

2463

LEASE AGREEMENT

between

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

and

MOORE-HANDLEY, INC.

Dated as of December 1, 1986

THIS DOCUMENT WAS PREPARED BY:

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Executed in 8 counterparts of
which this is counterpart # 1

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Columbia Title

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The following Table of Contents has been inserted for convenience only and does not constitute a part of this Agreement.

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LEASE AGREEMENT between THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM, a public corporation and instrumentality organized under the laws of the State of Alabama, party of the first part, and MOORE-HANDLEY, INC., a corporation organized under the laws of the State of Delaware, party of the second part,

R E C I T A L S:

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The Board (the party of the first part) has heretofore acquired (i) the real property hereinafter described and defined as the "Existing Project Site", including the warehouse and distribution facility and other improvements located thereon, and (ii) certain additional real property hereinafter described and defined as the "Additional Project Site", and proposes to construct on the said Existing Project Site and on the said Additional Project Site an addition and other improvements to the said existing warehouse and distribution facility and to acquire and install on the said Existing Project Site and on the said Additional Project Site certain items of machinery, equipment, furniture, fixtures and other personal property for use in the operation thereof, all for lease to and use and occupancy by the Company (the party of the second part) as a wholesale warehouse and distribution facility for building materials and hardware. To finance the cost of acquiring the said Additional Project Site, constructing said addition and other improvements and acquiring and installing said machinery, equipment, furniture, fixtures and other personal property, the Board proposes to issue the Series 1986 Bonds hereinafter referred to under a Mortgage and Trust Indenture dated as of December 1, 1986, from the Board to First Alabama Bank, Birmingham, Alabama, a banking corporation organized and existing under the laws of the State of Alabama. The said Mortgage and Trust Indenture is being executed and delivered simultaneously with the delivery hereof, and the terms and conditions thereof are hereby made a part of this Lease Agreement as fully and completely as if set out herein.

The acquisition of the said Additional Project Site, the construction of said addition and other improvements, the acquisition and installation therein of said machinery, equipment, furniture, fixtures and other personal property, the issuance and sale of the Series 1986 Bonds and the lease of the said Existing Project Site, said existing warehouse and distribution facility and other improvements, said addition and other improvements, and said machinery, equipment, furniture, fixtures and other personal property to the Company will enable the Company to expand its existing warehousing and distribution operations in the State of Alabama and will promote the continued industrial development of said state and the City of Pelham, Alabama. To achieve certain of the objectives hereinabove outlined, the Board and the Company have entered into this Lease Agreement.

NOW, THEREFORE, THIS AGREEMENT

W I T N E S S E T H:

That in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND USE OF PHRASES

Section 1.1 Definitions. The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations herein:

"Additional Bonds" means those authorized under the Indenture in Article VIII thereof.

"Additional Project Site" means the real property specifically described in Exhibit A attached hereto and made a part hereof.

"Affiliate" means any person, firm or corporation controlled by, or under common control with, the Company and any person, firm or corporation controlling the Company.

"Applicable Percentage" means the percentage which, when applied to the Base Rate, shall produce the Applicable Rate on the Series 1986 Bonds pursuant to Section 7.1 of the Indenture.

"Applicable Rate" means the applicable per annum rate of interest on the Series 1986 Bonds which is obtained by multiplying the Base Rate times the Applicable Percentage.

"Authorized Board Representative" means the Chairman or Vice Chairman of the Directors, the Secretary of the Board and any other person or persons at the time designated as such by written certificate furnished to the Company and the Trustee, containing the specimen signature or signatures of such person or persons and signed on behalf of the Board by the Chairman or Vice Chairman of its Board of Directors.

"Authorized Company Representative" means the person or persons at the time designated as such by written certificate furnished to the Board and the Trustee, containing the specimen signature or signatures of such person or persons, and signed on behalf of the Company by its President, by any Vice President, by its Secretary or by its Treasurer.

"Authorizing Act" means Article 4 of Chapter 54 of Title 11 (Sections 11-54-80 to 11-54-101, inclusive) of the Code of Alabama of 1975, as amended.

"Base Rate" means that rate announced by First Alabama Bancshares, Inc., as the Commercial Base Rate (such rate being an index for establishing variable interest rates on loans of affiliates of First Alabama Bancshares, Inc.) (or, if no such rate is then announced, such other comparable rate which serves as the basis upon which effective rates of interest are calculated for those making reference thereto). Loans are made at rates above, below, or equal to the Commercial Base Rate. The Commercial Base Rate may change at any time.

"Basic Rent" means (a) the moneys payable by the Company pursuant to the provisions of Section 5.2 hereof, (ii) any other moneys payable by the Company pursuant hereto to provide for payment of the principal of and interest and premium (if any) on the Bonds (other than the aforesaid moneys payable pursuant to Section 5.2 hereof), and (iii) any other sums payable by the Company hereunder that are herein referred to as Basic Rent.

"Board" means (i) the party of the first part hereto and its successors and assigns, and (ii) any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party as provided in Section 11.6 of the Indenture.

"Bond Fund" means the Bond Principal and Interest Fund created in Section 10.1 of the Indenture.

"Bonds" means all bonds of the Board issued under the Indenture.

"Bond Preference Tax" shall mean any tax or penalty under federal or state law imposed on the owner of Tax Exempt Obligations (hereinafter defined) as a result of a change of law occurring subsequent to the issuance of the Series 1986 Bonds (other than any tax or penalty imposed by the Tax Reform Act of 1986), including without limitation any preference tax, excess profits tax, minimum tax, tax resulting from the disallowance of a deduction, or other tax measured in whole or in part by reference to (i) interest on or principal of Tax Exempt Obligations or (ii) any amount of interest on indebtedness deemed attributable to the purchase or carrying of Tax Exempt Obligations.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Moore-Handley, Inc., a corporation organized under the laws of the State of Delaware, and, subject to the provisions of Section 8.4 hereof, includes its successors and assigns and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Construction Fund" means the Construction Fund created in Section 9.2 hereof.

"Counsel" means any attorney duly admitted to practice before the highest court of any state of the United States of America or of the District of Columbia.

"Existing Facility" means the existing warehouse and distribution facility and other improvements now located on the Existing Project Site.

"Existing Project Site" means the real property more specifically described in Exhibit B attached hereto and made a part hereof.

"Facility" means the Existing Facility and the Improvements, as they may at any time exist.

"Holder", when used in conjunction with a Bond, means the person in whose name such Bond is registered on the registry books of the Trustee pertaining to the Bonds.

"Improvements" means the addition and other improvements to the Existing Facility which the Board has agreed to construct on the Project Site pursuant to Section 4.1 hereof.

"Indenture" means the Mortgage and Trust Indenture between the Board and First Alabama Bank, dated as of December 1, 1986, under which (i) the Bonds are authorized to be issued, and (ii) the Board's interest in this Lease Agreement and the revenues and receipts to be derived by the Board from any leasing or sale of the Project are to be assigned, and the Project is to be mortgaged, as security for payment of the principal of and the interest and premium (if any) on the Bonds, as said Mortgage and Trust Indenture now exists and as it may hereafter be supplemented and amended.

"Independent Architect" means an architect or architectural firm not employed full time by the Board, the Company or an Affiliate.

"Independent Auditor" means a certified public accountant or firm of certified public accountants acceptable to the Trustee and not employed full time by the Board, the Company or an Affiliate.

"Independent Engineer" means an engineer or engineering firm not employed full time by the Board, the Company or an Affiliate.

"Interest Payment Date" means each June 1 and December 1 until and including December 1, 2001.

"Interim Agreement" means that certain Interim Agreement between the Board and the Company, dated as of October 1, 1985.

"Lease Term" means the period beginning on the date of delivery of these presents and, subject to the provisions of this Lease Agreement, continuing until 11:59 o'clock, P.M., on December 1, 2001.

"Leased Equipment" means those items of machinery, equipment, furniture, fixtures and other personal property that are generally described in Exhibit C attached hereto and made a part hereof and that are required hereby to be acquired and installed on the Project Site and any other items of machinery, equipment, furniture, fixtures and other personal property that, under the provisions hereof, are to constitute part of "the Leased Equipment."

"Local Facilities" means facilities of which the Company or a related person or persons (as the terms "related person" and "facilities" are used in Section 144(a)(4)(B) of the Code) is or will be the principal user and which are located in the corporate limits of the Municipality, or any facilities contiguous or integrated with such facilities within the meaning of Section 1.103-10(b)(2)(ii)(e) and 1.103-10(d)(2) of the regulations under Section 103 of the Code.

"Mandatory Redemption Requirement" means (a) the provisions for mandatory redemption of the Series 1986 Bonds set forth in subsection (b) of Section 7.2 of the Indenture, and (b) any similar provisions that may be set forth in a Supplemental Indenture for mandatory redemption of any Additional Bonds at a Redemption Price equal to the principal amount thereof.

"Municipality" means the City of Pelham, Alabama, and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Net Condemnation Award" means the total amount awarded as compensation for any part of the Project taken under the exercise of the power of eminent domain plus damages to any part not taken, less and except (i) any portion thereof to which the Company is entitled under the provisions of Section 7.4 hereof, and (ii) all attorneys' fees and other costs and expenses incurred in the condemnation proceeding with respect to which such award was made (other than those paid directly by the Company or deducted, pursuant to the provisions of said Section 7.4, from that portion of the award to which it is entitled under the provisions thereof).

"Net Insurance Proceeds" means the total insurance proceeds recovered by the Board, the Company and the Trustee on account of any damage to or destruction of the Project or any part thereof less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such proceeds.

"outstanding", when used with reference to any of the Bonds, means, at any date as of which the amount of such Bonds outstanding is to be determined, all such Bonds which have been theretofore authenticated and delivered by the Trustee under the Indenture, except (i) those of such Bonds purchased for retirement which have been delivered to and cancelled by the Trustee, (ii) those of such Bonds cancelled by the Trustee because of payment at or after their respective maturities or redemption prior to their respective maturities, (iii) those of such Bonds for the payment or redemption of which provisions shall have been made with the Trustee as provided in Section 18.1 of the Indenture, and (iv) those of such Bonds in exchange for which, or in lieu of which, other Bonds have been authenticated and delivered under the Indenture. In determining whether the holders of a requisite aggregate principal amount of outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Indenture, Bonds which are owned by the Company or any Affiliate thereof shall be disregarded and deemed not to be outstanding hereunder for the purpose of any such determination.

"Permitted Encumbrances" means, as of any particular time, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Lease Agreement and the Indenture, (c) the 1981 Lease and the 1981 Indenture, (d) the 1982 Lease and the 1982 Indenture, (e) utility, access, drainage and other easements and rights-of-way, restrictions and exceptions (including inchoate mechanics' and materialmen's liens) that a licensed engineer (who may, but need not be, an employee of the Company) certifies will not materially interfere with or impair the operations being conducted at the Project (or, if no operations are being conducted at the Project, the operations for which the Project was designed or last modified), (f) such

minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title (including zoning and other similar restrictions and regulations) as customarily exist with respect to properties similar in character to the Project and as do not, in the opinion of Counsel, in the aggregate materially impair the use of the property affected thereby for the purpose for which it was acquired or is held by the Board, (g) with respect to the Additional Project Site, the easements, rights-of-way, restrictions and other exceptions, if any, referred to in Exhibit A hereto, and (h) with respect to the Existing Project Site, the easements, rights-of-way, restrictions and other exceptions, if any, referred to in Exhibit B hereto.

"Project" means the Project Site, the Facility and the Leased Equipment, as they may at any time exist, and all other property and rights referred to or intended so to be in the demising clauses hereof or in any way subject to the demise hereof.

"Project Development Costs" means (i) the cost of acquiring, preparing and improving the Additional Project Site; (ii) all costs and expenses incurred in connection with the planning, development and design of the Improvements, including the costs of preliminary investigations, surveys, estimates and plans and specifications; (iii) all costs of constructing the Improvements; (iv) all costs of acquiring and installing the Leased Equipment; (v) all costs and expenses incurred by the Board directly related to the planning, development and design of the Improvements and the Leased Equipment, including, without limiting the generality of the foregoing, the expenses incurred by the Board in connection with the issuance and sale of the Series 1986 Bonds (including the initial charge of the Trustee, the fiscal, legal, printing, advertising, recording and other similar fees and expenses related thereto; (vi) interest on the Series 1986 Bonds to the extent that such interest constitutes a Qualified Project Cost; and (vii) without limiting the generality of the foregoing, any costs and expenses incurred by the Board in connection with and directly related to the planning, development and design of the Additional Project Site, the Improvements and the Leased Equipment paid by the Company or by the Board with funds advanced by the Company or for which the Company is entitled to be reimbursed under the provisions of the Interim Agreement.

"Project Site" means the Existing Project Site and the Additional Project Site (to the extent that at the time the said real property is subject to the demise hereof) and any other real property that under the terms hereof constitute a part of the Project Site.

"Public Securities" means any bonds or other obligations of a state, a territory, or a possession of the United States, or any political subdivision of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia.

"Qualified Project Costs" means Project Development Costs paid or reimbursed pursuant to the provisions of the Indenture to the extent that such costs (i) constitute expenditures for the acquisition, construction, reconstruction, or improvement of land or property subject to the allowance for depreciation within the meaning of Section 144(a)(1) of the Code, and (ii) were paid or incurred subsequent to October 10, 1985.

