

LEASE AGREEMENT

Dated as of May 5, 2004

by and between

THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF CALERA

and

AMERICAN CONCRETE PUMPING, LLC

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LEASE AGREEMENT
(This Table of Contents is not a part of
this Lease Agreement and is only for
convenience of reference)

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STATE OF ALABAMA

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§ ss.

SHELBY COUNTY

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LEASE AGREEMENT

This Lease Agreement is dated as of May 5, 2004, between The Industrial Development Board of The Town of Calera, a public corporation organized under the laws of the State of Alabama (the "Board"), and American Concrete Pumping, LLC, a limited liability company (the "Company"). Certain capitalized terms and phrases are defined in Section 1 of this Lease.

RECITALS:

To finance a portion of the cost of acquiring and constructing the Project, all for the promotion of local manufacturing and industrial development, the Board has agreed to provide the Company a package of incentives that have and will promote the continued industrial development of the State of Alabama, the City of Calera, and Shelby County and have and will induce the Company to locate, expand, improve its operations, and/or remain in the State of Alabama. To achieve certain of the objectives hereinabove outlined, the Board and the Company have entered into this Lease.

NOW, THEREFORE, in consideration of the respective representations and agreements contained in this Lease, the parties to this Lease agree as follows:

SECTION 1. DEFINITIONS

The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication otherwise in this Lease, be given the following respective interpretations in this Lease:

"Affiliate" of any designated Person, means any Person that has a relationship with the designated Person whereby either of such Persons directly or indirectly controls or is controlled by or is under common control with the other, or holds or beneficially owns 5% or more of the equity interest in the other or 5% or more of any class of voting securities of the other. For this purpose "control" means the power, direct or indirect, of one Person to direct or cause direction of the management and policies of another, whether by contract, through voting securities or otherwise. Notwithstanding the foregoing, no Person shall be deemed to be an Affiliate of another solely by reason of such Person's being a participant in a joint venture, partnership, joint operating group or joint undivided ownership group.

"Board" means The Industrial Development Board of The Town of Calera, a public corporation organized under the laws of the State of Alabama, its successors and assigns and any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

“Authorized Company Representative” means the person or persons at the time designated as such by written certificate furnished to the Board containing the specimen signature or signatures of such person or persons and signed on behalf of the Company by its authorized member, manager, or any of them.

“Authorizing Act” means section 11-54-1 *et seq.*, of the *Code of Alabama* (1975), as amended.

“Company” means American Concrete Pumping, LLC, a limited liability company, its successors and assigns and any United States Entity resulting from or surviving any consolidation or merger to which it or its successors may be a party.

“Counsel” means an attorney who is duly licensed to practice before the highest court of any state of the United States of America or of the District of Columbia.

“Effective Date” means May 5, 2004.

“Environmental Law” means any federal, state or local statute, law, ordinance, treaty, convention, regulation, rule, code, order or other requirement or rule of law, now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the pollution, conservation, or protection of the environment, health, safety or natural resources.

“Lease” means this Lease Agreement, as amended, supplemented or otherwise modified from time to time.

“Lease Term” means the period beginning on the Effective Date and, subject to the provisions of this Lease, continuing until 11:59 o’clock, p.m., on the 20th anniversary of the Effective Date.

“Net Insurance Proceeds” means the total insurance proceeds recovered by the Board or the Company on account of any damage to or destruction of the Project or any part thereof less all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“Permitted Encumbrances” means, as of any particular time, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Lease, (c) inchoate mechanics’ and materialmen’s liens, (d) utility, access, drainage and other easements and rights-of-way, restrictions and exceptions (including inchoate mechanics’ and materialmen’s liens) that a licensed engineer designated by the Company (who may, but need not be, an employee of the Company) certifies will not materially interfere with or impair the operations being conducted in or about the Plant (or, if no operations are being conducted in or about the Plant, the operations for which the Plant was designed or last modified), (e) 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 satisfactory to the Board and to the Company, 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, (f) a mortgage in favor of Regions Bank providing security for the letter of credit being issued as security for the Bonds (and any future mortgage providing security for the Bonds or a letter of credit securing the Bonds); and (g) those matters set forth on Exhibit "B" attached to this Lease and made a part of this Lease.

