuant to this Section in reliance thereon. If said Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall

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nonetheless complete the work thereof and shall pay that portion of the costs thereof in excess of the amount of said Net Proceeds or shall advance to the Issuer and the Trustee the moneys necessary to complete said work, in which case the Issuer shall proceed so to complete the work. The Company shall not, by reason of the payment of such excess costs (whether by direct payment thereof or advances to the Issuer or Trustee), be entitled to any reimbursement from the Issuer or any abatement, diminution or postponement of the rents payable under Section 5.3 hereof.

Any balance of said Net Proceeds remaining after payment of all the costs of such replacement, repair, rebuilding or restoration shall be paid into the Bond Fund. If payment in full of the Bonds has been made, all Net Proceeds shall be paid to the Company.

**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 person, firm or corporation acting under governmental authority, the Company shall be obligated to continue to make the rental payments and other payments specified in Section 5.3 hereof. 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 they existed prior to the exercise of the said power of eminent domain;
- (b) the acquisition, by construction or otherwise, by the Issuer of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company 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 prior to the lien or security interests created by this Agreement or the Indenture, other than Permitted Encumbrances; or
- (c) payment into the Bond Fund or, if payment in full of the Bonds has been made, to the Company.

Unless the Company shall exercise its option to purchase the Project pursuant to the provisions of 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 of the ways specified in this Section the Company elects to have the condemnation award applied. The direction of the Company shall, in the case of a restoration under Section 7.2(a) or the acquisition or construction of improvements under Section 7.2(b), be accompanied by a certificate similar to that required in the second

paragraph of Section 7.1. 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.

## **ARTICLE VIII.**

### **SPECIAL COVENANTS**

**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 and agrees to hold the Issuer harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the use thereof, except as caused by the gross negligence or wilful misconduct of the Issuer or any agent thereof.

**Section 8.2. Inspection of the Project.** The Company agrees that the Issuer and the Trustee and their duly authorized agents who are acceptable to the Company shall have the right at reasonable times during business hours to enter upon the Leased Land and to examine and inspect the Project without interference or prejudice to the Company's operations.

**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, except as to inventory in the ordinary course of business, transfer or convey (except for security) all or substantially all of its property, assets and licenses; 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

(a) the transferee 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, and

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(b) in connection with any such consolidation, merger or transfer there shall be filed with the Issuer and the Trustee, a letter from an independent certified public accountant (or firm thereof) certifying that immediately after the consummation of such consolidation, merger or transfer the corporation resulting from or surviving such consolidation or merger or the corporation to which such transfer is made will have an aggregate stockholders' equity at least equal to 90% of the aggregate stockholders' equity of the Company immediately preceding such consolidation, merger or transfer.

If the Company is the surviving corporation in such a consolidation or merger, the express assumption referred to in (a) above shall not be required, but the letter of an independent certified public accountant (or firm thereof) shall be filed as indicated in (b) above.

Until the Bonds are paid in full, the Company shall preserve and keep in full force and effect all licenses and permits necessary to the proper conduct of its business.

**Section 8.4. Qualification in Alabama.** The Company warrants (except as may be otherwise permitted pursuant to the provisions of Section 8.3 above) that it is and throughout the Lease Term it will continue to be a corporation either organized under the laws of the State of Alabama or duly qualified to do business in the State of Alabama as a foreign corporation, as the case may be.

**Section 8.5. Financial Information.** During the term of this Agreement, the Company will deliver to the Trustee and the Issuer the following:

(i) as soon as available and in any event within 90 days after the close of each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries as of the end of such year and consolidated statements of income and surplus of the Company and its subsidiaries for such year, accompanied by the opinion of independent public accountants for the Company to the effect that the same fairly present the consolidated financial condition of the Company and its subsidiaries as of such date and the results of their operations for such year; and

(ii) within 45 days after the end of each of the first three quarters of each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries as of the close of each such quarter, and consolidated statements of income and surplus of the Company and its subsidiaries for each such quarter and for that part of the fiscal year ending with each such fiscal quarter, all in reasonable detail and certified (subject to audit and normal year-end adjustments) by a proper accounting officer of the Company.

**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 the lien or security interest created by this Agreement and 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 of any such easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant or release; (ii) a written application signed by the president or any vice president of the Company requesting the execution and delivery of such instrument and stating (1) that such grant or release is not detrimental to the proper conduct of the business of the Company, and (2) 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 this Agreement or the Indenture. The Issuer shall not grant any easement with respect to the Leased Land without the prior written consent of the Company.

**Section 8.7. Covenants With Respect to Exemption of Interest from Federal Income Taxation.** The Bonds are being issued by the Issuer in compliance with the conditions necessary for the interest income of 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 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. 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 the 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 described in Section 103(b)(6)(D) of the Code and the applicable Income Tax Regulations thereunder.

(b) No state, territory or possession of the United States of America, nor any political subdivision of any such state, territory or possession, nor the District of Columbia, nor any agency, authority, instrumentality or corporation of a public or quasi-public nature, has issued any obligations, presently outstanding, the proceeds of which are to be or have been used primarily with respect to any facilities (i) that are located in the City and (ii) the "principal user" of which facilities was, is or will be the Company or any one or more "related persons" with respect to the Company (as such terms are defined in Section 103(b) of the Code) other than the Series 1981 Bonds. For purposes of this subsection (b), a contiguous or integrated facility located on both sides of the border between any two or more political jurisdictions shall be considered as being located wholly within each such political jurisdiction. No bonds, notes or other obligations have been or will be, prior to the date of the issuance of the Bond, issued for the benefit of the Company or any "related person" (as defined above) which (i) were, or will be, sold at substantially the same time as the Bonds; (ii) were, or will be, sold pursuant to a plan of marketing that included the sale of the Bonds contemplated by this



Agreement; (iii) were or will be, sold at substantially the same interest rate as the interest rate on the Bonds; and (iv) used or had available, or will use or will have available, security for the payment of debt service that is the same as the security for the payment of the Bonds or that pools the security for the payment of the Bonds with other security.

(c) The Company represents that the aggregate principal amount of the Bonds being issued and the capital expenditures made during the three-year period immediately preceding the issuance and delivery of the Bonds (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 City do not exceed \$10,000,000.

(d) The Issuer and the Company further covenant and 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 or treated as being located in the City, which would cause the interest payable on the Bonds to be or become subject to Federal income taxation.