"Repurchase Agreement" means that certain Repurchase Agreement dated as of December 1, 1986, between the Company and First Alabama Bank, the initial purchaser of the Series 1986 Bonds.

"Series 1986 Bonds" means those of the Bonds bearing the designation Industrial Revenue Bonds (Moore-Handley Project), Series 1986, and authorized in Article VII of the Indenture to be issued thereunder in the principal amount of \$5,000,000.

"Series 1986 Date of Taxability" means the date from which, according to any Series 1986 Determination of Taxability, the interest on any of the Series 1986 Bonds became Taxable.

"Series 1986 Determination of Taxability" means a determination that the interest income on any of the Series 1986 Bonds is Taxable, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(a) the date on which the Company determines that the interest income on any of the Series 1986 Bonds is Taxable by filing with the Trustee or the Internal Revenue Service a statement to that effect; or

(b) the date on which the Company, the Board or any holder or former holder of any of the Series 1986 Bonds shall be advised by private ruling, technical advice or any other written communication from an authorized official of the Internal Revenue Service that, based upon any filings of the Company, or upon any review or audit of the Company, or upon any other grounds whatsoever, the interest income on any of the Series 1986 Bonds is Taxable; or

(c) the date on which the Company shall receive notice from the Trustee, any holder or former holder of any of the Series 1986 Bonds or the Board in writing that the Trustee, such holder or former holder of any of the Series 1986 Bonds or the Board, as the case may be, has been advised (i) that the Internal Revenue Service has assessed as includable in the

gross income of such holder the interest on such Series 1986 Bonds by reason of such income being Taxable, or (ii) by any authorized official of the Internal Revenue Service that the interest income on the Series 1986 Bonds is Taxable; or

(d) the date on which the Company shall receive notice from the Trustee, any holder or former holder of any of the Series 1986 Bonds or the Board that a holder or former holder of any of the Series 1986 Bonds has become aware of facts that cause such holder or former holder of any of the Series 1986 Bonds to determine in good faith that the interest income on any of the Series 1986 Bonds is Taxable;

provided that no Series 1986 Determination of Taxability shall be deemed to have occurred: (1) as a result of a determination by the Company pursuant to the preceding clause (a) unless supported by a written opinion of Bond Counsel acceptable to the Trustee and the Board that the interest income on the Series 1986 Bonds is Taxable; (2) as a result of the event described in the preceding clause (d) if within twenty (20) days after the Company has received notice of the event described in the said clause (d), the Company shall deliver to the Trustee and any holder or former holder of any of the Series 1986 Bonds giving such notice on opinion of Bond Counsel that the interest income on the Series 1986 Bonds is not Taxable; or (3) as a result of events described in any of the preceding clauses (b), (c) and (d) unless and until (i) the Company has been afforded a reasonable opportunity, at its expense, to contest such determination either through its own action (if permitted by law) or by or on behalf of one or more holders of the Series 1986 Bonds and (ii) all such contests, if made, have been abandoned by the Company or have been finally determined by a court of competent jurisdiction from which no further appeal exists; provided further, however, that if such contests have not been abandoned or finally determined within twelve months of the events described in any of the preceding clauses (b), (c) and (d) which forms the basis of the Series 1986 Determination of Taxability in question, then such Series 1986 Determination of Taxability shall be deemed to have occurred twelve months after the date of such event unless the holder or former holder of any of the Series 1986 Bonds agrees to an extension of such period of time; provided further, however, that in no event shall the holder or former holder of any of the Bonds be obligated to extend or waive (directly or by operation of law) the statute of limitations on the assessment of Federal income tax for any issue other than the Series 1986 Determination of Taxability in question.

"Series 1986 Guaranty" means that certain Bond Guaranty Agreement dated as of December 1, 1986, between the Company and the Trustee pursuant to which the Company has, subject to the terms and conditions therein, guaranteed the full and prompt payment of the principal of and the interest and premium, if any, on, the Series 1986 Bonds.

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"Taxable", when applied to the interest income on any of the Bonds, means that, under federal tax laws and regulations issued thereunder, as such laws and regulations exist on the date of initial delivery of the Bonds or as they may thereafter be amended, the interest income on such Bond is subject to gross income for federal income tax purposes for any reason other than the fact (and for the period) that such Bond is held by a person who is a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code or any successor provision.

"Taxable Rate" means a per annum rate of interest equal to the Base Rate.

"Tax-Exempt Obligations" shall mean (i) for purposes of a Bond Preference Tax imposed by federal law, obligations the interest on which is exempt from federal income taxation under Section 103 of the Code, and (ii) for purposes of a Bond Preference Tax imposed by state law, obligations the interest on which is exempt from state income taxation.

"Trustee" means the Trustee at the time serving as such under the Indenture.

"United States Corporation" means a corporation organized under the laws of one of the states of the United States of America or of the District of Columbia.

"1981 Bonds" means the Board's Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1981, which were originally issued in the principal amount of \$2,850,000 and are presently outstanding in the principal amount of \$2,350,000.

"1981 Indenture" means the Mortgage and Trust Indenture dated as of December 1, 1981, between the Board and the 1981 Trustee, pursuant to which the 1981 Bonds were issued, as supplemented and amended by a First Supplemental Indenture dated as of December 1, 1986, between the Board and the 1981 Trustee.

"1981 Lease" means the Lease Agreement dated as of December 1, 1986, between the Board and the Company, covering a portion of the Existing Project Site and the Existing Facility, as heretofore supplemented and amended.

"1981 Trustee" means First Alabama Bank, Birmingham, Alabama (formerly First Alabama Bank of Birmingham), as trustee under the 1981 Indenture.

"1982 Bonds" means the Board's Industrial Development Revenue Bonds (Moore-Handley, Inc. Project), Series 1982, which were originally issued in the principal amount of \$1,200,000, and are presently outstanding in the principal amount of \$1,030,000.

"1982 Indenture" means the Mortgage and Trust Indenture dated as of December 1, 1982, between the Board and the 1982 Trustee, pursuant to which the 1982 Bonds were issued, as supplemented and amended by a First Supplemental Indenture dated as of December 1, 1986, between the Board and the 1982 Trustee.

"1982 Lease" means the Lease Agreement dated as of December 1, 1982, between the Board and the Company, covering a portion of the Existing Project Site and the Existing Facility, as heretofore supplemented and amended.

"1982 Trustee" means First Alabama Bank, Birmingham, Alabama (formerly First Alabama Bank of Birmingham), as trustee under the 1982 Indenture.

Section 1.2 Use of Phrases. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Lease Agreement as an entirety and not solely to the particular portion in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

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ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

(a) The Board is duly incorporated under the provisions of the Authorizing Act by Certificate of Incorporation duly filed for record in the office of the Judge of Probate of Shelby County, Alabama, and is not in default under any of the provisions contained in said Certificate of Incorporation or in the laws of Alabama;

(b) Under the provisions of the Authorizing Act, the Board has the power to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder;

(c) The Board has good and marketable title to that certain real property specifically described in Exhibits A and B attached hereto and made a part hereof, subject only to Permitted Encumbrances; and all said real property is located within the corporate limits of the municipality;

(d) Pursuant to Section 144(a)(4) of the Code, the Board has (based in part upon information supplied by the Company) made an election to have a bond issue in the aggregate authorized face amount of \$10,000,000 or less, in lieu of the \$1,000,000 "exemption" provided for in Section 144(a)(1) of the Code; and

(e) The execution and delivery of this Lease Agreement on its part have been duly authorized by all necessary corporate action.

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

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the

State of Delaware, is in good standing as a foreign corporation qualified to do business in the State of Alabama and has power to enter into, and to perform and observe the agreements and covenants on its part contained in, this Lease Agreement;

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance with the terms and conditions hereof, conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation of the Company or any agreement, instrument or court or other governmental order to which the Company is now a party or by which the Company is bound, or constitute a default under any of the foregoing;

(c) The acquisition of the Additional Project Site on the part of the Board, the construction of the Improvements, the acquisition and installation of the Leased Equipment, and the leasing of the Project to the Company have induced the Company to expand its existing operations in the State of Alabama;

(d) No part of the acquisition of the Additional Project Site, the construction of the Improvements or the acquisition and installation of the Leased Equipment was commenced by the Board or the Company prior to the effective date of the Interim Agreement (October 10, 1985) and no property which constitutes or is to constitute part of the Project and which is to be constructed, acquired or installed out of the proceeds derived from the sale of the Series 1986 Bonds was acquired by the Board or by the Company prior to the effective date of the Interim Agreement (October 10, 1985), nor did either of such parties enter into any binding commitment for the construction, acquisition or installation of any such property prior to such date;

(e) Other than the 1981 Bonds and the 1982 Bonds, there have not been issued since April 30, 1968 any Public Securities the proceeds of which were or are to be used primarily with respect to Local Facilities;

(f) The total of all capital expenditures (as determined as provided in Section 144(a)(4)(A) of the Code) made with respect to Local Facilities during the period beginning three years next preceding the date of issue of the Series 1986 Bonds is less than \$1,000,000.

(g) On the date of the delivery of this Lease Agreement, the Company expects that it will be the only principal user (as the term "principal user" is used in Section 144(a)(4)(B) of the Code) of the Project during the Lease Term;

(h) On the date of delivery of this Lease Agreement, the Company expects that not less than ninety-five percent (95%) of the proceeds derived from the sale of the Series 1986 Bonds will be applied for Qualified Project Costs;

(i) On the date of delivery of this Lease Agreement the Company expects to use the Project as a wholesale warehouse and distribution facility for building materials and hardware;

(j) The aggregate face amount of all outstanding tax-exempt facility-related bonds, including the Series 1986 Bonds, which are required by Section 144(a)(10)(B) of the Code to be considered in determining whether there are now outstanding bonds in excess of \$40,000,000 attributable or allocated to the Company or any related person thereto, under said Section 144(a)(10)(A), is \$8,380,000;

(k) No part of the proceeds derived from the sale of the Series 1986 Bonds will be used to acquire any property the original use of which commenced prior to the acquisition of such property by the Board or the Company within the meaning of Section 147(d)(1);

(l) Less than 25% of the proceeds derived from the sale of the Series 1986 Bonds will be used, directly or indirectly, for the acquisition of land or an interest therein;

(m) The average maturity of the Series 1986 Bonds (determined as provided in Section 147(b)(2) of the Code) does not exceed 120% of the average reasonably expected economic life of the Additional Project Site, the Improvements and the Leased Equipment (determined as provided in Section 147(b)(2) and (3) of the Code);

(n) No portion of the proceeds derived from the sale of the Series 1986 Bonds will be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment;

(o) No portion of the proceeds derived from the sale of the Series 1986 Bonds will be used to provide any of the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack;

(p) Not more than 2% of the principal proceeds derived from the sale of the Series 1986 Bonds will be used for payment of expenses incurred in connection with the issuance of the Series 1986 Bonds; and

(q) The execution and delivery of this Lease Agreement on its part have been duly authorized by all necessary action.

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ARTICLE III
DEMISING CLAUSES

Section 3.1 Demising Clauses. The Board hereby demises and leases to the Company, subject to Permitted Encumbrances, and the Company hereby rents from the Board, subject to Permitted Encumbrances, for and during the Lease Term, the following described properties and related rights:

I

The real property situated in Shelby County, Alabama, that is specifically described in Exhibits A and B attached hereto and made a part hereof;

II

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The Facility and any other improvements constituting real property now or hereafter situated on the Project Site, all permits, easements, licenses, rights-of-way, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Project Site and all fixtures now or hereafter owned by the Board and installed on the Project Site or in any improvements now or hereafter located on the Project Site, it being the intention hereof that all property, rights and privileges hereafter acquired for use as a part of or in connection with or as an improvement to the Project Site shall be as fully covered hereby as if such property, rights and privileges were now owned by the Board and were specifically described herein; and

III

All items (whether or not fixtures) of machinery, equipment, furniture, fixtures and other personal property that at any time, under the provisions of this Lease Agreement, constitute the Leased Equipment, including, without limitation, the items (whether or not fixtures) of machinery, equipment, furniture, fixtures and other personal property generally described in Exhibit C attached hereto and made a part hereof, excluding, however, any machinery, equipment, furniture, fixtures or other personal property that, under the provisions of this Lease Agreement, is, or is to become (prior to the termination of this Lease Agreement), the sole property of the Company or third parties.

This Lease Agreement is made, however, upon and subject to the following terms and conditions, to each of which the Board and the Company hereby agree:

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ARTICLE IV

CONSTRUCTING, ACQUIRING AND FINANCING THE IMPROVEMENTS AND THE LEASED EQUIPMENT

Section 4.1 Agreement to Construct, Acquire and Install Improvements and Leased Equipment. The Board will proceed with, and will complete as promptly as practicable, the construction, acquisition and installation, wholly within the boundary lines of the Project Site, of the Improvements, substantially in accordance with plans and specifications therefor approved by the Company, and with the acquisition and installation wholly within the boundary lines of the Project Site, of such items of machinery, equipment, furniture, fixtures and other personal property necessary for or useful in the operation of the Facility as shall be specified by the Company (said machinery, equipment, furniture, fixtures and other personal property, as presently envisioned by the Company, being generally described on said Exhibit C), and will pay, solely out of the principal proceeds derived by it from the sale of the Series 1986 Bonds and any Additional Bonds issued for such purpose and any investment earnings thereon, the costs of such construction, acquisition and installation.