"Person" means an individual, a corporation, a partnership, a trust, a limited liability company, an unincorporated organization or a government or any agency or political subdivision thereof.

"Plant" means that certain manufacturing plant to be constructed on the Plant Site, as said Plant may at any time exist.

"Plant Site" means the real property specifically described in Exhibit "A" attached to this Lease and made a part of this Lease and any other real property that under the terms of this Lease constitutes a part of the Plant Site, as the same may be replatted from time to time.

"Project" means the Plant Site and the Plant, as they may at any time exist, and all other property and rights of every kind described or referred to or intended so to be in the demising clauses of this Lease or in any way subject to the demise of this Lease.

"Site Preparation" means preparation of the Plant Site for construction of the Project and rehabilitation of structures, including those the cost of which may be paid or reimbursed to the Board by so-called "industrial development grants" by the State Industrial Development Authority.

"United States Entity" means a corporation, a partnership, a trust or a limited liability company organized under the laws of one of the states of the United States of America or of the District of Columbia.

SECTION 2. REPRESENTATIONS AND WARRANTIES

SECTION 2.1 Representations and Warranties by the Board

The Board makes the following representations and warranties as the basis for the undertakings on its part contained in this Lease:

SECTION 2.1.1 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 under the laws of the State of Alabama;

SECTION 2.1.2 Under the provisions of the Authorizing Act, the Board has the power to enter into the transactions contemplated by this Lease and to carry out its obligations under this Lease;

SECTION 2.1.3 The Plant Site is located wholly within the City of Calera and Shelby County, Alabama; and

SECTION 2.1.4 The execution and delivery of this Lease 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 contained in this Lease:

SECTION 2.2.1 The Company has good and marketable title to the real property specifically described in Exhibit "A", subject only to Permitted Encumbrances;

SECTION 2.2.2 The Company is a limited liability company qualified to transact business under the laws of the State of Alabama and has the power to enter into, and to perform and observe the agreements and covenants on its part contained in this Lease;

SECTION 2.2.3 Neither the execution and delivery of this Lease, the consummation of the transactions contemplated by this Lease, nor the fulfillment or compliance with the terms and conditions of this Lease, conflict with, or result in a breach of, any of the terms, conditions or provisions of any corporate restriction or limitation 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;

SECTION 2.2.4 The construction of the Plant and the leasing of the Project to the Company are components of a package promised to the Company that have and will induce the Company to locate its manufacturing operations in the State of Alabama; and

SECTION 2.2.5 The execution and delivery of this Lease on its part have been duly authorized by all necessary entity action.

SECTION 3. 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 Plant Site, the Plant, any other improvements constituting real property now or hereafter situated on the Plant Site, all easements, licenses, rights-of-way in addition to those set forth on Exhibit "B", all permits, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Plant Site, and all fixtures now or hereafter owned by the Board and installed on the Plant Site or in the Plant or in any other improvements now or hereafter located on the Plant Site. It is the intention of this Lease that all property, rights and privileges hereafter acquired for use as a part of or in connection with or as an addition to or an improvement on the Plant Site shall be as fully covered by this Lease as if such property, rights and privileges were now owned by the Board and were specifically described in this Lease.

SECTION 4. ACQUIRING AND FINANCING THE IMPROVEMENTS

SECTION 4.1 Improvements

The Board will proceed with, and will complete the Site Preparation on the Plant Site as promptly as practicable, the costs of such improvements to be paid for by the Board to the extent that the Board receives grant monies for such purpose and otherwise to be paid for by the Company as additional rent, all in accordance with plans and specifications for the Project approved by the Company.