(e) The Company further covenants and agrees that it will furnish to the Trustee, within 30 days after the filing of its income tax returns for the taxable years 1982, 1983, 1984 and 1985, copies of the supplemental statements required to be filed with such income tax returns pursuant to Section 1.103-10(b)(2)(vi)(c) of the Income Tax Regulations.

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

**Section 8.8. Event and Determination of Taxability.** An "Event of Taxability" shall mean an event the occurrence of which results in the inclusion of interest payable on the Bonds in the gross income for federal income tax purposes of any holder of a Bond (other than a holder who is a "substantial user" or a "related person" as such terms are used in Section 103(b) of the Code). A "Determination of Taxability" shall be deemed to have occurred on that date when the Company shall receive notice from the Trustee in writing that the Trustee has been advised by (i) any bondholder that the Internal Revenue Service has assessed as includable in the gross income of such bondholder the interest on his Bonds because of the occurrence of an Event of Taxability, or (ii) the Commissioner or any District Director of Internal Revenue that the interest on any Bond is includable in the gross income of any bondholder because of the occurrence of an Event of Taxability; provided, however, that no Determination of Taxability shall occur and be final (and the 180-day period referred to below shall not commence) unless the Company has been afforded the opportunity, at its expense, to contest any such assessment or conclusion and such contest, if made, has been finally determined.

Upon the occurrence of a final Determination of Taxability, the Company shall have the option, exercisable by the giving of written notice of exercise to the Trustee within 180 days following said occurrence, to purchase the Project on a date specified in the notice of exercise which date shall not be less than sixty (60) days nor more than ninety (90) days following receipt by the Trustee of the written notice of the exercise of said option to purchase. Upon the exercise of said option the purchase price of the Project shall be an amount equal to:

- (a) 100% of the principal amount of the Bonds outstanding on the date of such final Determination of Taxability plus accrued interest thereon to the purchase date; plus
- (b) an additional amount, computed for the period beginning on the date of the Event of Taxability and ending on the purchase date, equal to the difference between (i) the accrued interest paid (if any) on such Bonds at the rate borne by the Bonds and (ii) the accrued interest which would have been paid on such Bonds at the "Taxable Rate" (as defined in Section 202 of the Indenture); plus
- (c) the expenses of redemption and fees and expenses of the Trustee in such capacity and in its capacities as Paying Agent and Bond Registrar.

Upon the exercise by the Company of said option, the Trustee will give notice with respect to and provide for the redemption of all outstanding Bonds on the date of closing of such purchase. Said redemption will be carried out in accordance with the provisions of Article III of the Indenture.

If the Company fails to exercise its option within the 180-day period following the occurrence of a final Determination of Taxability, the interest rate pertaining to the Bonds outstanding on the date of such final Determination of Taxability shall automatically increase to the Taxable Rate retroactively to the occurrence of the related Event of Taxability. Upon the 181st day after the occurrence of a final Determination of Taxability, the Company shall pay to the Trustee for deposit in the Bond Fund an amount equal to the amount which would have been paid under clause (b) above, had an election thereunder been made to purchase the Project on the 180th day, for distribution by the Trustee as appropriate with respect to the Bonds outstanding during the period to which the final Determination of Taxability relates.

The Company further covenants and agrees to reimburse any bondholders for the amount of any interest and penalties assessed by the Internal Revenue Service and paid by such bondholder as a result of any such final Determination of Taxability, but not including any amounts of interest or penalty resulting from fraud or other acts or omissions on the part of such bondholder or failure to pay when due any such assessment of interest and penalty. Such reimbursement shall be made upon written request (with proof of assessment and payment satisfactory to the Company and the Trustee) delivered by such bondholder to the Company and the Trustee not later than six (6) months from the date of the final Determination of Taxability.



**Section 8.9. Financial Covenants and Restrictions.** Following the payment or prepayment in full of that certain Promissory Note, dated as of December 30, 1981, between the Company and Manufacturers Hanover Commercial Corporation (Del.), the Company hereby covenants and agrees to enter into good faith negotiations with the Trustee to the end of amending this Agreement to include herein financial covenants and restrictions pertaining to the Company which will be no more onerous than those contained in said Note on the date of the payment or prepayment in full thereof. In the event that the Company and the Trustee are unable to agree, within 90 days following the expiration or termination of said Note, upon the form, scope and substance of such financial covenants and restrictions, the financial covenants and restrictions in such Note as of the date of such payment or prepayment shall apply to the Company with the same effect as if set forth in full herein.

**Section 8.10. Grant of Security Interest in Leased Equipment.** As security for the rental payments and other payments which shall be or become due and payable hereunder, the Company hereby grants to the Issuer a security interest covering any right, title or interest which the Company may have in the Leased Equipment (other than the Leased Equipment which is part of the Subleased Property) and all proceeds thereof and general intangibles relating thereto. The security interest granted in this Section shall terminate when the Bonds are paid in full.

## **ARTICLE IX.**

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

**Section 9.1. Assignment and Subleasing.** This Agreement may be assigned, in whole or in part, and the Project may be subleased, as a whole or in part, by the Company without the necessity of obtaining the consent of the Issuer or the Trustee, subject, however, to the following conditions:

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

(b) the interest of the assignee or sublessee in the Project shall be subject to the obligations of the Company hereunder;

(c) the Company shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer and to the Trustee a true and complete copy of each such assignment or sublease, as the case may be; and

(d) the Company shall reaffirm that the Guaranty shall continue in full force and effect following such assignment or sublease.

**Section 9.2. Pledge and Security Interest.** Pursuant to the Indenture the Issuer shall create, and assign and pledge to the Trustee, a security interest with respect to its interest in all Pledged Revenues, all as security for the payment of the principal of and interest on the Bonds, but the Indenture and 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 for the assignment of this Agreement and the rents, revenues and receipts to be derived hereunder to the Trustee pursuant to the Indenture and except for any assignment or sublease permitted by Section 9.1, it shall not (i) sell, assign, transfer or convey the Project or any interest therein during the Lease Term, (ii) create or suffer to be created any debt, lien or charge on the Pledged Revenues, or (iii) 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 of Alabama 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 (a) that no such action shall be taken without the prior written consent of the Company, unless such action shall be required by law, (b) that upon any such consolidation, merger or transfer, the due and punctual payment of the principal of and interest on the Bonds according to their tenor, and the due and punctual performance and observance of all the agreements and conditions of this Agreement 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, and (c) such consolidation, merger or transfer shall not constitute or result in an Event of Taxability.