The Company may, after the execution and delivery of this Lease Agreement, (a) cause such changes to be made to the aforesaid plans and specifications as it may desire and as will not result in any material change in the appearance or basic design of the Facility or in changing its character or general purpose, and (b) cause such changes to be made in the Leased Equipment described in Exhibit C hereto, including additions thereto, deletions therefrom and substitutions therefor, as it may desire and as will not cause the Leased Equipment, as altered by such changes, to be, in the reasonable judgment of the Company, functionally inferior (insofar as the operation of the Facility by the Company is concerned) to the Leased Equipment described in said Exhibit C. Except as provided in the preceding sentence, neither the Company nor the Board will cause or permit any changes to be made to the aforesaid plans and specifications. The rights of the Company under this paragraph to cause changes to be made in the Leased Equipment described in said Exhibit C shall apply only to the selection of such equipment prior to its installation at the Project Site, and nothing herein contained shall be construed to enlarge, restrict or otherwise alter the terms and conditions contained in Section 6.2 of this Lease Agreement respecting the removal from the Project Site of any item of the Leased Equipment.

The Board will not hereafter enter into any contract for such construction, acquisition and installation, or any part thereof, unless there is endorsed thereon a legend indicating that the Company has approved both the form and substance of such contract or order and such legend is signed on behalf of the Company by an Authorized Company Representative at the time acting as such under the provisions of the Indenture. The Company and

the Board will cooperate with each other in order that the construction, acquisition and installation of the Improvements and the Leased Equipment may be completed as promptly as practicable.

Section 4.2 Agreement to Issue Series 1986 Bonds. In order to provide funds for the permanent financing of the costs of acquiring the Additional Project Site, constructing the Improvements, acquiring and installing the Leased Equipment and the other Project Development Costs, the Board will, simultaneously with the delivery hereof, issue and sell the Series 1986 Bonds in accordance with instructions from the Company and the provisions of the Indenture.

Section 4.3 No Warranty of Suitability by Board. Company Required to Bear Certain Costs in Certain Events. The Company recognizes that since the plans and specifications for the Improvements have been prepared to its order and that since the items of Leased Equipment have been and are to be selected by it, the Board can make no warranty, either express or implied, or offer any assurances that the Improvements will be suitable for the Company's purposes or needs or that the proceeds derived from the sale of the Series 1986 Bonds will be sufficient to pay in full all the Project Development Costs. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BOARD MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS WITH RESPECT TO ANY PART OF THE IMPROVEMENTS OR THE LEASED EQUIPMENT. In the event said proceeds and the proceeds of any Additional Bonds issued for such purpose are insufficient to pay all said costs, the Company

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(a) will, subject to the provisions of the second paragraph of Section 4.1 hereof, cause such changes to be made in the design of the Improvements or in the composition of the Leased Equipment as will result in the Project Development Costs not exceeding the moneys available for payment thereof derived from the sale of the Series 1986 Bonds or any such Additional Bonds, or

(b) will complete said construction, acquisition and installation itself and will pay that portion of the Project Development Costs in excess of the available moneys derived from the sale of the Series 1986 Bonds and any such Additional Bonds, or

(c) will pay into the Construction Fund such moneys as are necessary to provide for payment of all said costs, in which case the Board will complete said construction, acquisition and installation.

The Company shall not, by reason of any changes in the design of the Improvements or the composition of the Leased Equipment or any payment of such excess costs (whether by virtue of direct payments thereof or payments into the Construction Fund), be entitled to any reimbursement from the Board or to any diminution of the rental payable hereunder.

Section 4.4 Board to Pursue Rights against Contractors, etc.

In the event of default by any contractor or subcontractor under any contract with the Board for construction, acquisition or installation of the Improvements or the Leased Equipment, or any part thereof, the Board will, upon written request made to it by the Company, proceed, either separately or in conjunction with others, to exhaust all remedies the Board may have against such contractor or subcontractor so in default and against each surety (if any) for the performance of such contract. Further, the Board will, in the event it proceeds in an arbitration proceeding or by an action at law or in equity against any such contractor, subcontractor or surety pursuant to the provisions of this section or in the event any such contractor, subcontractor or surety brings any such proceeding or action against the Board in connection with or relating to the aforesaid construction, acquisition or installation, follow all reasonable directions given to it by the Company in connection with such proceeding or action, and the Company shall have full and complete control thereof, including (without limitation) the right to select counsel for the Board but subject to the prior written approval of the Board. The net proceeds recovered by the Board in any such action shall be paid into the Construction Fund (or, in the event that at the time such proceeds are received by the Board the Construction Fund is closed, shall be applied as excess Construction Fund moneys in accordance with the provisions of the last paragraph of Section 9.2 of the Indenture.)

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ARTICLE V
DURATION OF TERM
AND RENTAL PROVISIONS

Section 5.1 Duration of Term. The term of this Lease Agreement and of the lease herein made shall begin on the date of the delivery of this Lease Agreement and, subject to the provisions of this Lease Agreement, shall continue until 11:59 o'clock, p.m., on December 1, 2001. The Board will deliver to the Company sole and exclusive possession of the Project (or such portion or portions thereof as are then in existence) on the commencement date of the Lease Term, subject to the inspection and other rights reserved in Section 8.3 hereof, and the Company will accept possession thereof at such time; provided, however, that the Board will be permitted such possession of the Project as shall be necessary and convenient for it (a) to complete the construction, acquisition and installation of the Improvements and the Leased Equipment, and (b) to make any repairs, restorations or improvements required or permitted to be made by the Board pursuant to the provisions hereof or pursuant to the provisions of any agreement between the Board and the Company supplemental hereto.

Section 5.2 Basic Rent. For and during the Lease Term, the Company will pay to the Board the following base rental for use and occupancy of the Project:

(a) On January 27, 1987, and on the 27th day of each calendar month thereafter until and including November 27, 2001, an amount equal to the interest accrued or to accrue on the Bonds with respect to such calendar month;

(b) On January 27, 1987, and on the 27th day of each calendar month thereafter until and including November 27, 1987, an amount equal to one-eleventh (1/11) of the principal of the Series 1986 Bonds maturing or subject to mandatory redemption on December 1, 1987; and

(c) On December 27, 1987, and on the 27th day of each calendar month thereafter until and including November 27, 2001, an amount equal to one-twelfth (1/12) of the principal of the Series 1986 Bonds maturing or subject to mandatory redemption on the next succeeding December 1.

provided, however, that there shall be credited on any installment of Basic Rent due under the preceding provisions of this section any amount on

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deposit in the Bond Fund (exclusive of amounts held therein for payment of matured but unrepresented Bonds or otherwise restricted by the provisions of the Indenture) at the time of the payment of such installment that has not theretofore been credited on any previous installment of Basic Rent due hereunder. Nothing herein contained shall be construed as imposing on the Board or on the Trustee any duty or responsibility of giving any notice to the Company of the amount on deposit in the Bond Fund as of any rent payment date, but the Board will cause the Trustee to respond to any reasonable requests that the Company may make for such information. Neither the Board nor the Trustee shall be obligated to give any prior notice to the Company of the due date or amount of any installment of Basic Rent, and failure to receive any such prior notice, even if customarily given by the Board or the Trustee, shall not relieve the Company of its obligation to pay such installment of Basic Rent when it is due and payable.

So long as any of the Bonds are outstanding, all Basic Rent payments shall be made in Federal or other immediately available funds directly to the Trustee, or its successor as Trustee under the Indenture, for the account of the Board. The Board will, promptly following the designation of any successor Trustee under the Indenture, give written notice to the Company of the name and location of the principal office of such successor Trustee, or it will cause such notice to be promptly given. In the event the due date of any installment of Basic Rent payable hereunder is a Sunday or legal holiday in Alabama, such installment shall be due on the next succeeding business day. Any Basic Rent payment due hereunder and referable to the Series 1986 Bonds that is not paid by the due date thereof shall bear interest from such due date until paid at a per annum rate equal to the highest rate of interest borne by any of the Series 1986 Bonds.

For the convenience of the Company, but solely at the option of the Trustee, the Trustee may provide the Company with a notice showing the amount of principal and interest payable by the Company as Basic Rent pursuant to this Section 5.2. Solely for the purpose of such notice, the Trustee may, but is not obligated to, assume that the Base Rate in effect on the twentieth (20th) day of such month will remain in effect for the remainder of that month. In the event that the Base Rate does change between the twentieth (20th) day of such month and the last day of that month, the Trustee shall adjust its notice for the succeeding months' Basic Rent to reflect any difference between the actual interest which accrued on the unpaid principal balance of the Bonds between the twentieth (20th) day of such month and the last day of that month as a result of such change in the Base Rate and the amount estimated for such period as reflected in the previous months' notice. Any such notice furnished by the Trustee shall in no way affect the actual amount of interest payable on the unpaid principal balance of the Bonds.

Section 5.3 Additional Rent - Trustee's Fees and Expenses. In addition to the Basic Rent and all other rental payments due from the Company hereunder, the Company will also pay, as additional rent, (i) the

annual fee of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, (ii) the reasonable fees and charges of the Trustee as registrar, transfer agent and paying agent with respect to the Bonds, as well as the fees and charges of any other paying agent with respect to the Bonds who shall act as such agent in accordance with the provisions of the Indenture, (iii) the reasonable fees and expenses of the Trustee in connection with the issuance of a new Bond upon the partial redemption of a Bond (including, without limitation, the expenses of printing such new Bond), (iv) the reasonable fees and expenses of the Trustee in connection with any other registration, transfer or exchange of any of the Bonds if the Trustee is not permitted by Section 5.4 of the Indenture to charge the holder of such Bonds for such fees and expenses and (v) the reasonable fees, charges and expenses of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture. All such fees, charges and expenses shall be paid directly to the Trustee, for its own account upon presentation of its statements therefor, but the Company may, without creating a default hereunder, contest in good faith the necessity for any of the extraordinary services performed by the Trustee or the reasonableness of the fees, charges or expenses of the Trustee in connection therewith.

Section 5.4 Additional Rent - Board's Expenses. In addition to the Basic Rent and all other rental payments due from the Company hereunder, the Company will also pay, as additional rent, the reasonable and necessary expenses, not otherwise provided for, which may be incurred by the Board, or for which the Board may in any way become liable, as a result of issuing any of the Bonds, acquiring the Project and leasing the same to the Company, or being a party to the Lease or the Indenture; provided, however, that so long as the Company is not in default hereunder, the Company's liability under this Section 5.4 or under any other provisions of this Lease Agreement obligating the Company to pay expenses of the Board or the Trustee shall not include expenses voluntarily incurred by the Board or the Trustee without prior request or approval by the Company, unless such expenses are necessary to enable the Board or the Trustee to perform its or their obligations under this Lease Agreement and the Indenture.

Section 5.5 Additional Rent - Board's Administrative Fee and Payments for Public Services. In addition to the Basic Rent and all other rental requirements due from the Company hereunder, the Company will also pay as additional rent, (a) a one-time administrative fee to the Board in an amount equal to one-half of one percent of the principal amount of the Series 1986 Bonds, and (b) an annual payment to the municipality on behalf of the Board for the provision of public services (including police and fire protection) which shall be due on or before December 31 of each year, commencing in 1988, in the amount of \$42,535; provided that the final payment due hereunder which would otherwise be payable on December 31, 2001, shall be payable prior to the expiration of the Lease Term; and provided, further, that no such payment for the provision of public services shall be due on any December 31 if, for the tax year beginning on the immediately preceding October 1, the Project Site was subject to municipal

ad valorem taxation. The Board and the Company hereby agree that the payments required to be made by this Section 5.5 shall be in lieu of the payments required to be made by the Company pursuant to Section 6.3 of the 1981 Lease and Section 6.12 of the 1982 Lease, and commencing on January 1, 1988, no further payments shall be required pursuant to the said Section 6.3 of the 1981 Lease or the said Section 6.12 of the 1982 Lease.

Section 5.6 Optional Prepayment of Basic Rent. The Company may, at its option at any time and from time to time, prepay directly to the Trustee, for the account of the Board, such amount of Basic Rent as shall be sufficient to enable the Board to redeem and retire in advance of maturity, any or all of the Bonds, in accordance with their terms. In the event of such prepayment, the Board will cause the amount of Basic Rent so prepaid (and, if provision is to be made for the payment of all outstanding bonds and the Company so elects by written notice furnished to the Board and the Trustee contemporaneously with such prepayment, any unexpended Net Condemnation Award and Net Insurance Proceeds and any moneys then on deposit in the Construction Fund) to be applied to redemption and retirement of Bonds, in accordance with the provisions of the Indenture, on the earliest practicable date after receipt of such prepaid Basic Rent on which, under their terms, such Bonds may be redeemed, and will take all action necessary under the provisions of the Indenture to effect such redemption. The Board recognizes that under the provisions of Section 5.2 hereof, any such prepayment of Basic Rent will result in a total or partial abatement of the Basic Rent that would thereafter have come due under the provisions of said Section 5.2, had it not been for such prepayment.