The Board hereby appoints the Company as the limited agent of the Board for the purpose of performing all the matters described in this Section 4.1. All contracts entered into by the Company as agent for the Board shall limit the liability of the Board to funds paid by the Company as rent under this Agreement, grants available for such purposes, or from proceeds from the issuance of bonds for the benefit of the Company. The Company may act as agent for the Board without disclosing the agency relationship of the Company, provided that no such agency shall impose liability on the Board beyond that stated in the preceding sentence.

The Board will not hereafter enter into any contract or purchase order for such Site Preparation, 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. The Company and the Board will cooperate with each other in order that the Site Preparation may be completed as promptly as practicable.

The Company may construct and/or install such buildings, fixtures and improvements on the Plant Site as it determines to be necessary, in its sole discretion.

SECTION 4.2 No Warranty of Suitability

The Company recognizes that since the plans and specifications for the Site Preparation and the Project have been prepared to its order, the Board can make no warranty, either express or implied, or offer any assurances that the Project, or any part thereof, will be suitable for the Company's purposes or needs. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE AUTHORITY MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SITE PREPARATION OR THE PROJECT OR ANY PART OF THE PROJECT.

SECTION 4.3 Board to Pursue Rights against Contractors, Etc.

In the event of default by any contractor or subcontractor under any contract with the Board for the Site Preparation, 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 4.3 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. The Company will pay or reimburse all legal or other expenses reasonably incurred by the Board (and its directors and agents) in connection with such proceeding or action.

SECTION 5. DURATION OF TERM AND RENTAL PROVISIONS

SECTION 5.1 Duration of Term

The term of this Lease and of the lease made in this Lease shall begin on the Effective Date and, subject to the provisions of this Lease, shall continue until 11:59 o'clock, p.m., on the 20th anniversary of the date of the Effective Date. 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 Effective Date, subject to the inspection rights reserved in this Lease, and the Company will accept possession thereof at such time; provided, however, that the Board will be permitted such access to the Project as shall be necessary and convenient for it to take any action required or permitted to be made by the Board pursuant to the provisions of this Lease or pursuant to the provisions of any agreement between the Board and the Company supplemental to this Lease.

SECTION 5.2 Rental Provisions

For and during the Lease Term, the Company will pay to the Board for use and occupancy of the Project the sum of \$100.00 (the "Basic Rent") which Basic Rent shall be due and payable in advance on the Effective Date.

SECTION 6. MAINTENANCE, TAXES AND INSURANCE

SECTION 6.1 Maintenance, Additions, Alterations and Improvements

The Company will, at its own expense, keep the Project in as reasonably safe condition as its operations permit, but otherwise shall be under no obligation to repair, replace or renew the Plant or any other improvements located on the Plant Site. The Company may, at its own expense, make any additions, alterations or improvements to the Project that it may deem desirable for its business purposes and that will not change the character of the manufacturing facility as a "project" under the Authorizing Act; provided that all such additions, alterations or improvements shall,

- (a) be located wholly within the boundary lines of the Plant Site, or
- (b) be located wholly within the boundary lines of other adjacent real property owned either (i) by the Company or (ii) by the Board, leased to the

Company by the Board, and subjected to the demise of this Lease, subject only to Permitted Encumbrances, or

- (c) be located wholly within the boundary lines of the Plant Site and such other adjacent real property.

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

Except as provided herein, 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.

SECTION 6.2 Taxes, Other Governmental Charges and Utility Charges

The Company will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may lawfully be assessed or levied against or with respect to the Project or any 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 charge on the revenues and receipts from the Project), (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.

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. The Board will cooperate fully with the Company in any such contest.

SECTION 6.3 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, insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Plant Site or in any way related to the

operations of the Plant, in the minimum amount of \$1,000,000 for total claims resulting from any one occurrence.

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 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 or the Company, at its option, may self-insure all or a portion of such risks.