**Section 9.4. Redemption of Bonds.** The Issuer, 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 applicable 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 11.1 hereof. So 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, the Issuer shall not redeem Bonds prior to their respective maturities unless requested in writing by the Company.

**Section 9.5. Prepayment of Rents.** On or after December 1, 1984, 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 hereof, and the Issuer agrees that the Trustee shall accept such prepayment when the same is tendered by the Company. All such prepayments shall be credited on the rents specified in Section 5.3, in the chronological order of their due dates, and 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 aggregate 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 default hereunder, then, at the election of the Company (i) the Company shall be entitled to use and occupy the Project from the date on which such aggregate moneys are in the Bond Fund to and including midnight on December 1, 1997, without the payment of rent during that interval (but otherwise on the terms and conditions hereof), or (ii) the Company may instruct the Issuer to redeem the Bonds, may terminate this Agreement and the Lease Term, and purchase the Project pursuant to Section 12.1.

**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 in this Agreement to the Bonds and the Trustee shall be ineffective and neither 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 rights of the Issuer or the Trustee to payment of expenses under Section 6.7 hereof or to indemnification under Sections 6.8 and 6.9, which rights 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.

## **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 used in this Agreement, any one or more of the following events:

(a) failure by the Company to pay the rents required to be paid under Section 5.3 hereof within 10 days of the times specified therein;

(b) failure by the Company to observe and perform any covenant, condition or agreement of this Agreement on its part to be observed or performed, other than as referred to in subsection (a) of this Section, for a period of forty-five (45) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an

extension of such time if it is possible to correct such failure and corrective action is instituted by the Company within the applicable period and diligently pursued until the default is corrected;

(c) any material representation or warranty by the Company contained in this Agreement proves false or misleading in any material respect as of the date of the making or furnishing thereof;

(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;

(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 sixty (60) 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;

(f) any "event of default" under that certain Promissory Note, dated as of December 30, 1982, between the Company and Manufacturers Hanover Commercial Corporation (Del.) shall have occurred and be continuing;

(g) if at any time during the Lease Term Mr. William Riley and/or Mr. Pierce E. Marks, Jr. or the members of the immediate family of either of them shall possess less than 51 percent of the combined voting power of all classes of stock of the Company entitled to vote;

(h) the occurrence of an event of default with respect to the Series 1981 Bonds; or

(i) the occurrence of an "event of default" or a "default" with respect to the Lease.



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 obligations on the part of the Company contained in Article V and Sections 6.3, 6.4, 8.8 and 12.2 hereof, the Company shall not be deemed in default during the continuance of such inability. 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 of Alabama 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 its 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.

The foregoing provisions of this Section 10.1 are also subject to the following limitations: A default in the performance or observance of any covenant, agreement or condition on the part of the Company in this Agreement pertaining, directly or indirectly to the tax-exempt status of the Bonds shall not constitute an "event of default" hereunder, but shall be exclusively governed by the provisions of Sections 8.8 and 12.2 hereof. Failure by the Company to comply with the provisions of Sections 8.8 and 12.2 hereof shall, however, constitute a default in the performance or observance of an agreement on the part of the Company and upon failure to correct the same after notice thereof pursuant to Section 10.1(b) hereof shall constitute an "event of default" hereunder.

**Section 10.2. Remedies on Default.** Whenever any event of default referred to in Section 10.1 hereof shall have happened and be subsisting, the Issuer, or the Trustee as provided in the Indenture, may take any one or more of the following remedial steps (provided, however, that upon the occurrence of any event of default referred to in subsection (d) or (e) of Section 10.1, all amounts payable as rent under Section 5.3 hereof for the remainder of the Lease Term shall immediately become due and payable without any act or action on the part of either the Issuer or the Trustee):

(a) the Issuer or the Trustee may, at its option, declare all installments of rent payable under Section 5.3 hereof 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 Section 10.2(a) and accelerates all rents payable under Section 5.3 hereof for the remainder of the Lease Term, the amount then due and payable by the Company as accelerated rents shall be the sum of (1) the aggregate principal amount of the outstanding Bonds, and (2) all interest on the Bonds then due and to become due to maturity at the rate in

effect on the date of such acceleration, 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 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 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 require the Company to assemble the Leased Equipment and make the same available on the Leased Land or in the Leased Building and shall have the right, without notice, demand or legal process, to come upon the Leased Land and take possession of all or any of the Leased Equipment in such manner and as and on such terms as it may choose, and otherwise the Issuer or the Trustee may exercise with respect to the Leased Equipment the rights of a secured party under the Uniform Commercial Code of the State of Alabama as now or hereafter amended;

(d) the Issuer or the Trustee may terminate the Lease Term, exclude the Company from possession of the Project and use its best efforts to lease or sell 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 leasing or sale;

(e) if any of the Bonds shall at the time be outstanding, the Issuer or the Trustee may require the Company to furnish copies of all books and records of the Company pertaining to the Project;

(f) the Issuer or the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the rents and other payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement; and

(g) the Issuer or the Trustee may exercise any remedies provided for in the Indenture and with respect to any security interest the rights of a secured party under the Uniform Commercial Code of the State of Alabama as now or hereafter amended.

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 or, if payment in full of the Bonds and the payment of any costs occasioned by an event of default hereunder has been made, to the Company.

Section 10.3. **No Remedy Exclusive.** Except as provided in Section 8.8, 10.1 and 12.2, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or



remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon 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 and 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 to it 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 given to the Issuer hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds shall be deemed third party beneficiaries of all covenants and agreements herein contained.

**Section 10.4. Agreement to Pay Attorneys' Fees and Expenses.** If the Company should default under any of the provisions of this Agreement 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 obligation or agreement on the part of the Company herein contained, the Company agrees that it shall 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. No Additional Waiver Implied by One Waiver.** If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE XI.**

### **OPTIONS IN FAVOR OF COMPANY**

**Section 11.1. Option to Prepay.** On or after December 1, 1984, the Company shall have the option to prepay all or a portion of the rents and other payments due hereunder at any time prior to payment in full of the Bonds, and may terminate the Lease Term by giving the Issuer notice in writing of such termination and by paying to the Trustee an amount which, when added to the funds 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, 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. If the Company shall elect to prepay in full all rents due hereunder, the Company shall be obligated to purchase the Project pursuant to Section 12.1 hereof.