Section 5.7 Obligation of Company Unconditional. The obligation of the Company to pay the Basic Rent, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Board or the Trustee. The Company will not suspend or discontinue any such payment or fail to perform and observe any of its other agreements and covenants contained herein or (except as expressly authorized in this Lease Agreement) terminate this Lease Agreement for any cause, including, without limiting the generality of the foregoing, the failure of the Board to complete the construction, acquisition or installation of the Improvements and the Leased Equipment, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration or commercial frustration of purpose, or any damage to or destruction of the Project or any part thereof, or the taking by eminent domain of title to or the right to temporary use of all or any part of the Project, or any change in the tax or other laws of the United States of America, the State of Alabama or any political or taxing subdivision of either thereof, or any failure of the Board to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement.

The provisions of the preceding paragraph of this Section 5.7 shall continue in effect only so long as any part of the principal of or the interest on any of the Bonds remains unpaid. Nothing herein contained shall, however, be construed to prevent the Company, at its own cost and expense and in its own name or in the name of the Board, from prosecuting or defending any action or proceeding or taking any other action involving third persons which the Company deems reasonably necessary in order to secure or protect its rights of use and occupancy and other rights hereunder, and the Board will cooperate fully with the Company in any such action or proceeding.

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ARTICLE VI

MAINTENANCE, TAXES AND INSURANCE

Section 6.1 Maintenance, Additions, Alterations and Improvements. The Company will, at its own expense, (a) keep the Project in as reasonably safe condition as its operations permit, and (b) subject to the provisions of Section 6.2 hereof, keep the Facility and the other improvements located on the Project Site in reasonable repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary and proper renewals thereto (including, without limitation, exterior and structural repairs, renewals and replacements); provided, however, that nothing contained in this sentence shall be construed to require the Company to make any renewals, repairs or replacements that are elsewhere in this Lease Agreement expressly required to be made by the Board. The Company may, also at its own expense, make any additions, alterations or improvements to the Project that it may deem desirable for its business purposes, that do not adversely affect the structural integrity of any building or other structure forming a part of the Project, and that will not impair the operating unity of the Facility or change the character of the Project as a "project" under the Authorizing Act; provided that all such additions, alterations or improvements shall, subject to the privilege of making full use of the party wall easements created in Section 12.3 hereof,

(1) be located wholly within the boundary lines of the Project Site, or

(2) be located wholly within the boundary lines of other adjacent real property hereafter acquired by the Board, leased to the Company by the Board and subjected to the demise of this Lease Agreement and to the lien of the Indenture and with respect to which the Board and the Trustee have been furnished with an opinion of Counsel satisfactory to each of them to the effect that the Board has good and marketable title thereto, subject only to the lien of the Indenture and Permitted Encumbrances, or

(3) be located wholly within the boundary lines of the Project Site and such other adjacent real property.

Any such adjacent real property so subjected to the demise hereof and to the lien of the Indenture shall henceforth be considered, for purposes of this Lease Agreement, as part of the Project Site. All such additions, alterations and improvements so made by the Company shall become a part of the Project.

The Company will not permit any mechanics' or other liens to stand against the Project for labor or materials furnished it in connection with any additions, alterations, improvements, repairs or renewals so made by it. The Company may, however, at its own expense and in good faith, contest any such mechanics' liens or other liens and in the event of any such contest may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless by such action the lien of the Indenture to any part of the Project shall be endangered or any part of the Project shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall be promptly satisfied.

Section 6.2 Removal of Leased Equipment. The Board and the Company recognize that after the Leased Equipment is installed at the Facility, portions thereof may become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Facility, but the Company shall not (any provision hereof to the contrary notwithstanding) be under any obligation to renew, repair or replace any such inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary Leased Equipment. However, in any instance where the Company in its sole discretion determines that any item of Leased Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Facility,

(a) the Company may remove such item of Leased Equipment from the Project Site and (on behalf of the Board) sell, trade in, exchange or otherwise dispose of it without any responsibility or accountability to the Board or the Trustee therefor, provided that (i) the Company substitutes and installs at the Project Site (either by direct payment of the costs thereof or by advancing to the Board the funds necessary therefor, as hereinafter provided) other machinery, equipment, furniture, fixtures or other personal property having equal or greater utility (but not necessarily the same value or function) in the operation of the Facility, which such substituted machinery, equipment, furniture, fixtures or other personal property shall be free of all liens and encumbrances (other than Permitted Encumbrances), shall be the sole property of the Board, shall be and become a part of the Leased Equipment subject to the demise hereof and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally comprising the Leased Equipment, and (ii) such removal and substitution do not impair the operating unity of the Facility; or

(b) the Company may remove such item of Leased Equipment from the Project Site and (on behalf of the Board) sell, trade in, exchange or otherwise dispose of it, without any responsibility or accountability to the Board or the Trustee

therefor and without being required to substitute and install at the Project Site other equipment in substitution therefor, provided that (i) in the case of the sale of such equipment to anyone other than itself or any of its Affiliates, or in the case of the scrapping thereof, the Company pays into the Bond Fund the proceeds from such sale or the scrap value thereof, respectively, (ii) in the case of the trade-in of such equipment for other property not to be installed at the Project Site, the Company pays into the Bond Fund an amount in cash equal to the credit received by it in such trade-in, or (iii) in the case of the sale of such equipment to itself or any of its Affiliates or in the case of any other disposition thereof, the Company pays into the Bond Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting practices; provided, however, that (1) there may be credited on any payment that under the provisions of this subsection (b) is due to be made into the Bond Fund by the Company an amount not in excess of (A) the original cost of any other equipment then installed at the Project Site that does not then constitute part of the Leased Equipment and is owned by the Company and that is free from all liens and encumbrances (other than the lien of the Indenture and Permitted Encumbrances), less (B) depreciation thereon at rates calculated in accordance with generally accepted accounting practices - all to the extent that such amount so credited has not theretofore been credited on payments theretofore due to be made into the Bond Fund pursuant to this subsection (b); and (2) from and after any such credit, such other equipment shall be and become the sole property of the Board and part of the Leased Equipment subject to the demise hereof and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally comprising the Leased Equipment.

In any case where the Company is herein required to purchase, install and substitute at the Project Site any item of machinery, equipment, furniture, fixtures or other personal property, it may, in lieu of purchasing and installing said machinery, equipment, furniture, fixtures and other personal property itself, advance to the Board the funds necessary therefor, whereupon the Board will purchase and install such machinery, equipment, furniture, fixtures or other personal property at the Project Site.

If, at the time of the removal of any item of Leased Equipment from the Project Site, there is then installed at the Project Site other equipment not then constituting part of the Leased Equipment, and if such other equipment has utility in the operation of the Project equal to or greater than that of the item of Leased Equipment to be removed and is free of all liens and encumbrances (other than Permitted Encumbrances), and if no part of the cost of such other equipment has been credited on a

payment theretofore due to be made into the Bond Fund pursuant to the provisions of subsection (b) of this section, the preceding provisions of this section shall not be applicable, it being understood and agreed, however, that from and after such removal such other equipment shall be and become the sole property of the Board and part of the Leased Equipment subject to the demise hereof and to the lien of the Indenture and shall be held by the Company on the same terms and conditions as the items originally comprising the Leased Equipment.

In furtherance of the preceding provisions of this section, the Company will

(1) pay to the Trustee such amounts as are required by the provisions of the preceding subsection (b) to be paid by the Company into the Bond Fund promptly after the sale, trade-in, exchange or other disposition requiring such payment, provided that no such payment need be made until the aggregate of such payments due but not theretofore made is \$100,000 or more;

(2) execute and deliver to the Board and the Trustee such documents as the Trustee may reasonably from time to time require to confirm the title of the Board (subject to this Lease Agreement) to, and the lien of the Indenture with respect to, any items of machinery, equipment, furniture, fixtures and other personal property that under the provisions of this section are to become a part of the Leased Equipment; and

(3) pay all reasonable costs (including reasonable counsel fees) incurred in subjecting to the demise of this Lease Agreement and the lien of the Indenture any items of machinery, equipment, furniture, fixtures or other personal property that under the provisions of this section are to become a part of the Leased Equipment.

The Company will not remove, or permit the removal of, any of the Leased Equipment from the Project Site except in accordance with the provisions of this Section 6.2.

The preceding provisions of this Section 6.2 shall apply only so long as any part of the principal of or the interest or premium (if any) on any of the Bonds remains unpaid. After full payment of the principal of and the interest or premium (if any) on the Bonds, neither the Board nor the Company shall be under any obligation to renew, repair or replace any of the Leased Equipment that may become inadequate, obsolete, worn out, unsuit-

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able, undesirable or unnecessary in the operation of the Facility, and after such full payment the Company may, if in its sole discretion any item of the Leased Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Facility, remove such item of Leased Equipment from the Project Site and (on behalf of the Board) sell, trade in, exchange or otherwise dispose of it, without any responsibility or accountability to the Board therefor and without being required to substitute and install at the Project Site other equipment in substitution therefor, and may retain any money or other consideration received by it upon any disposition of any such item of Leased Equipment.

Nothing contained herein shall prohibit the Company, at any time during which it is not in default hereunder, from removing from the Project Site any machinery, equipment, furniture, fixtures or other personal property that is owned by it or leased by it from third parties and that does not constitute part of the Leased Equipment, provided (1) that such machinery, equipment, furniture, fixtures or other personal property may be removed without adversely affecting the structural integrity of any building or other structure forming a part of the Facility or causing any material damage to any such building or structure or to the Project Site, or (2) that if such removal results in adversely affecting the structural integrity of any such building or structure or in causing material damage to any such building or structure or to the Project Site, the Company promptly thereafter takes such action as is necessary to restore the structural integrity of such building or structure or to repair such damage, as the case may be.

Section 6.3 Taxes, Other Governmental Charges and Utility Charges. The Board and the Company acknowledge (a) that under present law no part of the receipts, income or profits (if any) of the Board from the Project are subject to either Federal or Alabama taxation, and (b) that this factor, among others, induced the Company to enter into this Lease Agreement. However, the Company will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever (including, without limitation, ad valorem taxes) that may lawfully be assessed or levied against or with respect to the Project or any machinery, equipment or other 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 any part of the receipts, income or profits of the Board from the Project and any other taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project prior to or on a parity with the lien of the Indenture or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and pledge and assignment thereof to be created and made in the Indenture), (ii) all utility and other similar charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) 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.

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The Company may, at its own expense and in its own name and behalf or in the name and behalf of the Board, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by such action the title of the Board to any part of the Project shall be materially endangered or the Project or any part thereof shall become subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid prior to their becoming delinquent. The Board will cooperate fully with the Company in any such contest.

Section 6.4 Insurance Required. The Company will take out and continuously maintain in effect insurance with respect to the Project against such risks as are customarily insured against by businesses of like size and type, paying as the same become due all premiums with respect thereto, including, but not necessarily limited to,

(a) Insurance against loss or damage to the Facility and the Leased Equipment by fire, lightning or other casualty including malicious mischief or vandalism, 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 Alabama, to the extent of the full replacement value thereof, which insurance shall not be subject to cancellation except after 30 days' prior written notice from the insurer to the Board and the Trustee;

(b) Builder's risk insurance with respect to the construction of the Improvements; and

(c) Insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project Site or in any way related to the operations of the Facility, in the minimum amount of \$2,000,000.

All policies evidencing the insurance required by the terms of the preceding paragraph shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State of Alabama to assume the respective risks undertaken and may be written with deductible amounts comparable to those on similar policies carried by persons engaged in businesses of the size and type of the Company; provided, however, that such deductible amounts shall not exceed \$10,000. All such insurance policies, other than those evidencing the insurance required by clause (c) of the preceding paragraph and such other policies or portions thereof as may evidence insurance against liability for injury to persons or property of others, shall name as insureds the Board, the

Trustee and the Company (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder in excess of \$100,000 to be paid to the Trustee and all such losses not in excess of said sum to be paid to the Company; provided that all losses (including those in excess of \$100,000) may be adjusted by the Company, subject, in the case of any single loss in excess of \$100,000, to the approval of the Trustee. All policies evidencing the insurance required to be carried by this Section 6.4 shall be deposited with the Trustee; provided, however, that in lieu thereof the Company may deposit with the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the Company will furnish to the Trustee evidence reasonably satisfactory to the Trustee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease Agreement. Anything herein to the contrary notwithstanding, any insurance required by the provisions hereof may be evidenced by a blanket policy covering risks in addition to those hereby required to be covered, but only if appropriate allocation certificates and loss payable endorsements are furnished to the Board and the Trustee.

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Section 6.5 Advances by Board or Trustee. In the event the Company fails to take out or maintain the full insurance coverage required by this Lease Agreement or fails to keep the Project in as reasonably safe condition as its operating conditions permit and the Facility in reasonable repair and operating condition, the Board or the Trustee, after first notifying the Company of any such failure on its part and after the subsequent failure by the Company to take out or maintain such insurance or to take action reasonably calculated to keep the Project in as reasonably safe condition as the Company's operations permit and the Facility in reasonable repair and operating condition, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same or make such repairs, renewals and replacements as may be necessary to maintain the Project in as reasonably safe condition as the Company's operations permit and the Facility in reasonable repair and operating condition, respectively; and all amounts so advanced therefor by the Board or the Trustee shall become an additional obligation of the Company to the Board or to the Trustee, as the case may be, which amounts, together with interest thereon at a per annum rate of interest equal to the Base Rate, the Company will pay. Any remedy herein vested in the Board or the Trustee for the collection of rental payments shall also be available to the Board and the Trustee for the collection of all such amounts so advanced.