All such insurance policies shall name as additional insured the Board. Anything in this Lease to the contrary notwithstanding, any insurance required by the provisions of this Lease may be evidenced by a blanket policy covering risks in addition to those hereby required to be covered.

SECTION 7. PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 Damage and Destruction Provisions

If the Plant is destroyed, in whole or in part, or is damaged, by fire or other casualty, and such destruction damage is so material as to materially impair the operating utility of the Project or to change the character of the Plant as a "project" under the Authorizing Act unless the damaged or destroyed Plant is repaired, rebuilt or restored, and the Company fails to exercise its option to purchase the Project as provided in Section 11, the Company, as agent for the Board, (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 modification as will not impair the operating utility of the Plant or its character as a "project" under the Authorizing Act, and (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. Any insurance proceeds paid with respect to such damage or destruction shall, to the extent it exceeds total amount necessary to maintain the operating utility of the Plant and its character as a "project" under the Authorizing Act, be paid to the Company.

SECTION 7.2 Condemnation Provisions

If the Project or 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, the entire condemnation award, including any that may be recoverable by the Company, shall be paid to the Company.

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. 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 8. 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 Plant Site that will impair or contravene in any material respect 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 Plant Site, the Plant, and the public ways abutting the Plant Site, comply in all material respects with all applicable lawful requirements of all governmental bodies.

SECTION 8.2 Release and Indemnification Covenants

The Company releases the Board (and its directors and agents) from and shall indemnify and hold the Board (and its directors and agents) harmless against, any and all claims and liabilities of any character or nature whatsoever asserted by or on behalf of any person, 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 costs of the Project which are not paid because the Company fails to pay such costs itself and fails also to provide to the Board sufficient moneys to pay such 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,
- (c) Any claims relating to the acquisition, construction, and installation of the Project, and
- (d) The leasing of the Project to the Company, or its subtenants or assigns, and the condition, use, possession, or management of the Project during the Lease Term.

The Company will also pay or reimburse all legal or other expenses reasonably incurred by the Board (and its directors and agents) 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 8.2.

Nothing contained in this Section 8.2 shall be construed to indemnify the Board, its directors or agents, against, or to release the Board from liability for, any claim or liability resulting from (i) its breach of any of the covenants and agreements on its part contained in this Lease or (ii) its willful misconduct or gross negligence; provided, however, the Company shall indemnify the Board or any of the Board's directors or agents for all legal or other expenses reasonably incurred in connection with the investigation or defense of any such action in the event a final, non-appealable judgment of a court of competent jurisdiction is rendered in favor of such parties in defending any such claim of willful misconduct or gross negligence.

Unless the Company elects to self-insure pursuant to Section 6.3, the Company will provide for and insure, in the public liability policies required in Section 6.3, not only its own liability in respect of the matters there mentioned but also the liability in this Lease assumed to the extent such insurance is available at reasonable cost. The Board will promptly notify the Company of any claims, actions or proceedings with respect to which indemnification may be sought under the provisions of this Section 8.2. The Board will not, without the prior written consent of the Company, settle or consent to the settlement of any prospective or pending litigation for which the Company is obligated under the provisions of this Section 8.2 to indemnify the Board, and the Company shall have full and complete control of any such litigation, including (without limitation) the right to select Counsel for the Board. The Board will not, without the prior written consent of the Company, take any other action that may prejudice the rights of the Company under its insurance programs.

Anything to the contrary contained in this Lease notwithstanding, the covenants of the Company contained in this Section 8.2 shall, with respect to any claim, liability, or loss for which the Company is obligated to provide indemnity, remain in full force and effect after the termination of this Lease until (i) any cause of action brought in respect to such claim, liability or loss shall be barred by the applicable statute of limitations or (ii) the payment in full or the satisfaction of such claim, liability or loss, including all reasonable expenses incurred by the indemnifiable party or parties in defending against such claim, liability or loss; provided, however, that in the event any action or proceeding arguably barred by the applicable statute of limitations is brought against any indemnifiable party under this Lease, the Company shall be obligated to defend such indemnifiable party with respect to such action or proceeding, all to the end that the bar of the statute of limitations may be asserted by the Company against the party bringing such action or proceedings but may not be asserted by the Company against the indemnifiable party in order to avoid performing any of Company's obligations under this Section 8.2.