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

(a) the Project 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) consecutive months to the condition thereof immediately preceding such damage or destruction, (ii) the Company is thereby prevented from carrying on its normal operations at the Project for a period of three (3) consecutive months, (iii) the cost of restoration thereof would exceed by at least \$100,000 the Net Proceeds of insurance carried thereon pursuant to the requirements of Section 6.4, plus the amounts for which the Company is self-insured with respect to deductible amounts permitted under Section 6.4, or (iv) 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 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 taking as, in the judgment of the Company, results in the Company being thereby prevented from carrying on its normal operations at the Project for a period of three (3) consecutive 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, decision 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 with respect to the operation of the Project, 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 from carrying on its normal operations at the Project for a period of three (3) consecutive months;

(e) changes which the Company cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project for the purposes contemplated by this Agreement shall have occurred or technological changes which the Company cannot reasonably overcome shall have occurred which, in the judgment of the Company, render the continued operation of the Project uneconomic for such purposes;

(f) legal curtailment of the Company's use and occupancy of all or substantially all of the Project for any reason other than that set forth in subsection (b), which curtailment shall, in the judgment of the Company, prevent the Company from carrying on its normal operations at the Project for a period of three (3) consecutive months; or

(g) this Agreement is terminated prior to the expiration of the Lease Term for any reason other than the occurrence of an event of default.



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To exercise such option, the Company (i) shall, within ninety (90) days following the event giving rise to the Company's desire to exercise such option, deliver to the Issuer and to the Trustee a certificate, executed by an officer of the Company, stating (A) the event giving rise to the exercise of such option, (B) that the Company has directed the Trustee to redeem all of the Bonds in accordance with the provisions of the Indenture, (C) the date of closing 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 (ii) 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. Conveyance on Purchase.** At the closing of the purchase of the Project pursuant to Article XII hereof or pursuant to the exercise of any option to purchase granted in Section 8.8 or this Article XI, the Issuer will upon receipt of the purchase price deliver to the Company the following:

- (a) if the Indenture shall not at the time have been satisfied in full, a release by the Trustee (including appropriate U.C.C. Termination Statements) from the lien or security interest of the Indenture of the property with respect to which such purchase is being consummated; and
- (b) if the Indenture shall have been satisfied in full, a release by the Trustee (including appropriate U.C.C. Termination Statements) from all liens and security interests of the Indenture and such evidence of the termination of the Indenture as the Company may reasonably request; and
- (c) documents conveying to the Company the Issuer's leasehold interest in the Subleased Property and good and marketable title in and to the Leased Property with respect to which such purchase is being consummated, as such property then exists, subject only to the following: 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, (iii) those liens, security interests and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agreement, and (iv) Permitted Encumbrances other than the Indenture.

## **ARTICLE XII.**

### **OBLIGATIONS OF COMPANY**

Section 12.1. **Obligation to Purchase Project.** The Company hereby agrees to purchase, and the Issuer hereby 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 obligations specified in this Section shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default hereunder provided that such default will not result in nonfulfillment of any condition to this right. Upon payment in full of the Bonds the Trustee shall deliver and release to the Company the assignment and bill of sale described in Section 3.4 hereof.

Section 12.2. **Obligation to Purchase Project Under Certain Circumstances.** Should there occur a final "Determination of Taxability", as defined in Section 8.8 hereof and the Company thereafter exercises its option to purchase the Project as specified in said Section, the Company agrees to purchase 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 amount set forth in said Section 8.8. The terms of such purchase and sale are specified more fully in said Section 8.8.

From the occurrence of a final Determination of Taxability and up to and including the day which follows such occurrence by 180 days, any option which the Company otherwise might have to purchase the Project or to have the Issuer redeem the Bonds pursuant to any other provision of this Agreement or the Indenture shall be superseded by the provisions of Section 8.8 hereof and this Section. The obligation of the Company contained in this Section 12.2 shall be the sole remedy available to the Trustee and the bondholders and the Issuer upon the occurrence of a final Determination of Taxability. Upon the payment of the purchase price described herein, this Agreement and the Lease Term shall terminate.

## **ARTICLE XIII.**

### **MISCELLANEOUS**

Section 13.1. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:



- (a) If to the Issuer - The Industrial Development Board  
of the Town of Pelham  
City Hall  
Attention: Chairman  
Pelham, Alabama 35124
- (b) If to the Company - Moore-Handley, Inc.  
P. O. Box 2607  
Birmingham, Alabama 35202  
Attention: President
- with a copy to: c/o Old Lyme Corporation  
717 Fifth Avenue  
New York, New York 10022
- and a copy to: Barry R. Bryan, Esq.  
Debevoise & Plimpton  
875 Third Avenue  
New York, New York 10022
- (c) If to the Trustee - First Alabama Bank of Birmingham  
Attention: Corporate Trust  
Department  
P.O. Box 10247  
Birmingham, Alabama 35202

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer, the Company or the Trustee to any one of the others shall also be given to all of the others and to the original purchasers of the Bonds, as long as they remain the registered owners of the same, at the addresses of said original purchasers shown on the registration books of the Trustee. The Issuer, the Company and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

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

**Section 13.4. Amounts Remaining in Bond Fund.** It is agreed by the parties hereto that, subject to and in accordance with the terms and conditions of Section 510 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 rents.

**Section 13.5. Amendments, Changes and Modifications.** Except as otherwise provided in this Agreement or in the Indenture, subsequent to the initial

issuance of Bonds and prior to their payment in full, this Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee.

**Section 13.6. Execution Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

**Section 13.8. Recording of Agreement.** This Agreement and every assignment and modification hereof shall be recorded in the Office of the Judge of Probate of Shelby County, Alabama, or in such other office as may be at the time provided by law as the proper place for such 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 of Alabama.

**Section 13.10. Net Lease.** This Agreement shall be deemed a "net lease", and the Company shall pay absolutely net during the term of this Agreement the rents specified herein, without abatement, deduction or set-off other than those herein expressly provided.