ARTICLE VII
PROVISIONS RESPECTING DAMAGE,
DESTRUCTION AND CONDEMNATION

Section 7.1 Damage and Destruction Provisions. If the Facility or any of the Leased Equipment is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Facility and the Leased Equipment resulting therefrom is not greater than \$100,000, the Company (a) will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition as prior to the event causing such damage or destruction, with such changes, alterations and modifications as will not impair the operating unity of the Project or its character or general purpose, (b) will apply for such purpose so much as may be necessary therefor of any insurance proceeds referable thereto, as well as any other moneys required therefor, and (c) shall, in the event the total costs of such repair, rebuilding and restoration are less than the amount of insurance proceeds referable thereto, pay to the Trustee, for deposit in the Bond Fund, the amount by which such proceeds exceed said total costs; provided that the Company may, if as a result of such damage or destruction it is entitled to do so under the provisions of Section 11.1 hereof, exercise the option to purchase there granted, in which event it need not repair, rebuild or restore the property damaged or destroyed.

If the Facility or any of the Leased Equipment is destroyed in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Facility and the Leased Equipment resulting therefrom is in excess of \$100,000, the Company will promptly so notify the Trustee in writing. If, in such event, the Company is not entitled to exercise the option to purchase granted in Section 11.1 hereof or if, in such event, being entitled to, it does not exercise such option, the Net Insurance Proceeds shall be paid to and held by the Trustee (or, if the Bonds have been fully paid, the Board), whereupon

(i) the Board will proceed, as promptly as practicable under the circumstances and under such terms, conditions and contracts as shall be approved by the Company, to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as prior to the event causing such damage or destruction, with such changes, alterations and modifications as shall be specified by the Company and as will not impair the operating unity of the Project or its character or general purpose, and

(ii) the Trustee (or, if the Bonds have been fully paid, the Board) will apply the Net Insurance Proceeds to payment of the costs of such repair, rebuilding or restoration,

either on completion thereof or as the work progresses, as the Trustee or the Board, as the case may be, may elect.

Any balance of the Net Insurance Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be paid into the Bond Fund, or, in the event the Bonds have been fully paid, to the Company. In the event said proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Company (1) will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the amount of the Net Insurance Proceeds available therefor, or (2) will advance to the Board and the Trustee the moneys necessary to complete said work, in which case the Board will proceed so to complete said work, and the Board and the Trustee will, upon completion of and payment in full for such work, return to the Company any portion of such advance that is not needed therefor. The Company shall not, by reason of the payment of such excess costs (whether by direct payment thereof or advances to the Board or Trustee therefor) be entitled to any reimbursement from the Board or to any abatement or diminution of the rental provided for herein.

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If, after being furnished with the necessary funds (whether by the Company, from insurance proceeds or from both sources), the Board fails or refuses after reasonable request so to take any action required to repair, rebuild or restore the property damaged or destroyed, the Company may, for and in the name and behalf of the Board, take such action as is required to accomplish such repair, rebuilding or restoration, in which case it shall be entitled to reimbursement for the costs thereof from the funds referred to above, to the extent such funds are sufficient therefor.

In no event shall the Board undertake the work of any repair, rebuilding or restoration unless and until (i) it has been notified in writing by the Company that the Company irrevocably relinquishes any right it may have, on account of such damage or destruction, to exercise the option to purchase granted in Section 11.1 hereof, or (ii) the time within which the Company must exercise such option has expired without the Company having exercised such option. If, however, as a result of such damage or destruction (irrespective of whether the loss resulting therefrom is greater than \$100,000 or not), the Company is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 11.1, then neither the Company nor the Board shall be required to repair, rebuild or restore the property damaged or destroyed, in which event so much (which may be all) of any Net Insurance Proceeds referable to such damage or destruction as shall be necessary to provide for full retirement of the Bonds (as specified in Section 11.1 hereof) shall be paid or credited by the Trustee into the Bond Fund and the excess thereafter remaining (if any) shall be paid to the Company after or simultaneously with the exercise by the Company of such option.

Section 7.2 Condemnation Provisions. If the Project or any part thereof is taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority, the entire condemnation award (if any) referable to the Project, including any that may be recoverable by the Company, shall be paid to the Trustee (or, if the Bonds have been fully paid, to the Board) and applied as hereinafter provided:

(a) **Taking of All or Substantially All the Facility.** If all or substantially all the Project is taken by such eminent domain proceeding, this Lease Agreement shall, unless the Company has theretofore duly exercised the option to purchase granted in Section 11.1 hereof, terminate except as to the provisions of this subsection (a) as of the forty-fifth (45th) day after the receipt by the Trustee of the entire final condemnation award. The Board will, as promptly as practicable following the Trustee's receipt of the entire final condemnation award, notify the Company of the date on which the Trustee received such entire final condemnation award, and will, on the forty-fifth (45th) day after such receipt by the Trustee, furnish to the Company a statement in writing of the amount of the Net Condemnation Award and the aggregate of the amounts on deposit in the Bond Fund and the Construction Fund.

If the total of all such amounts is insufficient to pay and retire all the then outstanding Bonds (including, without limitation, principal, premium, if any, interest to maturity or earliest practicable redemption date, as the case may be, expenses of redemption and Trustee's fees, charges and disbursements) in accordance with the applicable provisions of the Indenture, the Company will promptly pay to the Board and the Trustee the amount of such deficiency as additional Basic Rent.

If the total of all such amounts is in excess of the sum needed to pay and retire all the outstanding Bonds, as aforesaid (or if the Bonds have been fully paid), then such excess (or, if the Bonds have been fully paid, such total amount) shall be paid to the Company.

(b) **Taking of Less Than All or Less Than Substantially All the Facility.** If less than all or less than substantially all the Project is taken by such eminent domain proceeding, this Lease Agreement (including, without limitation, the provisions hereof relating to the payment of Basic Rent) shall continue in full force and effect but with the following consequences;

(1) If no part of the Project is taken or damaged and if in the Company's opinion the efficient utilization of the Project is not impaired by such taking, the Net Condemnation Award referable thereto shall be paid into the Bond Fund or, in the event the Bonds have been fully paid, to the Company.

(2) If any part of the Project is taken or damaged or if in the Company's opinion the efficient utilization of the Project is impaired by such taking, the Board will proceed, as promptly as practicable under the circumstances and upon such terms as shall be approved in writing by the Company, to repair, rebuild, restore or rearrange the Project so as to make it suitable for the Company's uses, and the Trustee (or, if the Bonds have been fully paid, the Board) will apply the Net Condemnation Award referable to such taking to payment of the costs of such repair, rebuilding, restoration or rearrangement. If the Net Condemnation Award is in excess of the costs of such repair, rebuilding, restoration or rearrangement, the excess shall be paid into the Bond Fund or, in the event the Bonds have been fully paid, to the Company. If the Net Condemnation Award is not sufficient to pay all the costs of such repair, rebuilding, restoration or rearrangement, the Company will pay the deficiency, provided that it shall not by reason of the payment of any such deficiency be entitled to any reimbursement from the Board or to any abatement or diminution of the rental provided for herein. If, after being furnished with the necessary funds (whether by the Company, from condemnation proceeds or from both such sources), the Board fails or refuses after reasonable request so to repair, rebuild, restore or rearrange the Facility so as to make it suitable for the Company's uses, the Company may, for and in the name and behalf of the Board, perform the work of such repair, rebuilding, restoration or rearrangement, in which case it shall be entitled to reimbursement for the costs thereof from the funds referred to above, to the extent that such funds are sufficient therefor.

The provisions of the preceding subparagraph (2) to the contrary notwithstanding, in no event shall the Board undertake the work of any repair, rebuilding, restoration or rearrangement thereunder unless and until (A) it has been notified in writing by the Company that the Company irrevocably relinquishes any right it may have, on account of such condemnation, to exercise the option to purchase granted in Section 11.1 hereof, or (B) the time within which the Company must exercise such option has expired

without the Company having exercised such option. If, however, as a result of such taking, the Company is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 11.1, then the Board shall not be required to repair, rebuild, restore or rearrange the Project nor shall any of the other provisions of said subparagraph (2) apply in such case, and so much (which may be all) of the Net Condemnation Award referable to such taking as may be necessary to provide for full payment and retirement of the Bonds (as specified in Section 11.1 hereof) shall be paid or credited by the Trustee into the Bond Fund and the excess thereafter remaining (if any) shall be paid to the Company after or simultaneously with the exercise by the Company of such option.

The Board will cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will follow all reasonable directions given to it by the Company in connection with such proceeding. The Company shall have full and complete control of such proceedings, including (without limitation) the right to select counsel for the Board. In no event will the Board settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the prior written consent of the Company.

Section 7.3 Condemnation of Right to Use of Project for Limited Period. If the use, for a limited period, of all or part of the Project is taken by any such eminent domain proceeding, this Lease Agreement (including, without limitation, the provisions hereof relating to the payment of Basic Rent) shall, unless as a result thereof the Company is entitled to exercise the option to purchase granted in Section 11.1 hereof and duly does so in accordance with the provisions of said Section 11.1, continue in full force and effect, but with the consequences specified in the remaining provisions of this Section 7.3. If the period of such taking expires on or before the expiration of the Lease Term, the Company shall be entitled to receive the entire condemnation award made therefor, whether by way of damages, rent or otherwise, and shall upon being restored to possession restore the Project as nearly as practicable to the condition existing immediately prior to such taking, with such changes, alterations and modifications as will not impair the operating unity of the Project or its character or general purpose. If such taking occurs during the Lease Term but the period of such taking expires after the expiration of the Lease Term, the Company shall be entitled to receive that portion of the award allocable to the period from the date of such taking to 11:59 o'clock, P.M., on December 1, 2001, and the Board shall be entitled to the remainder thereof; provided, however, that if within ten (10) days after such taking the Company exercises the option to purchase granted in Section 11.2 hereof, it (rather than the Board) shall be entitled to receive the entire condemnation award.

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Section 7.4 Condemnation of Company-Owned Property. The Company shall be entitled to any condemnation award or portion thereof made for damages to or takings of its own property, as well as all other sums awarded as compensation for the interest of the Company in the part of the Project taken and as damages to the interest of the Company in any part thereof not taken, but there shall be deducted therefrom, or paid directly by the Company, all attorneys' fees and other expenses incurred in connection with the receipt of such award or sum or portion thereof.

Section 7.5 Provisions Relating to the Incurring of Certain Expenses after Bonds Paid. The Board will not, at any time after full payment of the Bonds, incur any expenses in connection with the collection of any insurance proceeds or condemnation award with respect to the Project, or any part thereof, without the prior written consent of the Company.

Section 7.6 Optional Use of Net Condemnation Award and Net Insurance Proceeds. The provisions of this Article VII are subject to the option of the Company to apply any unexpended Net Condemnation Award and Net Insurance Proceeds in accordance with the provisions of Section 5.6 hereof.

ARTICLE VIII

PARTICULAR COVENANTS OF THE COMPANY

Section 8.1 General Covenants. The Company will not do or permit anything to be done on or about the Project that will affect, impair or contravene any policies of insurance that may be carried on the Project or any part thereof against loss or damage by fire, casualty or otherwise. The Company will, in the use of the Project Site, the Facility and the public ways (if any) abutting the Project Site, comply with all applicable lawful requirements of all governmental bodies.

Section 8.2 Release and Indemnification Covenants. The Company releases the Board, each director, officer, employee and agent thereof, the Trustee and the holders of the Bonds from, and will indemnify and hold the Board, each director, officer, employee and agent thereof, the Trustee and the holders of the Bonds harmless against, any and all claims, liabilities or losses of any character or nature whatsoever asserted by or on behalf of any persons, firm, corporation or governmental authority arising out of, resulting from, or in any way connected with the Project, including, without limiting the generality of the foregoing:

(a) obligations for the payment of any Project Development Costs which are not paid because the proceeds derived from the sale of the Bonds are insufficient to pay all said costs and the Company fails, pursuant to Section 4.3 hereof, to pay such costs itself or to pay into the Construction Fund sufficient moneys to pay all said costs;

(b) any destruction of or damage to property or any injury to or death of any person or persons caused by or related to the Project; and

(c) any actions taken by the Board at the request or suggestion of the Company or any person acting for the Company (including its officers, employees and counsel, as well as bond counsel involved at the request of the Company in the issuance of the Bonds) in connection with the offering or sale of the Bonds;

provided, however, that the Company shall not be obligated to indemnify the Board, any director, officer, employee or agent thereof, the Trustee or the holder of the Bond against any claim, liability or loss resulting from willful misconduct or gross negligence on the part of the Board, such director,

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officer, employee or agent, the Trustee or the holders of the Bonds; and provided, further, that no agent of the Board designated by the Company shall have any rights as an indemnifiable party pursuant to the provisions of this section. If any indemnifiable party (whether the Board, any of its directors, officers, employees or agents, the Trustee or the holders of the Bonds) shall be obligated to pay any claim, liability or loss, and if in accordance with all applicable provisions of this section the Company shall be obligated to indemnify and hold such indemnifiable party harmless against such claim, liability or loss, then, in such case, the Company shall have a primary obligation to pay such claim, liability or loss on behalf of such indemnifiable party and may not defer discharge of its indemnity obligation hereunder until such indemnifiable party shall have first paid such claim, liability or loss and thereby incurred actual loss. The Company will also pay or reimburse all legal or other expenses reasonably incurred by any indemnifiable party in connection with the investigation or defense of any action or proceeding, whether or not resulting in liability, with respect to any claim, liability or loss in respect of which indemnity may be sought against the Company under the provisions of this section.