SECTION 8.3 Environmental Indemnification and Compliance

The Company shall defend, indemnify, and hold the Board, its officers, directors, employees, and agents harmless from and against and shall pay and reimburse the Board for any and all losses, damages, liabilities, claims, causes of action, deficiencies, penalties, fines, and fees (including reasonable attorneys' fees) asserted against the Board resulting from liabilities arising from the handling, treatment, storage, or disposal of Hazardous or Toxic materials, and asbestos or urea formaldehyde insulation as relates to the Plant Site by the Company or any of its agents, servants, employees, contractors. The terms "Hazardous" and "Toxic" should mean a substance defined as "hazardous" or "toxic" under any Environmental Law.

Nothing contained in this Section 8.3 shall be construed as an obligation on the part of the Company to indemnify the Board against, or to release the Board from liability for, any environmental claim or liability resulting from misconduct or negligence by the Board, its officers, directors, employees or agents.

SECTION 8.4 Agreement to Maintain Existence as a United States Entity

The Company will maintain its existence as a United States Entity, 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 United States Entity or permit one or more other United States Entities to consolidate with or merge into it; provided that the Company may, without violating the agreements contained in this Section 8.4, do or perform any of the following:

SECTION 8.4.1 It may consolidate with or merge into another United States Entity, or permit one or more other United States Entities to consolidate with or merge into it, if the United States Entity surviving such merger or resulting from such consolidation expressly assumes in writing all the obligations of the Company contained in this Lease (if such surviving or resulting United States Entity is one other than the Company); and

SECTION 8.4.2 It may transfer to another United States Entity all or substantially all its assets as an entirety, and (if it so elects) thereafter dissolve, if the United States Entity to which such transfer shall be made expressly assumes in writing all the obligations of the Company contained in this Lease.

The Company will, promptly following any merger, consolidation, or transfer permitted under the provisions of this Section 8.4, furnish to the Board fully executed or appropriately certified copies of the writing by which the Company's successor or transferee United States Entity expressly assumed the obligations of the Company contained in this Lease.

If, after a transfer by the Company of all or substantially all its assets to another United States Entity under the circumstances described in the preceding Section 8.4.2, the Company does not thereafter dissolve, it shall not have any further rights or obligations under this Lease.

SECTION 8.5 Qualification in the State of Alabama

The Company warrants and represents that it is now duly qualified to do business in the State of Alabama and that, so long as it is the lessee under this Lease, it will continuously remain so qualified during the term of this Lease. If, in accordance with the permissive provisions of Section 8.4, the Company should merge into a United States Entity not organized and existing under the laws of the State of Alabama, should consolidate with one or more United States Entity under circumstances wherein the consolidated United States Entity is not a United States Entity organized and existing under the laws of the State of Alabama or should transfer all or substantially all its assets to a United States Entity not organized under the laws of the State of Alabama, it will cause the United States Entity into which it merged, the United States Entity resulting from such consolidation or the United States Entity to which all or substantially all its assets were transferred, as the case may be, to qualify to do business in the State of Alabama as a foreign United States Entity 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 under this Lease, including, without limitation, the filing of all financing and continuation statements that may at the time be required under the Alabama Uniform Commercial Code.