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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 hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM

(CORPORATE SEAL)

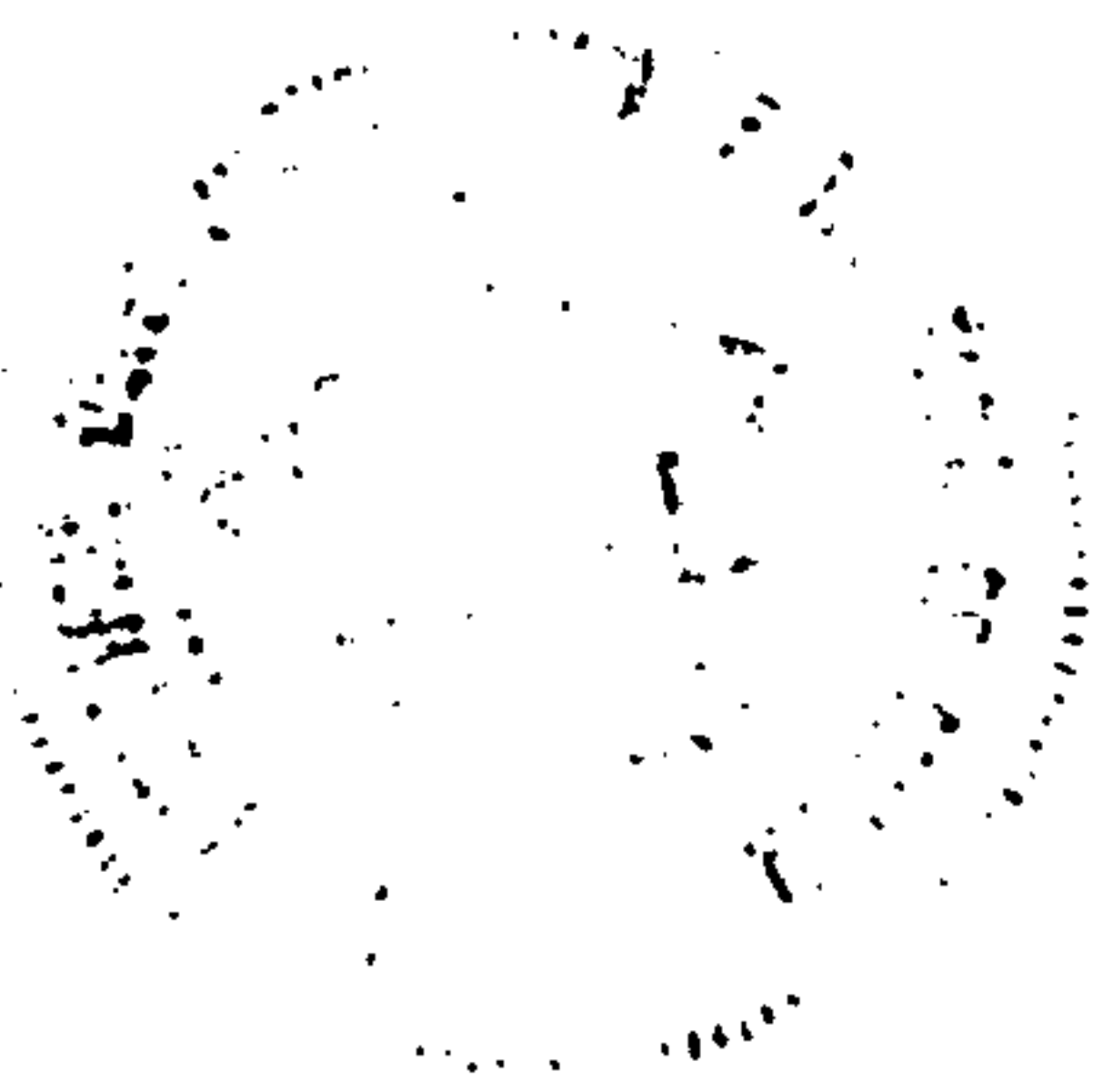
By:   
Chairman of the Board of Directors

Attest:

  
Secretary

(Execution by the Company appears on page 47.)

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MOORE-HANDLEY, INC.

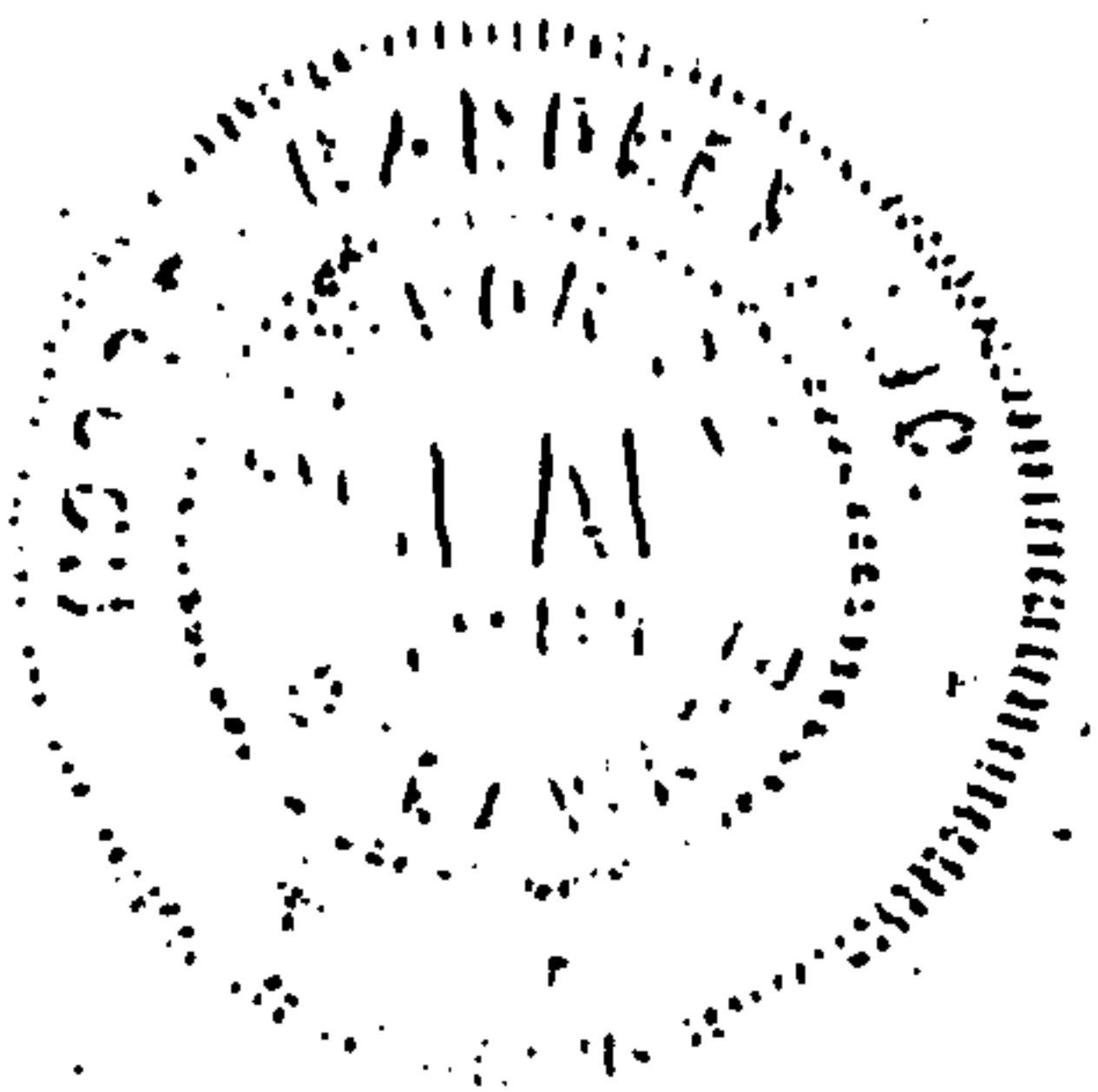
(CORPORATE SEAL)