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In the event that any action or proceeding is brought against any indemnifiable party (whether the Board, any of its directors, officers, employees or agents, the Trustee or the holders of the Bonds) in respect of which indemnity may be sought against the Company under the provisions of this section, such indemnifiable party shall, as a condition of the Company's liability under the provisions of this section give written notice to the Company of such action or proceeding within a reasonable time following the commencement thereof and shall thereafter forward to the Company a copy of every summons, complaint, pleading, motion or other process received with respect to such action or proceeding. The Company may (and if so requested by such indemnifiable party, shall) at any time assume the defense of such indemnifiable party in connection with any such action or proceeding, and in such case the Company shall pay all expenses of such defense and shall have full and complete control of the conduct on the part of such party of any such action or proceeding, subject, however, to the other provisions of this section. In any action or proceeding where the Company assumes the defense of any indemnifiable party, the Company shall have the right to select counsel for such party; provided that such party may in its discretion employ its own counsel if it deems such action to be necessary, in which case the Company shall pay the fees and expenses of such other counsel in addition to the fees and expenses of such counsel selected by the Company.

The Company shall not be obligated to indemnify and hold harmless any indemnifiable party for any claim, liability or loss if such indemnifiable party has agreed to a settlement of such claim, liability or loss without the Company's consent, irrespective of whether the Company had, prior to such settlement, exercised its right to assume the defense of such indemnifiable party in connection with any such action or proceeding; provided, however, that in the event an indemnifiable party desires to settle a claim in response to a bona fide offer of settlement, if the Company is

unwilling to settle the claim in accordance with the terms of such offer, then, in that event, the Company may withhold its consent to the settlement of the claim in accordance with the terms of such offer of settlement only if it establishes an escrow fund with an escrow agent acceptable to such indemnifiable party in a principal amount equal to the difference between the claimed amount for which the indemnifiable party is potentially liable and the amount of the settlement offer. Such escrow may consist of cash, direct obligations of the United States Government or obligations which are unconditionally guaranteed by the United States Government, bank certificates of deposit, bank letters of credit or any other security acceptable to such indemnifiable party. Any interest earned on the funds held in such escrow shall accrue to the benefit of the Company and shall be paid over to the Company as earned. Subject to the preceeding provisions of this paragraph, the Company shall have the right to settle or compromise any claim, liability or loss for which it shall be liable under the provisions of this section upon such terms and conditions as it shall determine in the exercise of its sole discretion.

Section 8.3 Inspection of Project. The Company will permit the Board and the Trustee and their duly authorized agents at all reasonable times to enter upon, examine and inspect the Project. So long as any of the Bonds are outstanding and unpaid, the Company will also permit the Trustee and its duly authorized agents to take such action as may be necessary and convenient to cause the Project to be kept in as reasonably safe condition as the Company's operations permit and to cause the Facility and the other improvements on the Project Site to be kept in reasonable repair and operating condition, all as and to the extent provided in Sections 6.1 and 6.5 hereof.

Section 8.4 Agreement to Maintain Corporate Existence. The Company will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all its assets (either in a single transaction or in a series of related transactions) and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided that the Company may, without violating the agreements contained in this section, do or perform any of the following:

- (a) It may consolidate with or merge into another United States Corporation, or permit one or more United States Corporations to consolidate with or merge into it, if the corporation surviving such merger or resulting from such consolidation, if it shall be one other than the Company, expressly assumes in writing all the obligations of the Company contained in this Lease Agreement, and there is furnished to the Board and the Trustee a certificate of an Independent Auditor stating that the net worth (computed on the basis of generally accepted accounting principles consistently applied) of the corporations surviving such merger or resulting from such consolidation will be not less than ninety per cent (90%)

of the net worth of the Company immediately prior to such merger or consolidation; and

(b) It may transfer to another United States Corporation all or substantially all its assets as an entirety, and (if it so elects) thereafter dissolve, if the corporation to which such transfer shall be made expressly assumes in writing all the obligations of the Company contained in this Lease Agreement, and there is furnished to the Board and the Trustee a certificate of an Independent Auditor stating that the net worth (computed on the basis of generally accepted accounting principles consistently applied) of the corporation to which such transfer shall be made will be not less than ninety per cent (90%) of the net worth of the Company immediately prior to such transfer.

The Company will, promptly following any merger, consolidation or transfer permitted under the provisions of this Section 8.4, furnish to the Board and the Trustee fully executed or appropriately certified copies of the writing by which the Company's successor or transferee corporation expressly assumed the obligations of the Company contained in this Lease Agreement, and a copy of the certificate of an Independent Auditor required by subparagraphs (a) and (b) of this Section 8.4.

If, after a transfer by the Company of all or substantially all its assets to another United States Corporation under the circumstances described in the preceding clause (b) of this section, the Company does not thereafter dissolve, it shall not have any further rights or obligations hereunder.

Section 8.5 Qualification in Alabama. If, in accordance with the permissive provisions of Section 8.4 hereof, the Company should merge into a corporation not organized and existing under the laws of Alabama, should consolidate with one or more corporations under circumstances wherein the consolidated corporation is not a corporation organized and existing under the laws of Alabama or should transfer all or substantially all its assets to a corporation not organized under the laws of Alabama, it will cause the corporation into which it merged, the corporation resulting from such consolidation or the corporation to which all or substantially all its assets were transferred, as the case may be, to qualify to do business in Alabama as a foreign corporation and to remain so qualified at all times during the remainder of the Lease Term.

Section 8.6 Further Assurances. The Company will, at its own cost and expense, take all actions that may at the time and from time to time be necessary to perfect, preserve, protect and secure the interests of the Board and the Trustee, or either, in and to the Project, including, without limitation, the filing of all financing and continuation statements that may at the time be required under the Alabama Uniform Commercial

Code. The Company further agrees, without in any way limiting the generality of the foregoing, to take any and all such actions that in the judgment of the Board or the Trustee are necessary for the perfection, preservation, protection and securing of such interests.

Section 8.7 Concerning the Tax-Exempt Nature of the Interest Income on the Series 1986 Bonds. (a) The Company will not issue, or permit to be issued on its behalf, any instructions for the investment or reinvestment of any moneys constituting "gross proceeds" of the Series 1986 Bonds if, as a result of any such investment or reinvestment being made in accordance therewith, the Series 1986 Bonds would be considered an "arbitrage bond" within the meaning of Section 148 of the Code. Furthermore, the Company will make or cause to be made on a timely basis all rebate payments to the United States of America required by Section 148(f) of the Code, or any successor provision thereto.

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DOX (b) The Company will not approve, or permit to be approved on its behalf, any payment out of moneys in the Construction Fund if, as a result of such payment, either (i) less than ninety-five percent (95%) of the proceeds of the Series 1986 Bonds would be considered as having been used for Qualified Project Costs or (ii) more than 2% of the principal of the Series 1986 Bonds would be considered as having been used to pay the expenses of issuing the Series 1986 Bonds.

DOX (c) The Company will maintain all records required by Section 148 of the Code and the applicable Treasury Regulations thereunder, and shall furnish such information with respect to its compliance with this Section 8.7 and Section 148 of the Code as the Trustee or the Holder or any former Holder of the Series 1986 Bonds may reasonably request in writing.

(d) The Company will file, or will cause to be filed, with the Internal Revenue Service all statements and reports, if any, required, by Section 144(a)(4) of the Code or rules or regulations issued thereunder, to be so filed as a condition to continue qualification of the Series 1986 Bonds as a small issue the interest on which is exempt from Federal income taxation.

(e) The Company will, at the request of the Trustee, within one hundred twenty (120) days after the expiration of one year from the date of issue of the Series 1986 Bonds and within one hundred twenty (120) days after the expiration of each of the next two succeeding such years, furnish to the Trustee a certificate signed by its chief financial officer or by an independent public accounting firm and stating the aggregate amount of capital expenditures determined as provided in Section 144(a)(4)(A) of the Code made with respect to Local Facilities during the three-year period next preceding the date of issue of the Series 1986 Bonds and during each full year after such date.

(f) The Company understands that as a result of Section 147(d)(1) of the Code, the use of any portion of the proceeds of the Series 1986 Bonds to acquire property the first use of which commenced prior to the acquisition of such property by the Board or the Company will result in the income on the Series 1986 Bonds being subject to Federal income taxation unless certain rehabilitation expenditures (as defined in Section 147(d)(3) of the Code) are made with respect to such property in the minimum amounts required by Section 147(d)(2) of the Code within twenty-four (24) months of the latter of the date on which such property was acquired, or the date on which the Bond was issued. The Company hereby agrees to make all necessary rehabilitation expenditures required by Section 147(d)(2) of the Code so that Section 147(d)(1) of the Code will not be applicable with respect to any property acquired with any portion of the proceeds of the Series 1986 Bonds the original use of which commenced prior to the acquisition of such property by the Board or the Company.

(g) The Company does hereby agree and covenant that it will comply or cause compliance with the requirements with respect to the exemption from gross income for Federal income tax purposes of the interest income on the Series 1986 Bonds as set out in the Code, or as set out in any other legislation hereafter adopted. Without limiting the generality of the foregoing, the Company covenants and agrees to comply with the representations and warranties contained in Section 2.2 hereof with respect to the use of the proceeds from the Series 1986 Bonds and the other requirements of the Code for the continued exemption of the interest income on the Series 1986 Bonds from gross income for Federal income tax purposes.

(h) In the event of a Series 1986 Determination of Taxability, the Company will promptly pay to the Trustee (or in the event of a Series 1986 Determination of Taxability after the final payment of the Series 1986 Bonds, directly to the holders of the Series 1986 Bonds), for the account of the Board and as additional Basic Rent, an amount equal to the difference between the interest payable with respect to the Series 1986 Bonds between the Series 1986 Date of Taxability and the most recent Interest Payment Date at the Taxable Rate and the interest paid with respect to the Series 1986 Bonds between the Series 1986 Date of Taxability and the most recent Interest Payment Date.

(i) The provisions of this Section 8.7 shall survive any termination of this Lease Agreement, including, without limitation, any termination pursuant to the provisions of subsection (a) of Section 7.2 hereof or subsection (b) of Section 10.2 hereof, any termination resulting from the exercise of the option to terminate granted in Section 11.3 hereof, any termination resulting from the exercise of any of the purchase options granted in Sections 11.1 and 11.2 hereof, or any termination resulting from the expiration of the term hereof.

Section 8.8 Indemnification for Preference Taxes. In the event that as a result of any change of law occurring subsequent to the issuance of the Series 1986 Bonds (other than a change resulting from the adoption of the Tax Reform Act of 1986), a holder or former holder of any of the Series 1986 Bonds is required to pay any Bond Preference Tax attributable directly or indirectly for the purchase or ownership of the Series 1986 Bonds, the Company shall pay the said holder or former holder within ten (10) days after receipt by the Company of written demand therefore (accompanied by appropriate verification), an amount which, after taking into account the income taxes that the holder or former holder is required to pay as a result of the receipt of such payments, shall equal the amount of such Bond Preference Tax and any other tax payable by the said holder or former holder with respect to the purchase or ownership of the Bond.

Section 8.9 Statement Regarding Leased Equipment. On or before the last day of each calendar year during which any portion of the principal of the Bonds is outstanding, the Company shall deliver to the Trustee a certificate specifically identifying the items of leased equipment then subject to the demise hereof, which shall set forth the depreciated value of each item of leased equipment as of the end of the most recent fiscal year of the Company.

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ARTICLE IX

CERTAIN PROVISIONS RELATING TO ASSIGNMENT, SUBLEASING AND MORTGAGING AND TO THE BONDS

Section 9.1 Provisions Relating to Assignment and Subleasing by Company. The Company may assign this Lease Agreement and the leasehold interest created hereby, and may sublet the Project or any part thereof, without the necessity of obtaining the consent of either the Board or the Trustee; provided, however, that no assignee or sublessee or anyone claiming by, through or under any such assignment or sublease shall by virtue thereof acquire any greater rights in the Project or in any part thereof than the Company then has under this Lease Agreement, nor shall any such assignment or subleasing or any dealings or transactions between the Board or the Trustee or any sublessee or assignee in any way relieve the Company from primary liability for any of its obligations hereunder. Thus, in the event of any such assignment or subleasing, the Company shall remain primarily liable for payment of the rentals herein provided to be paid by it and for performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

Section 9.2 Mortgaging of Project by Board. It is understood and agreed that the Board will mortgage the Project to the Trustee as security for the payment of the Bonds, subject to this Lease Agreement (which Lease Agreement and the estate of the Company hereunder shall be prior and superior to the lien of the Indenture), and will assign its interest in and pledge any moneys receivable under this Lease Agreement to the Trustee as security for payment of the principal of and the interest and premium (if any) on the Bonds. It is further understood and agreed that the Board will in the Indenture obligate itself to follow the instructions of the Trustee or the holders of the Bonds or a certain percentage thereof in the election or pursuit of any remedies herein vested in it. Upon the assignment and pledge to the Trustee of the Board's interest in this Lease Agreement, the Trustee shall have all rights and remedies herein accorded the Board and any reference herein to the Board shall be deemed, with the necessary changes in detail, to include the Trustee, and the Trustee and the holders of the Bonds shall be deemed to be third party beneficiaries of the covenants and agreements on the part of the Company herein contained. Subsequent to the issuance of the Bonds and prior to their payment in full, the Board and the Company shall have no power to modify, alter, amend or (except as specifically authorized herein) terminate this Lease Agreement without the prior written consent of the Trustee and then only as provided in the Indenture. The Board will not, so long as the Company is not in default hereunder, amend the Indenture or any indenture supplemental thereto without the prior written consent of the Company.