SECTION 9. CERTAIN PROVISIONS RELATING TO ASSIGNMENT AND SUBLEASING

SECTION 9.1 Assignment and Subleasing by Company

The Company may assign this Lease and the leasehold interest created by this Lease, and may sublet the Project or any part thereof, and may mortgage, pledge, or hypothecate this Lease and the leasehold interest created by this Lease, without the necessity of obtaining the consent of the Board; provided, however, that no assignee or subleases 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, nor shall any such assignment or subleasing or any dealings or transactions between the Board or any subleases or assignee in any way relieve the Company from primary liability for any of its obligations under this Lease. Thus, in the event of any such assignment or subleasing, the Company shall remain primarily liable for payment of the rentals provided in this Lease to be paid by it and for performance and observance of the other agreements and covenants on its part provided in this Lease to be performed and observed by it.

SECTION 9.2 Assignment by Board

The Board may not assign, mortgage, pledge, hypothecate, or otherwise transfer its interest in or pledge any moneys receivable under this Lease 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 under this Lease, hereafter issue any bonds or other securities (including refunding securities), 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 hereafter place any encumbrance on the Project or any part thereof or the revenues derived from the lease or sale thereof. Neither the Board nor the Company will unreasonably withhold any consent required in this Lease of either of them.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 Events of Default Defined

Failure by the Company to perform or observe any of its other agreements or covenants contained in this Lease, which failure shall have continued for a period of 60 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 unless (i) the Board shall agree in writing to an extension of such period prior to its expiration, or (ii) during such 60-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 shall be “events of default” under this Lease.

SECTION 10.1.1 The phrase “*force majeure*” 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 may declare immediately due and payable all rent due under this Lease, and may bring suit for damages or specific performance but may not terminate, or seek to terminate, this Lease.

SECTION 10.3 No Additional Waiver Implied by One Waiver

In the event either party should breach any covenant contained in this Lease 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 under this Lease.

SECTION 11. OPTION TO PURCHASE

The Company shall have, and is hereby granted, the option to purchase the Project, at any time while this Lease is in full force and effect. To exercise such option, the Company:

- (a) Shall give written notice to the Board,
- (b) Shall specify therein the date of purchase, which shall be not less than 20 nor more than 90 days after the date such notice is mailed,
- (c) Shall on the date of purchase pay to the Board, the sum of \$250,000. The Company may pay the purchase price by offsetting such amount against any amount owed by the Board to Company, whether or not then due.

On the date of purchase and upon receipt of said sum the Board will, by deed, bills of sale, and other appropriate instruments, transfer and convey the Plant Site (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 was delivered, those to the creation or suffering of which the Company consented (except for this Lease), and those resulting from

the failure of the Company to perform or observe any of the agreements or covenants on its part contained in this Lease.

Notwithstanding the above, the option to purchase the Project granted to the Company in this Section 11 shall be deemed to have been exercised by the Company, and the Board and the Company shall effect such purchase, 30 days after the receipt by the Company of a State Industrial Development Authority site grant, whether paid directly to the Company or paid to the Board and paid by the Board to the Company (if the Company has not theretofore exercised such option or terminated this Lease and entered into a new Lease Agreement with respect to the Project) unless the Company notifies the Board in writing prior to such date that it does not wish to exercise the option granted to it in this Section 11 at such time.

The Company may not terminate this Lease before the end of its term except by exercise of the option granted in this Section 11.

SECTION 12. 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 contained in this Lease, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term subject to all the terms and provisions of this Lease. At the end of the Lease Term or upon any prior termination of this Lease (other than by exercise of option to purchase under Section 11), 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 of the Plant, excepting only (a) loss by fire or other casualty, (b) acts of governmental or condemning authorities, and (c) ordinary wear and tear.

SECTION 12.2 Retention of Title to Project by Board

Without the prior written consent of the Company, the Board will not itself (a) sell, convey, mortgage, pledge, hypothecate, encumber or otherwise dispose of all or any part of the Project (except to the Company as hereinabove provided), or (b) dissolve or do anything that will result in the termination of its corporate existence.

SECTION 12.3 Net Lease

The Company recognizes and understands that it is the intention of this Lease that this Lease be a net lease. It is further intended by the parties that this Lease be considered a financing or capitalized lease for federal and state income tax purposes and financial accounting purposes.