By:

W. R. Rice  
Title: Chairman

Attest:

John M. Kelly  
Title: Assistant Secretary



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ACKNOWLEDGMENT OF ISSUER

STATE OF ALABAMA

COUNTY OF SHELBY

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Daniel M. Spitler, whose name as Chairman of the Board of Directors of The Industrial Development Board of the Town of Pelham is signed to the foregoing Lease Agreement, and who is known to me and known to be such officer, acknowledged before me under oath that, being informed of the contents of said Lease Agreement he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said Industrial Board.

Given under my hand and seal of office this 22 day of December, 1982.

Sheral A Davis  
Notary Public

My commission expires: Aug 14, 1985

(SEAL)

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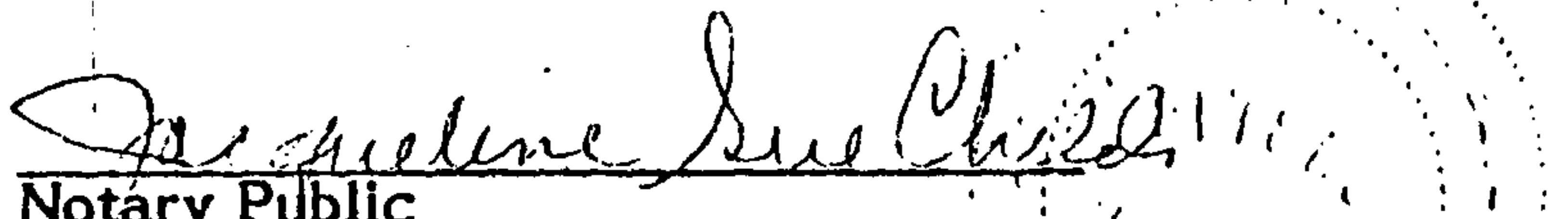
**ACKNOWLEDGMENT OF COMPANY**

**STATE OF ALABAMA**

**COUNTY OF SHELBY**

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that William Riley, whose name as Chairman of Moore-Handley, Inc., is signed to the foregoing Lease Agreement, and who is known to me and known to be such officer, acknowledged before me under oath that, being informed of the contents of said Lease Agreement he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 21 day of December, 1982.

  
Notary Public

My commission expires: 7-11-85

(SEAL)

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**EXHIBIT "A"**

to

Lease Agreement between

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**

dated as of December 1, 1982

**DESCRIPTION OF LEASED LAND**

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 13, and the SE 1/4 of the SE 1/4 of Section 14, all in Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows: Commence at the Southwest corner of said Section 13, thence in an Easterly direction along the South line of said Section 13, a distance of 764.69 feet to the intersection of said Section line and the Westerly right-of-way line of U. S. Highway 31; thence 102 degrees 18 minutes left in a Northwesterly direction along said right-of-way a distance of 317.80 feet to the point of beginning; thence continue along last described course a distance of 344.43 feet; thence 84 degrees 29 minutes 36 seconds left in a Southwesterly direction a distance of 621.22 feet; thence 90 degrees right in a Northwesterly direction a distance of 222.33 feet; thence 90 degrees left in a Southwesterly direction a distance of 313.80 feet to the Easterly right-of-way line of the Old Ashville-Montevallo Highway; thence 89 degrees 48 minutes 24 seconds left, in a Southeasterly direction along said right-of-way line a distance of 518.42 feet to the Northeasterly right-of-way line of the Seaboard Coast Line Railroad; thence 20 degrees 45 minutes left, in a Southeasterly direction, along said right-of-way of said Seaboard Coast Line Railroad, a distance of 130.72 feet; thence 62 degrees 39 minutes left, in an Easterly direction a distance of 476.70 feet; thence 102 degrees 18 minutes left in a Northwesterly direction a distance of 188.73 feet; thence 102 degrees 18 minutes right in an Easterly direction a distance of 472.0 feet to the point of beginning; being situated in Shelby County, Alabama.

(Subject to Permitted Encumbrances as described in the Agreement.)

**EXHIBIT "B"**

to

**Lease Agreement between**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**  
dated as of December 1, 1982

**DESCRIPTION OF LEASED EQUIPMENT**

**Leased Equipment which constitutes Subleased Property:**

Certain wooden fixtures

**Leased Equipment to be acquired by the Issuer:**

That certain Industrial Belt Crane and Slitter to be installed in the Project



**EXHIBIT "C"**

to

Lease Agreement between

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**  
dated as of December 1, 1982

**ASSIGNMENT OF LEASE AND BILL OF SALE**

**STATE OF ALABAMA**

**COUNTY OF SHELBY**

**THIS ASSIGNMENT OF LEASE AND BILL OF SALE, made as of the 1st day of December, 1982, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM, a public corporation and instrumentality organized and existing under the laws of the State of Alabama (the "Assignor"), and MOORE-HANDLEY, INC., a Delaware corporation (the "Assignee"), and its successors and assigns;**

