

MINUTES OF  
Budget and  
Control Board  
Meeting

May 23, 1978

MINUTES OF BUDGET AND CONTROL BOARD MEETING

MAY 23, 1978      4:00 P. M.

Following a meeting of the State Education Assistance Authority, the Budget and Control Board met at 4:00 p.m. on May 23, 1978 in the Governor's Conference Room with the following members in attendance:

Governor James B. Edwards  
Mr. Grady L. Patterson, Jr.  
Mr. Earle E. Morris, Jr.  
Representative Tom G. Mangum

Because of their involvement with the Senate Finance Committee on the 1978-79 Appropriations Bill, Senator Rembert C. Dennis joined the meeting during the first Executive Session and Board Secretary State Auditor William T. Putnam joined the meeting late in the second Executive Session.

Also attending were A. E. Reiser, William A. McInnis and Donna K. Clark.

The following items of business were considered:

EXECUTIVE SESSION - Governor Edwards announced that one contractual matter had been proposed for consideration in Executive Session. The Budget and Control Board without objection agreed to consider this matter whereupon Governor Edwards declared the meeting to be in Executive Session.

RATIFICATION OF EXECUTIVE SESSION ACTION - Following the Board's consideration of the Executive Session item, the meeting was opened and the following action taken by the Board in Executive Session was announced:

(1) Postponed action on the award of a contract for Life, Accidental Death and Dismemberment and Long Term Disability Insurance for state and public school employees pending receipt of additional information.

Following this action, the Budget and Control Board continued with the following regular session agenda items.



UNIVERSITY OF SOUTH CAROLINA - RENOVATION OF BENSON SCHOOL - USC

Vice President for Operations Harold Brunton, accompanied by Dr. Ernest Furchgott, head of the USC Department of Psychology, appeared before the Budget and Control Board to discuss further the proposed renovation of Benson School using "Renovation Reserve" funds.

Mr. Brunton briefly summarized the various features of the proposal and distributed an Attorney General's opinion that the renovation of a leased building to implement present University programs would not be in contravention of Act 410 of 1978 (the "Lake Bill"). He stressed that the proposal stems basically from the loss of about 43,000 square feet of space as a result of the fire in and related renovation of the Barnwell Building and pointed out the following space needs: (a) between 10,000 and 15,000 square feet of animal research and laboratory space for the Department of Psychology; (b) between 10,000 and 20,000 square feet of lab space for the School of Public Health; (c) 9,400 square feet for the University Affiliated Facilities programs; and (d) a future need for 10,350 square feet of space for the Speech and Hearing Clinic now located at the Hall Institute.

Mr. Brunton reiterated the original proposal considered by the Budget and Control Board at its May 9, 1978 meeting which called for leasing for a five-year period the 38,867 square foot Benson School from Richland School District One. He pointed out that the consideration involved in the proposed lease included the provision of certain computer services for District One at practically no cost to the University plus the expenditure of \$400,000 for renovating the facilities. He concluded that the proposed \$400,000 expenditure represents a \$2.06 per square foot cost annually for the renovated facility over the five-year period.

Mr. Brunton then outlined two alternative proposals as follows:

(1) make available the 16,000 square feet in the 1800 Gervais Street building and authorize the University to lease and renovate two wings of the Benson School

at a cost of \$300,000; and (2) make available the 1800 Gervais Street building, seek 10,000 square feet of wet lab space from DHEC for a four-year period for the Public Health School, and authorize the renovation of one wing of Benson School for the Psychology Department at a cost of \$200,000.

Following a discussion of the several possibilities, during which Mr. Brunton noted that University classroom space is presently used about 55% of the 45-hour week, upon a motion by Representative Mangum, seconded by Mr. Patterson, the Budget and Control Board authorized the University of South Carolina to lease the Benson School for a five-year period and to renovate one wing of that school at an estimated cost of \$200,000, using the funds from the Renovation Reserve, and authorized further exploration of the other possibilities included in Alternate 2 as presented by Mr. Brunton.

Information relating to this matter has been retained in these files and is identified as Exhibit I.

POLL AGENDA - Nine items were included on the Poll Agenda for the present meeting. Governor Edwards expressed concern about Poll Items 1, 2 and 3 (relating to the selection of architectural and engineering firms by The Citadel, the Department of Corrections and Lander College, respectively) each of which involves the selection of a firm which has had a greater volume of State work during the two previous years than the other firms considered. In the extended discussion which ensued, Governor Edwards expressed the view that approval of the selection of firms which have had the greater volume of State work in the preceding two years would be unfair and inconsistent with the Board's responsibilities under the A&E selection procedure set forth in law. Mr. Morris questioned whether the Board should intrude in the A&E selection procedure and took the position that the Board should approve the firms selected by the agencies after they have gone through the prescribed selection process. Senator Dennis observed that the intention of the selection procedure legislation is to spread A&E work among qualified firms and to avoid creating a

monopoly but that the implementation of the intent of this legislation is a difficult practical matter.

