

THIS INSTRUMENT WAS PREPARED BY:
Richard L. Pearson, Esq.
Balch & Bingham
P. O. Box 306
Birmingham, Alabama 35201
(205) 251-8100

232

ACKNOWLEDGMENT AND CONFIRMATION REGARDING LEASE AGREEMENT

This Acknowledgment and Confirmation Regarding Lease Agreement dated as of March 1, 1991 is entered into among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF PELHAM** (the "Board"), a public corporation and instrumentality under the laws of the State of Alabama, **HARBERT INTERNATIONAL, INC.** (the "Harbert International"), a corporation organized under the laws of the State of Delaware, assignee and successor in interest to Harbert Construction Corporation, an Alabama corporation ("Harbert Construction"), and **AMSOUTH BANK, N.A.** (f/k/a The First National Bank of Birmingham), as Trustee.

WITNESSETH:

WHEREAS, the Board and Harbert Construction heretofore entered into that certain Lease Agreement dated as of September 1, 1975, recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Records") at Deed Book 294, beginning at page 794 (the "Original Lease") in connection with the issuance by the Board of \$3,200,000 aggregate principal amount of its Industrial Development First Mortgage Revenue Bonds, Series 1974-HCC (the "Bonds");

WHEREAS, the Original Lease heretofore was amended and supplemented pursuant to a certain First Supplemental Lease Agreement dated as of September 1, 1981, recorded in the said Probate Records at Misc. Book 42, beginning at Page 503 (the "First Supplement"), which such First Supplement provided, *inter alia*, that Harbert Construction could assign all of its rights and obligations under the Original Lease to Harbert International and that such assignment would constitute a complete novation of Harbert International for Harbert Construction as Lessee thereunder (it being the intention of the parties to allow a complete substitution of Harbert International for Harbert Construction but to continue the Original Lease in full force and effect);

WHEREAS, by instrument dated September 1, 1981 (a true and correct copy of which is attached hereto as "Annex A" and incorporated herein by this reference) Harbert Construction assigned all of its rights and obligations under the Original Lease, as amended and supplemented by the First Supplement (the "Lease") to Harbert International and Harbert International accepted such assignment;

WHEREAS, certain of the rights, titles and interests of the Board in and to the Lease have been assigned by the Board to AmSouth Bank, N.A. (formerly known as The First National Bank of Birmingham), as Trustee (the "Trustee") under and pursuant to that certain Mortgage, Security Agreement and Indenture of Trust dated as of September 1, 1975, recorded in the said Probate Records at Mortgage Book 459, beginning at Page 263 (the "Indenture"); and

WHEREAS, the Board, the Lessee and the Trustee wish to acknowledge and confirm the Lease and the assignment of the Board's rights, titles and interests therein to the Trustee pursuant to the Indenture.

NOW THEREFORE, the parties hereto agree as follows:

I. The Board, the Lessee and the Trustee each hereby confirm, ratify and republish the Lease and acknowledge that the Lease remains in full force and effect as a lease between the

BOOK 336 PAGE 423

Calaba 3.9.90

Board, as Lessor, and Harbert International, as Lessee, in accordance with its terms and confirm and ratify the assignment by the Board to the Trustee, under and pursuant to the Indenture and on the terms and conditions therein set forth, of the rights of the Board under and pursuant to the Lease (including all lease rentals, revenues and receipts receivable by the Board from the Project, as defined in the Indenture, and specifically all rentals to be received under and pursuant to the Lease). Without limitation to the generality of the foregoing and the Lease, the Board, for itself and its successors and assigns, hereby (i) demises and leases to Harbert International, its permitted successors and assigns under the Lease, the Project (as defined in and described under the Lease) in accordance with the terms of the Lease and upon and subject to the terms, conditions and provisions of the Lease (including without limitation all obligations to pay rent and other sums, all options to terminate, renew and/or purchase and all covenants and restrictions), to each of which the Board, its successors and assigns, and Harbert International, its permitted successors and assigns under the Lease, do hereby separately and severally covenant and agree and (ii) confirms for the benefit of the Trustee the assignment, pursuant to the Indenture and on the terms and conditions therein set forth, of the Board's rights under and pursuant to the demise and lease set forth in (i) above.