Without the prior written consent of the Company, the Board will not, at any time while the Company is not in default hereunder, hereafter issue any bonds or other securities (including refunding securities), other than the Series 1986 Bonds and the Additional Bonds, that are payable out of or secured by a pledge of the revenues and receipts derived by the Board from the leasing or sale of the Project, nor, without such consent, will the Board, at any time while the Company is not in default hereunder, hereafter place any mortgage or other encumbrance (other than the Indenture and supplemental indentures contemplated thereby, the 1981 Indenture and the 1982 Indenture) on the Project or any part thereof. Neither the Board nor the Company will unreasonably withhold any consent herein or in the Indenture required of either of them.

Section 9.3 Prepayment of Basic Rent. The Company may, at its option at any time and from time to time, prepay directly to the Trustee, for the account of the Board, such amount of Basic Rent as shall be sufficient to enable the Board to redeem and retire, in advance of maturity, any or all of the Bonds, in accordance with their terms. In the event of such prepayment, the Board will cause the amount of Basic Rent so prepaid to be applied to redemption and retirement of Bonds, in accordance with the provisions of the Indenture, on the earliest practicable date after receipt of such prepaid Basic Rent on which, under their terms, such Bonds may be redeemed, and will take all action necessary under the provisions of the Indenture to effect such redemption. The Board recognizes that under the provisions of Section 5.2 hereof, any such prepayment of Basic Rent will result in a total or partial abatement of the Basic Rent that would thereafter have come due under the provisions of said Section 5.2, had it not been for such prepayment.

Section 9.4 References to Bonds Ineffective After Bonds Paid. Upon full payment of the Bonds, all references in this Lease 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. For purposes of this Lease Agreement, any of the Bonds shall be deemed fully paid if there exist, with respect thereto, the applicable conditions specified in Section 16.1 of the Indenture.

In the event the Bonds are fully paid prior to the last maturity thereof, the Company shall be entitled to use and occupancy of the Project from the date of such payment until 11:59 o'clock, P. M., on December 1, 2001, without the payment of any further Basic Rent but otherwise on all the same terms and conditions hereof. If after full payment of the Bonds, any moneys then remain in any of the special funds created in the Indenture, the Board (A) will cause the Trustee to pay all such moneys to the Company, and (B) hereby assigns all such moneys to the Company.

Section 9.5 Concerning Issuance of Additional Parity Bonds. The Board and the Company recognize that under the provisions of the

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Indenture, the Board is authorized to issue one or more series of Additional Bonds on a parity with the Series 1986 Bonds, for certain purposes, provided that the conditions precedent specified in the Indenture are complied with. If the Company is not in default hereunder, the Board will, on the written request of the Company and upon being furnished by the Company with the documentation required therefor in Section 8.2 of the Indenture, take such actions as are necessary to authorize the issuance and sale of such amount of Additional Bonds as is specified in such request and will use its best efforts to effect the sale thereof; provided that the interest rate or rates to be borne by such Additional Bonds and the purchase price to be paid therefor are approved in writing by the Company.

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ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. The following shall be "events of default" under this Lease Agreement, and the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the Company to pay, when due and payable, the Basic Rent hereinabove provided;

(b) Failure by the Company to perform or observe any of its agreements or covenants contained in this Lease Agreement (other than an agreement or covenant a default in the performance or breach of which is elsewhere in this Section specifically dealt with), which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring the Company to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the Company by the Board or the Trustee, unless (i) the Board and the Trustee shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (iii) the Company is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent;

(c) The occurrence of an event of default under the 1981 Lease or the 1981 Indenture;

(d) The occurrence of an event of default under the 1982 Lease or the 1982 Indenture;

(e) The dissolution or liquidation of the Company or the filing by the Company of a voluntary petition in bankruptcy, or its failure to lift or to bond (in a manner satisfactory to the Trustee), within ninety (90) days, any execution, garnishment or attachment of a size as seriously to impair its ability to carry on its operations, the commission by it of any act of bankruptcy or its adjudication as a bankrupt, an assignment by it for the benefit of creditors, the entry by it

into an agreement of composition with its creditors or the approval by a court of competent jurisdiction as having been filed in good faith of a petition applicable to it in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under any similar act that may hereafter be enacted;

(f) Any warranty, representation or other statement by or on behalf of the Company contained in this Lease Agreement or any warranty, representation or other statement by or on behalf of the Company contained in the Series 1986 Guaranty shall be false, untrue or misleading in any material respect;

(g) The failure by the Company to perform or observe any covenant, condition or agreement contained in the Series 1986 Guaranty required to be observed or performed; or

(h) The failure by the Company to perform or observe any covenant, condition or agreement contained in the Repurchase Agreement.

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The term "force majeure" as used in subsection (b) of this section means acts of God or the public enemy, strikes, labor disputes, lockouts, work slowdowns or stoppages or other industrial disturbances, insurrections, riots or other civil disturbances, orders of the United States of America, the State of Alabama or any department, agency or political subdivision of either thereof, or of other civil or military authority, or partial or entire failure of public utilities.

Section 10.2 Remedies on Default. Whenever any such event of default shall have happened and be continuing, the Board and the Trustee (or the Trustee on behalf of the Board) may take any one or more of the following remedial steps:

(a) They or it may re-enter and take possession of the Project, exclude the Company from possession thereof and lease the same for the account of the Company, holding the Company liable for the rent and other payments due hereunder up to the effective date of such leasing and for the excess, if any, of the rent and other amounts payable hereunder over the rents and other amounts which are payable by the lessee under such new lease;

(b) They or it may terminate this Lease Agreement, exclude the Company from possession of the Project and hold the Company liable for the balance due hereunder, in which event the rights of the Company in the Project and the use and possession thereof shall terminate;

(c) They or it may declare immediately due and payable all installments of rent thereafter coming due hereunder, provided, however, that the total amount of such rent that may be so declared immediately due and payable shall be an amount which, when added to the total of the amounts then on deposit in the Bond Fund and the Construction Fund, will be sufficient to pay, redeem and retire all the outstanding Bonds on the earliest practicable date thereafter on which, under their terms, they may be redeemed, including, without limitation, principal, premium, interest to mature until and on such date, expenses of redemption and Trustee's fees and charges;

(d) They or it may have access to, and inspect, examine and make copies of, the books, records and accounts of the Company, but if and only if any of the Bonds are then outstanding; and

(e) They or it may take whatever other action at law or in equity may appear necessary or desirable to collect the rent then due, or to enforce any obligation, covenant or agreement of the Company under this Lease Agreement.

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Section 10.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Board 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 Lease 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 any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Board or the Trustee to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

Section 10.4 Agreement to Pay Attorneys' Fees. In the event that, as a result of a default or a threatened default by the Company hereunder, the Board or the Trustee should employ attorneys at law or incur other expenses in or about the collection of rent or the enforcement of any other obligation, covenant, agreement, term or condition of this Lease Agreement, the Company will pay to the Board or to the Trustee, as the case may be, reasonable attorneys' fees and other expenses so incurred by the Board or the Trustee.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease 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. Further, neither the receipt or the acceptance of rental hereunder by the Board, or by the Trustee on its behalf, shall be deemed to be a waiver of any breach of any covenant or condition herein contained even though at the time of such receipt or acceptance there has been a breach of one or more covenants or conditions on the part of the Company herein contained and the Board or the Trustee (or both) have knowledge thereof.

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ARTICLE XI

OPTIONS

Section 11.1 Option to Purchase Upon Occurrence of Certain Extraordinary Events. The Company shall have, and is hereby granted, the option to purchase the Project, at any time while this Lease Agreement is in full force and effect, if

(a) the Project is damaged or destroyed, by fire or other cause, to such extent that in the opinion of an Independent Engineer, expressed in a written certificate filed with the Board and the Trustee, (i) the Project cannot reasonably be restored to the condition thereof immediately preceding such damage or destruction within a period of four (4) consecutive months, or (ii) the Company or any sublessee of the Project is thereby prevented from carrying on its normal operations at the Project for a period of not less than four (4) consecutive months, or

(b) title to, or the temporary use of, any part of the Project is taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority and such taking or takings result (or, in the opinion of an Independent Engineer, expressed in a written certificate filed with the Board and the Trustee, are likely to result) in the Company or any sublessee of the Project being thereby prevented from carrying on its normal operations at the Project for a period of not less than four (4) consecutive months, or

(c) as a result of any changes in the Constitution of the State of Alabama or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), entered after the contest thereof by the Company in good faith, this Lease Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein or unreasonable burdens or excessive liabilities are imposed on the Board or the Company.

To exercise such option, the Company

(i) shall, within sixty (60) days following the event authorizing the exercise of such option, give written notice to the Board and the Trustee,

(ii) shall specify therein the date of purchase, which shall be not less than forty-five (45) nor more than ninety (90) days after the date such notice is mailed, and

(iii) shall on the date of purchase pay to the Trustee (for the account of the Board), as and for the purchase price of the Project, an amount which, when added to the total of the amounts on deposit in the Bond Fund and the Construction Fund plus the amount of any Net Insurance Proceeds or Net Condemnation Award in the hands of the Trustee and referable to the damage, destruction or condemnation authorizing the exercise of such option, will be sufficient to pay, retire and redeem all the outstanding Bonds on the earliest practicable date next succeeding the date of purchase on which under their terms they may be redeemed, including, without limitation, principal, all interest to mature until and on such date, expenses of redemption and Trustee's reasonable fees, charges and disbursements; provided, however, that if on the date of purchase the Bonds have been paid in full, the Company shall not be required to pay any such amount in order to entitle it to exercise such option, in which event (any provision herein to the contrary notwithstanding) any Net Condemnation Award referable to any condemnation authorizing the exercise of such option (or, in the case of damage or destruction authorizing the exercise of such option, any Net Insurance Proceeds referable thereto) shall be paid to the Company simultaneously with or promptly after the exercise of such option.

Upon receipt of said sum (if payment of any such sum is required), and if at such time the Company is not in default in payment of the Basic Rent due hereunder, the Board will, by statutory warranty deed, bills of sale and other appropriate instruments, transfer and convey the Project (or such portion (which may be none) thereof as is then in existence and is owned by the Board, and in its then condition, whatever that may be) to the Company, subject only to such liens, encumbrances and exceptions to which title thereto was subject when this Lease Agreement was delivered, those to the creation or suffering of which the Company consented (except for this Lease Agreement and the Indenture) and those resulting from the failure of the Company to perform or observe any of the agreements or covenants on its part herein contained. The Company will pay the costs and expenses (including attorneys' fees) incurred by the Board in connection with any exercise by the Company of the option granted in this Section 11.1.

In the event that at the time of the exercise of any option to purchase herein granted, there have not been collected by the Board, the Trustee or the Company the entire insurance proceeds or condemnation award referable to any damage, destruction or condemnation authorizing the exercise of such option, all Net Insurance Proceeds and all Net Condemnation Awards thereafter collected and referable to such damage, destruction or condemnation shall be paid to the Company, and the Board will take all actions necessary to cause the amount of any such award or proceeds to be paid to the Company.

Section 11.2. Option to Purchase After Payment of Bonds. If the Company pays the rental herein reserved to the Board, it shall have the right and option, herein granted by the Board, to purchase the Project from the Board at any time during the Lease Term after or simultaneously with payment in full of the principal of and the interest and premium (if any) on the Bonds and all reasonable fees, charges and disbursements of the Trustee, accrued and to accrue until the date of such full payment, at and for a purchase price of \$100 plus the costs and expenses (including attorneys' fees) incurred by the Board in connection with the Company's exercise of such option.

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To exercise any such purchase option, the Company shall notify the Board in writing not less than thirty (30) days prior to the date on which it proposes to effect such purchase and, on the date of such purchase, shall pay the aforesaid purchase price to the Board in cash or bankable funds, whereupon the Board will, by bills of sale and statutory warranty deed or other appropriate instruments, transfer and convey the Project (in its then condition, whatever that may be) to the Company, subject only to such liens, encumbrances and exceptions to which title thereto was subject when this Lease Agreement was delivered, those to the creation or suffering of which the Company consented (except for this Lease Agreement and the Indenture) and those resulting from the failure of the Company to perform or observe any of the agreements or covenants on its part herein contained. Nothing herein contained shall be construed to give the Company any right to any rebate to or refund or any rental paid by it hereunder prior to the exercise by it of the purchase option hereinabove granted, even though such rental may have been wholly or partially prepaid.