Following this discussion, Senator Dennis moved that the Board approve the firms listed first in order of preference in the three requests under consideration and Mr. Morris seconded this motion.

In the ensuing discussion, Senator Dennis withdrew his previous motion and the Budget and Control Board, upon a motion by Senator Dennis, seconded by Mr. Patterson, withheld approval of the A&E firms selected by The Citadel, the Department of Corrections and Lander College and directed State Engineer John McPherson to be present at the next meeting to provide specific facts and figures on these three requests and to advise the Board on its compliance with the prescribed A&E selection and selection approval process.

Information relating to these three requests has been retained in these files and is collectively identified as Exhibit II.

Upon a motion by Senator Dennis, seconded by Mr. Morris, Poll Item 7, relating to a Division of General Services request for approval of two positions above the number authorized in the Appropriation Act, was carried over to a future meeting.

Information relating to Poll Item 7 has been retained in these files and is identified as Exhibit III.

The five poll items acted on at the present meeting are specifically identified as such in these minutes.

HIGHWAYS AND PUBLIC TRANSPORTATION - CONSULTANT SERVICES CONTRACT  
REVISION (POLL ITEM 4) - State Highway Engineer E. S. Coffey advised the Budget and Control Board that, as a result of an honest oversight, \$11,200 of costs for the drafting of all topographic features in the area covered by mapping were left out of the total contract amount approved by the Board at its 4/5/78 meeting. Mr. Coffey further advises that, with this amount included, the total cost proposed by the firm involved (Kucera and Associates, Inc. of Atlanta) is



still about \$11,000 less than the next lowest cost proposed. He also pointed out that with the \$11,200 included in the Kucera price, the costs proposed by this firm for the particular service involved is about \$8,000 less than the next lowest cost proposed for this service.

The Budget and Control Board without objection approved the correction of the contract previously approved on 4/5/78 between the Department of Highways and Public Transportation and Kucera and Associates, Inc. for aerial mapping services so as to include an \$11,200 cost item which, through error, was not included in the contract as approved originally.

Information relating to this matter has been retained in these files and is identified as Exhibit IV.

DIVISION OF GENERAL SERVICES - PRINTING EQUIPMENT ACQUISITIONS (POLL ITEM 5) - Upon the recommendation of Division Director Furman McEachern, who advised the Board that the State Printing Officer has reviewed the following requests and concurs in their justification, the Budget and Control Board without objection approved the following printing equipment acquisitions:

A. College of Charleston: To lease, with option to purchase, one AB Dick Model 360 Offset Press with Model 1-3-501 Organizer, and Model 675M Platemaker, to replace existing equipment, at an approximate cost of \$337 per month; and

B. Clemson University - To lease two Xerox 9200 Copiers, to complete a modernization program underway over the past year aimed at replacing obsolete equipment with faster, more modern and cost-effective equipment, at an approximate cost of \$4,300 per month.

Information relating to this matter has been retained in these files and is identified as Exhibit V.

CLEMSON UNIVERSITY - POSITIONS ABOVE AUTHORIZED NUMBER (POLL ITEM 6) - Clemson University Classification and Compensation Manager Bernard J. Price requested Budget and Control Board approval of the following positions which

still about \$11,000 less than the next lowest cost proposed. He also pointed out that with the \$11,200 included in the Kucera price, the costs proposed by this firm for the particular service involved is about \$8,000 less than the next lowest cost proposed for this service.

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CLEMSON UNIVERSITY - POSITIONS ABOVE AUTHORIZED NUMBER (POLL ITEM 6) - Clemson University Classification and Compensation Manager Bernard J. Price requested Budget and Control Board approval of the following positions which

have existed for two or more years as temporary part-time slots in the Department of Agricultural Economics and Rural Sociology: (a) 17 Enumerators who collect data from Livestock Auction Markets, livestock producers and farm operators; and (b) one Library Technician Assistant III. Mr. Price also advised the Budget and Control Board that the required State funds would be transferred from the Other Personal Services category to Classified Positions if this request is approved.

The Budget and Control Board without objection approved the referenced request as outlined in Classification and Compensation Manager Price's April 28, 1978 letter to Budget Analyst Hutto.