SECTION 12.4 Notices

All notices under this Lease shall be deemed sufficient and properly given if in writing and (i) delivered an officer or other legal representative of the party to whom the same is directed

to the hand delivery address specified below, (ii) mailed by first-class, registered, or certified mail, postage prepaid, addressed as specified below, or (iii) delivered by facsimile, e-mail, or similar electronic means, addressed, as the case may be, as follows:

(i) If to the Board, to:

The Industrial Development Board of the Town of Calera
c/o W. M. Schroeder, Chairman
P.O. Box 180
Calera, Alabama 35040
Facsimile: _____
Email: _____

(ii) If to the Company, to:

Mr. Joe Burdette
American Concrete Pumping, LLC
4204 Highway 31 South
Calera, Alabama 35040
Facsimile: (205) _____
Email: _____

With a copy (which shall not constitute notice) to:

Mr. Jay F. Guin
Tanner & Guin, LLC
2711 University Boulevard (35401)
P. O. Box 3206
Tuscaloosa, AL 35403
Facsimile: (205) 633-0290
Email: jguin@tannerguin.com

The Board and the Company may, by like notice, designate any further or different addresses to which subsequent notices shall be sent.

SECTION 12.5 Limited Liability of Board

The Board is entering into this Lease pursuant to the authority conferred upon it in the Authorizing Act. No provision of this Lease shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon the Board.

SECTION 12.6 Concerning the Investment Tax Credit

The Board will execute such documents as the Company may reasonably request in order to make available to the Company any investment tax credit provided for in the Internal Revenue Code of 1986, as amended.

SECTION 12.7 Binding Effect

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

SECTION 12.8 Severability

In the event any court of competent jurisdiction shall hold any provision of this Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Lease.

SECTION 12.9 Section Captions

The section headings and captions contained in this Lease are included for convenience only and shall not be considered a part of this Lease or affect in any manner the construction or interpretation of this Lease.

SECTION 12.10 Survival of Agreements

The warranties and representations of the parties to this Lease shall survive the exercise by the Company of the option to purchase and the delivery of the deed upon the closing of the option to purchase.

IN WITNESS WHEREOF, the undersigned has caused this Lease to be executed in its corporate name by its duly authorized officers effective as of the date first written above.

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE TOWN OF CALERA

By: W.M. Schroeder
W.M. Schroeder
Its Chairman

ATTEST:

By: James L. Carden
JAMES L. CARDEN
Its Secretary

STATE OF ALABAMA §
 §
SHELBY COUNTY §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that W.M. Schroeder and James L. Carden, whose names as Chairman and Secretary, respectively, of The Industrial Development Board of the Town of Calera, a public corporation and instrumentality under the laws of the State of Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said public corporation.

GIVEN under my hand this 22 day of April, 2004.

William W. Brummitt
Notary Public
My Commission Expires: MY COMMISSION EXPIRES MARCH 4, 2006

IN WITNESS WHEREOF, the undersigned has caused this Lease to be executed in its name effective as of the date first written above.

AMERICAN CONCRETE PUMPING, LLC

By: Joe Burdette
Joe Burdette
Its PRESIDENT

STATE OF ALABAMA §
 §
SHELBY COUNTY §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that Joe Burdette, whose name as President of American Concrete Pumping, LLC, an Alabama limited liability company, 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on this the 22 day of April, 2004.

Delia H. Brummett
Notary Public
My Commission Expires: MARCH 4, 2006

EXHIBIT "A" Description of Plant Site

Lot 12, according to the survey of Calera South Industrial Park, as recorded in Map Book 26, Page 57, in the Probate Office of Shelby County, Alabama, being situated in Shelby County, Alabama.

EXHIBIT "B" Permitted Encumbrances

1. Liens for ad valorem taxes not yet due.
2. Restrictive covenants of record.