Section 11.3 Option to Purchase Portions of Project Site. The Company shall have, and is hereby granted, subject to the conditions hereinafter specified, the option to purchase from the Board any part of the Project Site at any time and from time to time while it is not in default hereunder, provided that the Company furnishes to the Board and the Trustee

(a) A notice in writing containing (i) an adequate legal description of that portion of the Project Site with respect to which such option is to be exercised and (ii) a

statement that the Company intends to exercise its option to purchase such portion of the Project Site on a date stated;

(b) A certificate signed by an Independent Engineer or an Independent Architect stating (i) that no part of the Facility or any other improvement (except for roads, walkways, sewer, water, oil, coal oil, gas, electric and communication lines, pipe lines and other energy source conveyors and the like, which shall be specified in such certificate) and no facility designed for the control of air or water pollution or for the disposal of solid wastes and necessary in the operation of the Facility are located on the portion of the Project Site with respect to which such option is exercised, and (ii) that the severance of such portion of the Project Site from the Project will not impair the operating unity of the Facility or unduly restrict ingress or egress to or from the Facility; and

(c) The written consent of the Holders of the Outstanding Bonds.

Upon the receipt by the Board and the Trustee of a notice and certificate complying with the provisions of the preceding clauses (a) and (b), respectively, the Board will, without the payment to it of any additional monetary consideration, execute and deliver to the Company a statutory warranty deed conveying to the Company that portion of the Project Site with respect to which such option was exercised, subject only to such liens, encumbrances and exceptions to which title thereto was subject when this Lease Agreement was delivered, those to the creation or suffering of which the Company consented (except for this Lease Agreement and the Indenture) and those resulting from the failure of the Company to perform or observe any of the agreements or covenants on its part herein contained.

From and after the consummation of any purchase effected by the Company pursuant to the provisions of this section, any reference herein to the Project Site shall be deemed to refer to the real property that immediately prior thereto constituted the Project Site, less and except that part so purchased by the Company under the provisions of this section. No purchase effected by the Company under the provisions of this section shall entitle the Company to any abatement or diminution of the rental payable hereunder.

Section 11.4 Option to Terminate. The Company shall have the right to terminate this Lease Agreement at any time after payment in full of the principal of and interest on the Bonds upon giving to the Board notice in writing not less than five (5) days prior to the day of termination.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Covenant of Quiet Enjoyment. Surrender of Project. So long as the Company performs and observes all the covenants and agreements on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term of this Lease Agreement subject to all the terms and provisions hereof. At the end of the Lease Term or the renewal term, as the case may be, of this Lease Agreement, or upon any prior termination of this Lease Agreement, the Company will (unless it has simultaneously purchased the Project from the Board) surrender possession of the Project peaceably and promptly to the Board in as good condition as at the completion of the construction, acquisition and installation of the Facility, excepting only (a) loss by fire or other casualty, (b) alterations, changes or improvements made in accordance with the provisions of this Lease Agreement, (c) acts of governmental or condemning authorities, and (d) ordinary wear and tear.

Section 12.2 Use of Party Walls. If the Company acquires or leases real property adjacent to the Project Site, all walls presently standing or hereafter erected on or contiguous to the boundary line of the land so purchased, acquired or leased by the Company shall be party walls and each party grants the other a ten foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction. If the Company uses any party wall for the purpose of tying-in new construction that will be used under common control with the Project, the Company may also tie in the utility facilities on the Project Site for the purpose of serving the new construction and may remove any non-loadbearing wall panels in the party wall; provided, however, that if the property so purchased, acquired or leased by the Company ceases to be operated under common control with the Project, the Company covenants that it will install non-loadbearing wall panels similar in quality to those that have been removed and will provide separate utility services for the new construction.

Section 12.3 Retention of Title to Project by Board. Grant of Utility Easements. Connecting Utilities. Without the prior written consent of the Company, the Board will not itself, at any time during which the Company is not in default hereunder, (a) except as provided in Section 11.6 of the Indenture, sell, convey or otherwise dispose of all or any part of the Project (except to the Company as hereinabove provided), (b) except as provided in Section 9.2 hereof, mortgage or otherwise encumber the Project or any part thereof, or (c) except as provided in Section 11.6 of the Indenture, dissolve or do anything that will result in the termination of its corporate existence. The Board will, however, grant such utility, access and other similar easements over, across or under the Project Site as shall be requested by the Company and as in the judgment of the Company are

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necessary or convenient for the efficient operation of the Facility. The Company may, at its own expense and without any consent of the Board or the Trustee, connect or "tie in" utility or other similar facilities serving the Project to utility or other similar facilities serving real property adjacent to or near the Project, but only if such connection or "tie in" of utility or similar facilities will not unreasonably interfere with the use of the Project.

Section 12.4 This Lease a Net Lease. The Company recognizes and understands that it is the intention hereof that this lease be a net lease and that until the Bonds are fully paid all Basic Rent be available for payment of principal and interest on the Bonds. This Lease Agreement shall be construed to effectuate such intent.

Section 12.5 Notices. All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or received by certified or registered mail, postage prepaid, at such addresses:

(a) If to the Board:

The Industrial Development Board
of the Town of Pelham
City Hall
Pelham, Alabama 35124
Attention: Chairman of the Board of Directors

(b) If to the Company:

Moore-Handley, Inc.
P. O. Box 2607
Birmingham, Alabama 35202
Attention: President

With a copy to:

Old Lyme Corporation
717 Fifth Avenue
New York, New York 10022

(c) If to the Trustee:

First Alabama Bank
P. O. Box 10247
Birmingham, Alabama 35202
Attention: Corporate Trust Department

Any of the above-mentioned parties may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. A copy of any notice given to the Board, the Company or the Trustee pursuant to the provisions of the Lease shall also be given to any of the foregoing three parties to whom notice is not herein required to be given, but the failure to give a copy of such notice to any party claiming the right to receive it pursuant to this sentence shall not invalidate such notice or render it ineffective unless notice to such party is otherwise herein expressly required. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

Whenever, under the provisions hereof, any request, consent or approval of the Board or the Company is required or authorized, such request, consent or approval shall (unless otherwise expressly provided herein) be signed on behalf of the Board by an Authorized Board Representative and, on behalf of the Company by an Authorized Company Representative; and each of the parties and the Trustee are authorized to act and rely upon any such requests, consents or approvals so signed.

Section 12.6 Certain Prior and Contemporaneous Agreements Cancelled. This Lease Agreement shall completely and fully supersede all other prior or contemporaneous agreements, both written and oral, between the Board and the Company relating to the construction, acquisition and installation of the Improvements and the Leased Equipment and the leasing of the Project including, without limitation, the Interim Agreement; provided, however, that this Lease Agreement shall not supersede the 1981 Lease or the 1982 Lease, both of which shall continue in full force and effect. Except as provided in the preceding sentence, neither the Board nor the Company shall hereafter have any rights under any such prior or contemporaneous agreement but shall look solely to this Lease Agreement for definition and determination of all their respective rights, liabilities and responsibilities respecting the construction, acquisition and installation of the Improvements and the leasing of the Project.

Section 12.7 Limited Liability of Board. The Board is entering into this Lease Agreement pursuant to the authority conferred upon it in the Authorizing Act. No provision hereof shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon the Board except with respect to the proper application of the proceeds to be derived from the sale of the Bonds and the revenues and receipts to be derived from any leasing or sale of the Project or any part thereof. Any purchase order, construction contract or other agreements made or entered into by the Board in connection with the construction of the Facility or the acquisition or installation of the Leased Equipment shall recite in substance that any obligation of the Board

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thereunder shall be payable solely from the proceeds of the Bonds and other funds of the Board made available to it by the Company pursuant to the provisions of this Lease Agreement.

Section 12.8 Binding Effect. This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Board, the Company, and their respective successors and assigns.

Section 12.9 Severability. In the event any provision of this Lease 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. This Lease Agreement shall be governed exclusively by the applicable laws of the State of Alabama.

Section 12.10 Article and Section Captions. The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

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IN WITNESS WHEREOF, the Board and the Company have caused this Lease Agreement to be executed in their respective corporate names, have caused their corporate seals to be hereunto affixed and have caused this Lease Agreement to be attested, all by their duly authorized officers, in eight (8) counterparts, each of which shall be deemed an original, and the Board and the Company have caused this Lease Agreement to be dated as of December 1, 1986.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

By *Donna S. Sperry*
Chairman of Its Board of Directors

Attest:

M. Marc Nease
Its Secretary

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MOORE-HANDLEY, INC.

By *Ronald H. Butler*
Its Vice President

Attest:

L. Ward Edwards
Its Secy.

STATE OF Alabama)
COUNTY OF Jefferson)

I, Joann R Ferguson, a Notary Public in and for said county in said state, hereby certify that Dan M. Spitler, whose name as Chairman of the Board of Directors of THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM, a public corporation under the laws of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

GIVEN under my hand and official seal of office, this 30th day of December, 1986.

(NOTARIAL SEAL)

Joann R Ferguson
Notary Public

My Commission Expires October 14, 1987

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STATE OF Alabama)
COUNTY OF Jefferson)

I, Joan R. Ferguson, a Notary Public in and for said county in said State, hereby certify that Ronald H. Butler, whose name as Vice President of MOORE-HANDLEY, INC., a corporation organized under the laws of the State of Delaware, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal of office, this 30th day of December, 1986.

(NOTARIAL SEAL)

Joan R. Ferguson
Notary Public
My Commission Expires October 13, 1987

BOOK 107 PAGE 620

EXHIBIT A

**to that certain Lease Agreement
between The Industrial Development Board
of the Town of Pelham
and Moore-Handley, Inc.
Dated as of December 1, 1986**

The following described real property located in Shelby County, Alabama:

A parcel of land located in the Southeast 1/4 of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows: Commence at the Southeast corner of said Section 14, thence in a Westerly direction along the South line of said Section 14 a distance of 201.98 feet to the center line of Atlantic Coast Line Railroad right of way, thence 62 degrees 35 minutes right along the center line of said right of way in a Northwesterly direction a distance of 196.31 feet to the intersection of the center line of the Ashville-Montevallo Road, thence 20 degrees 35 minutes right in a Northwesterly direction along said center line of said road a distance of 703.74 feet, thence 90 degrees left in a Southwesterly direction a distance of 30.0 feet to the West right of way line of said road and the Point of Beginning of herein described property, thence continue along last described course a distance of 180.88 feet to the Northeast right of way line of Atlantic Coast Line Railroad, thence 69 degrees 25 minutes right in a Northwesterly direction along said right of way a distance of 594.74 feet to the beginning of a curve to the left, said curve having a central angle of 27 degrees 12 minutes (measure 8°07'53") and a radius of 2,914.82 feet, thence along arc of said curve a distance of 413.67 feet, thence 125 degrees 32 minutes 53 seconds right, measured from tangent of said curve, in an Easterly direction a distance of 670.32 feet to the West right of way line of Ashville-Montevallo Road, said point being on a curve to the left having a central angle of 2 degrees 23 minutes 18 seconds and a radius of 277.35 feet (calculated 2,775.35) thence 95 degrees 34 minutes 48 seconds right, measured to tangent of said curve, in a Southerly direction along arc of said curve a distance of 115.69 feet to end of said curve, thence continue along said right of way line in a Southerly direction a distance of 180.82 feet to the beginning of a curve to the left, said curve having a central angle of 10 degrees 01 minutes 30 seconds and a radius of 3,223.53 feet, thence continue along arc of said curve in a Southerly direction a distance of 564.02 feet to end of said curve and the Point of Beginning. Parcel contains 8.0 acres±.

EXHIBIT B

to that certain Lease Agreement
between The Industrial Development Board
of the Town of Pelham
and Moore-Handley, Inc.
Dated as of December 1, 1986

The following described real property located in Shelby County, Alabama:

PARCEL A

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 862.23 feet to the point of beginning; thence continue along last described course a distance of 655.57 feet; thence 77 degrees 42 minutes left in a Westerly direction a distance of 848.51 feet to the Easterly right-of-way line of the Old Ashville-Montevallo Highway; thence 90 degrees 12 minutes left in a Southerly direction along the Easterly right-of-way line of said Highway, a distance of 249.15 feet; thence 6 degrees 24 minutes left in a Southeasterly direction along said right-of-way a distance of 283.08 feet; thence 90 degrees 11 minutes 36 seconds left in a Northeasterly direction a distance of 313.80 feet; thence 90 degrees right, in a Southeasterly direction a distance of 222.33 feet; thence 90 degrees left in a Northeasterly direction a distance of 621.22 feet to the point of beginning; being situated in Shelby County, Alabama.

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PARCEL B

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 North-

westerly 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.

EXHIBIT C

to that certain Lease Agreement
between The Industrial Development Board
of the Town of Pelham
and Moore-Handley, Inc.
Dated as of December 1, 1986

Warehouse shelves and racking

Forklifts and other related material handling equipment

Truck dock equipment

Towveyor system

Computers and office furniture and equipment

Fuel tanks and maintenance garage equipment

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

1986 DEC 30 AM 4:52

Thomas H. Henderson, Jr.
JUDGE OF PROBATE

RECORDING FEES

Recording Fee \$182⁵⁰/₁₀₀

Index Fee 1⁰⁰/₁₀₀

TOTAL \$183⁵⁰/₁₀₀

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