**WITNESSETH:**

**WHEREAS, pursuant to a Lease Agreement, dated as of December 1, 1982 (the "Agreement"), by and between the Assignor and the Assignee, the Assignor has undertaken to acquire a certain Project as described and defined in the Agreement and the Assignor has agreed to lease or sublease, as the case may be, the Project to the Assignee for a term specified in the Agreement, and, upon the expiration or sooner termination of the term of the Agreement following the payment in full of the Bonds described in the Agreement, to bargain, grant, sell and convey the Project to the Assignee at the time and for the considerations set forth in and/or contemplated by the Agreement;**

**NOW, THEREFORE, for the consideration set forth in and/or contemplated by the Agreement and the sum of Ten Dollars (\$10), the receipt of which is acknowledged, the Assignor by these presents hereby (1) assigns to the**

IN WITNESS WHEREOF, the Assignor has caused this Assignment of Lease and Bill of Sale to be signed in its name and behalf by the Chairman of its Board of Directors and its official seal to be hereunto affixed and attested by its Secretary, all as of the date first above written.

**THE INDUSTRIAL DEVELOPMENT  
BOARD OF THE TOWN OF PELHAM**

By: \_\_\_\_\_  
Chairman of the Board of Directors

(SEAL)

Attest:

\_\_\_\_\_  
Secretary

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**ACKNOWLEDGMENT OF ASSIGNOR**

**STATE OF ALABAMA**

**COUNTY OF SHELBY**

I, the undersigned, a Notary Public in and for said State and County, DO **HEREBY CERTIFY** that Daniel M. Spitler, whose name as Chairman of the Board of Directors of The Industrial Development Board of the Town of Pelham is signed to the foregoing Assignment of Lease and Bill of Sale, and who is known to me to be such officer, acknowledged before me under oath, that, being informed of the contents of said Assignment of Lease and Bill of Sale he, as such officer and with full authority, executed the same voluntarily for and as the act of The Industrial Development Board of the Town of Pelham.

Given under my hand and seal of office this \_\_\_\_ day of December, 1982.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

**EXHIBIT "1"**

to

**ASSIGNMENT OF LEASE AND BILL OF SALE**

from

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

to

**MOORE-HANDLEY, INC.**

dated as of December 1, 1982

**DESCRIPTION OF LEASED REALTY**

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 13, and the SE 1/4 of the SE 1/4 of Section 14, all in Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows: Commence at the Southwest corner of said Section 13, thence in an Easterly direction along the South line of said Section 13, a distance of 764.69 feet to the intersection of said Section line and the Westerly right-of-way line of U. S. Highway 31; thence 102 degrees 18 minutes left in a Northwesterly direction along said right-of-way a distance of 317.80 feet to the point of beginning; thence continue along last described course a distance of 344.43 feet; thence 84 degrees 29 minutes 36 seconds left in a Southwesterly direction a distance of 621.22 feet; thence 90 degrees right in a Northwesterly direction a distance of 222.33 feet; thence 90 degrees left in a Southwesterly direction a distance of 313.80 feet to the Easterly right-of-way line of the Old Ashville-Montevallo Highway; thence 89 degrees 48 minutes 24 seconds left, in a Southeasterly direction along said right-of-way line a distance of 518.42 feet to the Northeasterly right-of-way line of the Seaboard Coast Line Railroad; thence 20 degrees 45 minutes left, in a Southeasterly direction, along said right-of-way of said Seaboard Coast Line Railroad, a distance of 130.72 feet; thence 62 degrees 39 minutes left, in an Easterly direction a distance of 476.70 feet; thence 102 degrees 18 minutes left in a Northwesterly direction a distance of 188.73 feet; thence 102 degrees 18 minutes right in an Easterly direction a distance of 472.0 feet to the point of beginning; being situated in Shelby County, Alabama.

(Subject to Permitted Encumbrances as described in the Agreement.)



**EXHIBIT "D"**

to

**Lease Agreement between**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**  
dated as of December 1, 1982

**REQUISITION AND CERTIFICATION**

Request No. \_\_\_\_\_ Date: \_\_\_\_\_

First Alabama Bank of Birmingham, as Trustee  
under the Trust Indenture,  
dated as of December 1, 1982,  
relating to \$1,200,000 Industrial  
Development Board of the Town of Pelham  
Industrial Development Revenue Bonds  
(Moore-Handley, Inc. Project), Series 1982

Attention: Corporate Trust Department

With respect to the use of the proceeds of the Industrial Development Board of the Town of Pelham Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1982 (the "Bonds"), **WE HEREBY CERTIFY**, as follows:

1. An obligation in the amount of \$ \_\_\_\_\_ has been paid or incurred in connection with the issuance of the Bonds or the acquisition, construction and installation of the "Project" described in the Lease Agreement, dated as of December 1, 1982, between the Industrial Development Board of the Town of Pelham, a public corporation and instrumentality and existing under the laws of the State of Alabama (the "Issuer"), and Moore-Handley, Inc., a Delaware corporation (the "Company").
2. Such obligation is a proper charge against the Construction Fund and has not been the basis of any previous withdrawal from said Construction Fund.
3. The purpose and circumstances of such obligation in reasonable detail are, as follows:

Assignee, its successors and assigns, forever, all of the Assignor's right, title and interest in and to that certain Lease Agreement (the "Lease"), dated as of July 1, 1963, by and between The Industrial Development Board of the Town of Alabaster and Moore-Handley, Incorporated, an Alabama corporation, pursuant to that certain Assignment and Bill of Sale, dated as of December 1, 1982, between Homecrafters Centers Inc., a Delaware corporation, and the successor by assignment to the interest of Moore-Handley, Incorporated in the Lease, as assignor, and Assignor, as assignee, which Lease relates to the real property described in Exhibit 1 hereto, (2) bargains, grants, sells and conveys to the Assignee, its successors and assigns, forever, all of the Assignor's right, title and interest in and to the personal property, fixtures and improvements comprising the Project and known as the "Leased Property", together with all warranties and guaranties of all contractors, subcontractors, suppliers, architects and engineers for the furnishing of labor, materials, supplies or equipment and/or the supervision or design in connection with the Project, and any other rights or causes of action arising from or against any of the foregoing.