2. Nothing herein shall be deemed to limit or restrict any of the rights and/or obligations of the "Lessor," the "Lessee" and/or the "Trustee" under or pursuant to the Lease or under or pursuant to the Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Acknowledgment and Confirmation Regarding Lease Agreement to be executed by their duly authorized officers, all as of the date first above written, but actually on the dates set forth below.

[SEAL]

ATTEST:

By: [Signature]
Secretary

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF PELHAM

By: [Signature]
Chairman of the Board of Directors

Date Executed: March 13, 1991

[SEAL]

ATTEST:

By: [Signature]
Its Secy

HARBERT INTERNATIONAL, INC.

By: [Signature]
Its CFO

Date Executed: March 20, 1991

[SEAL]

ATTEST:

By: [Signature]
Its VICE PRESIDENT AND CORPORATE TRUST OFFICER

AMSOUTH BANK, N.A. (f/k/a The First National Bank of Birmingham)

By: [Signature]
Its VICE PRESIDENT AND CORPORATE TRUST OFFICER

Date Executed: March 15, 1991

STATE OF ALABAMA)
COUNTY OF ~~JEFFERSON~~ Shelby)

I, Wendy K. McDowell, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Daniel M. Spitler, whose name as Chairman of the Board of Directors of The Industrial Development Board of the Town of Pelham, a public corporation, is signed to the foregoing instrument, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and seal of office, this 13th day of March, 1991.

[NOTARIAL SEAL]

Wendy K. McDowell
Notary Public
My Commission Expires: 3-27-93

STATE OF ALABAMA)
COUNTY OF ~~JEFFERSON~~ SHELBY)

I, Brenda J. Harris, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Swift C. Barnes III, whose name as CFO of Harbert International, Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office, this 20 day of March, 1991.

[NOTARIAL SEAL]

Brenda J. Harris
Notary Public
My Commission Expires: 11/1/93

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Renee C. Looney, the undersigned, a Notary Public in and for said County in said State, do hereby certify that F. L. WESSINGER, whose name as CORPORATE TRUST OFFICER of AmSouth Bank, N.A. (f/k/a The First National Bank of Birmingham), a NATIONAL BANK corporation, is signed to the foregoing instrument, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office, this 14th day of March, 1991.

[NOTARIAL SEAL]

Renee C. Looney
Notary Public
My Commission Expires: JUN 17 1992

ANNEX A

ASSIGNMENT OF LEASE AGREEMENT

HARBERT CONSTRUCTION CORPORATION, as Lessee under that certain Lease Agreement dated as of March 1, 1978, as amended by that certain First Supplemental Lease Agreement dated as of September 1, 1981 (collectively, the "Lease") by and between Harbert Construction Corporation and The Industrial Development Board of the City of Bessemer, hereby assigns all of its rights and obligations under the Lease to Harbert International, Inc., such assignment being made pursuant to Section 6.1 of the Lease for the purpose of accomplishing a complete novation of Harbert International, Inc. for Harbert Construction Corporation, as Lessee thereunder.

THIS 16th day of September, 1981.

HARBERT CONSTRUCTION CORPORATION

By [Signature]
Title: Chairman/CEO

[S E A L]

Attest: [Signature]

ACCEPTANCE OF ASSIGNMENT

HARBERT INTERNATIONAL, INC. hereby accepts the assignment from Harbert Construction Corporation of all of its rights and obligations under the said Lease.

THIS 16th day of September, 1981.

HARBERT INTERNATIONAL, INC.

By [Signature]
Title: Chairman/CEO

[S E A L]

Attest: [Signature]

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

91 APR -3 AM 9:12

JUDGE OF PROBATE

1. Dead Tax	
2. Mfg. Tax	10.00
3. Recording Fee	3.00
4. Indexing Fee	
5. No Tax Fee	1.00
6. Certified Fee	
Total	14.00

BOOK 336 PAGE 426