The Assignor, for its successors and assigns, does agree that it has the full right and authority to assign, bargain, grant, sell and convey the Project to the Assignee, its successors and assigns, forever, and that it has not mortgaged, sold, hypothecated, assigned, transferred or conveyed, nor will it prior to the delivery of this instrument to the Assignee at the time set forth in the Agreement, mortgage, sell, hypothecate, assign, transfer or convey the Project or any part thereof except as is set forth in and/or contemplated by the Agreement. And the Assignor, for its successors and assigns, does further agree that it has not created, suffered or placed, nor will it prior to the delivery of this instrument to the Assignee at the time set forth in the Agreement, create, suffer or place on the Project any liens, encumbrances, title exceptions or other title defects, excluding, however, "Permitted Encumbrances" (as defined in the Agreement) and such other, if any, liens, encumbrances, title exceptions or other title defects to the creation of which the Assignee has consented in writing or to which it may hereafter consent and those, if any, resulting from any failure of the Assignee to observe and perform any of the agreements on its part contained in the Agreement. Except with respect to the hereinbefore mentioned items, the Assignor will warrant and defend its leasehold interest in and the title to all personal property comprising the Project against all persons lawfully claiming the same from, through or under it.

**THE ASSIGNOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT.**

The Agreement further provides that the Assignor shall execute and deliver to the Assignee such other instruments and documents as the Assignee may reasonably request to perfect the conveyance of title in and to the Project to the Assignee.



The name and address of the person, firm or corporation to whom payment has been made or to whom payment is owed, are, as follows:

Name:

Address:

A bill or statement of account for such obligation is attached hereto, and, if the Company or the Issuer is to be reimbursed, proof of payment of such obligation is attached hereto, which proof is satisfactory to the undersigned and the Trustee may act thereon.

4. The obligation is for an item which is properly chargeable to the capital account of the Company for Federal income tax purposes or would be so chargeable either with a proper election by the Company or but for a proper election by the Company to deduct the costs. Payment of this obligation will not result in less than substantially all of the net proceeds of the sale of the Bonds (net proceeds being those proceeds remaining after paying all expenses incurred in connection with the issuance of the Bonds) being used to provide land or property of a character subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1954, as amended. (The obligation does not represent a cost paid or incurred by the Issuer or the Company prior to November 18, 1981.)

5. The Company (a) has 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 which should be satisfied or discharged before payment of such obligation is made, or (b) this requisition is for the purpose of obtaining funds to be used to satisfy or discharge a lien or contract of the type described in (a) above.

6. This requisition contains no request for payment on account of any portion of such obligation which the Issuer is, as of the date hereof, entitled to retain under retained percentage agreements.

7. With respect to any such item representing payment for labor, services, material, supplies and/or equipment, insofar as such obligation was incurred for labor, services, material, supplies and/or equipment in connection with the acquisition, construction and installation of the Project, (i) such labor and/or services were actually performed in a satisfactory manner, and (ii) such material, supplies and/or equipment were actually used in or about the construction of the Project or delivered at the site of the Project for that purpose.

As provided in Section 4.3 of said Lease Agreement, the Issuer may rely upon the Company as to the completeness and accuracy of all statements contained herein.

By: \_\_\_\_\_  
Authorized Company Representative

**EXHIBIT "E"**

to

**Lease Agreement between**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**  
dated as of December 1, 1982

**CERTIFICATE OF COMPLETION**

The undersigned Authorized Company Representative designated pursuant to that certain Lease Agreement (the "Agreement"), dated as of December 1, 1982, between the Industrial Development Board of the Town of Pelham, a public corporation and instrumentality created and existing under the laws of the State of Alabama, and Moore-Handley, Inc., a Delaware corporation (the "Company"), **DOES HEREBY CERTIFY**, as follows:

1. Construction of the "Project" as described in the Agreement has been completed substantially in accordance with the plans and specifications therefor and all labor, services, material, supplies and/or equipment used in such construction have been paid for, except for amounts retained in the "Construction Fund" created in the Agreement for costs of the "Project" as described in the Agreement not yet due and payable.

2. All facilities necessary in connection with the Project have been acquired, constructed and installed substantially in accordance with the plans and specifications therefor and all costs and expenses incurred in connection therewith have been paid, except for amounts retained in said Construction Fund for costs of the Project not yet due and payable.

3. That portion of the "Leased Equipment" to be acquired with the proceeds of the Bonds as described in the Agreement has been acquired and installed to my satisfaction, the Leased Equipment so acquired and installed together with any other machinery, equipment and related property provided and installed in the Leased Building or on the Leased Land by the Company is suitable and sufficient for the efficient operation of the Project and all costs and expenses incurred in the acquisition and installation of such Leased Equipment and other machinery, equipment and related property have been paid, except for amounts retained in said Construction Fund for costs of the Project not yet due and payable.



4. Substantially all of the net proceeds of the \$1,200,000 in principal amount of Industrial Development Board of the Town of Pelham Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1982 (net proceeds being those proceeds remaining after paying all expenses incurred in connection with the issuance of the Bonds), have been used to acquire land or property of a character subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1954, as amended, and such costs representing proceeds so used are properly chargeable to the capital account of the Company for Federal income tax purposes or would be so chargeable either with a proper election by the Company or but for a proper election by the Company to deduct the costs.

5. All permissions required of governmental authorities for the occupancy of the Project have been obtained.

This Certificate is given without prejudice to any rights against third parties which exist on the date of this Certificate or which may subsequently come into being.

This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

MOORE-HANDLEY, INC.

By: \_\_\_\_\_  
Authorized Company Representative

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**EXHIBIT "F"**

to

Lease Agreement between

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF PELHAM**

and

**MOORE-HANDLEY, INC.**  
dated as of December 1, 1982

**DESCRIPTION OF CERTAIN IMPROVEMENTS  
OWNED BY THE ISSUER AND CONSTITUTING  
PART OF THE LEASED BUILDING**

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- Paving - Pelham Warehouse
- Paving - Pelham Yard
- Pelham Yard Drainage
- Drainage Improvements
- Chain Link Fence
- Re-excavate and Pave Pelham Yard
- Department 7403
- Improvement - Pelham
- Improvement - Pelham
- Diesel Tank
- Diesel Fuel Storage Tank
- Chain-Link Fence - Inside Security
- Chain-Link Fence - Outside Yard

FILED IN ALA. JUDICIAL CO.  
THIS  
1982 DEC 27 AM 10:34  
*Thomas P. Handley*  
JUDGE OF PROBATE

Rec 99.00  
Jud 1.00  
100.00