Information relating to this matter has been retained in these files and is identified as Exhibit VI.

POLLUTION CONTROL REVENUE BONDS - BERKELEY COUNTY (POLL ITEM 8) -

The Budget and Control Board was presented with a Petition from Berkeley County for the issuance of \$1,800,000 Pollution Control Revenue Bonds on behalf of Mobay Chemical Corporation.

After being advised by Assistant State Auditor McInnis that the required reviews were not yet completed, the Budget and Control Board, upon a motion by Mr. Patterson, seconded by Representative Mangum, adopted a Resolution approving the Berkeley County proposal to issue \$1,800,000 Pollution Control Revenue Bonds on behalf of Mobay Chemical Corporation, pursuant to 1976 Code Sections 48-3-10 et seq, on the condition that the required reviews be completed to the satisfaction of the State Auditor.

(SECRETARY'S NOTE: Subsequent to the meeting, the required reviews were completed satisfactorily and the required certificate was received from the Department of Health and Environmental Control.)

Information relating to this matter has been retained in these files and is identified as Exhibit VII.

INDUSTRIAL REVENUE NOTE - LEXINGTON COUNTY (POLL ITEM 9) - The Budget



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(SECRETARY'S NOTE: Subsequent to the meeting, the required reviews were completed satisfactorily and the required certificate was received from the Department of Health and Environmental Control.)

Information relating to this matter has been retained in these files and is identified as Exhibit VII.

INDUSTRIAL REVENUE NOTE - LEXINGTON COUNTY (POLL ITEM 9) - The Budget

and Control Board was presented with a Petition from Lexington County for the issuance of \$1,000,000 Industrial Revenue Note on behalf of Summit Container Corporation. The project consists of the acquisition of certain industrial machinery and equipment and, when completed, will provide additional employment for about 30 persons.

After being advised by Assistant State Auditor McInnis that the required reviews had not yet been completed, the Budget and Control Board, upon a motion by Mr. Patterson, seconded by Representative Mangum, adopted a Resolution approving the Lexington County proposal to issue a \$1,000,000 Industrial Revenue Note on behalf of Summit Container Corporation, pursuant to 1976 Code Sections 4-29-10 et seq, on the condition that the required reviews be completed to the satisfaction of the State Auditor.

(SECRETARY'S NOTE: Subsequent to the meeting, the required reviews were completed and an investment letter was received from the United Virginia Bank of Richmond, Virginia, purchaser of the Note.)

Information relating to this matter has been retained in these files and is identified as Exhibit VIII.

MINUTES OF PREVIOUS MEETINGS - Board members previously had been furnished with draft versions of the minutes of the meetings held on May 2 and May 9, 1978.

Upon a motion by Mr. Patterson, seconded by Mr. Morris, the Budget and Control Board approved the referenced minutes as written.

TECHNICAL AND COMPREHENSIVE EDUCATION - USE OF BOND FUNDS - The Board without objection agreed to add to the agenda of the present meeting the consideration of a request by TEC Associate Executive Director Wyman D. Shealy for authorization to use for construction purposes \$57,789 of Capital Improvement Bond funds which were authorized originally for equipment. Mr. Shealy noted that, if approved, TEC would be in position to accept the low bid on the Denmark TEC Student Services Building.

Following a brief discussion in which Board members agreed that the Board could not change the purpose for which bond funds are authorized, upon a motion by Senator Dennis, seconded by Mr. Patterson, the Budget and Control Board denied the referenced request.

Information relating to this matter has been retained in these files and is identified as Exhibit IX.

CLEMSON UNIVERSITY - FUNDS FOR EMPLOYER CONTRIBUTIONS - Clemson

University Vice President for Business and Finance Melvin E. Barnette advised the Budget and Control Board of problems associated with three categories of employer contributions costs which are not adequately dealt with under the procedures followed during the current year whereby the employer costs of fringe benefit programs are to be paid from appropriations made to individual institutions and agencies rather than from funds appropriated to the Budget and Control Board.

The first category cited by Vice President Barnette relates to employer contributions associated with salaries and wages paid by Clemson University for the June 25-30, 1977 period which were charged by accrual to fiscal year 1976-77. Mr. Barnette reports that Clemson University has paid \$73,802.27 to the Retirement System to cover these costs from funds budgeted for other purposes and requests reimbursement from funds appropriated to the Board for these purposes. In support of his request, Mr. Barnette pointed out that the costs involved relate to fiscal year 1976-77 when funds for these purposes were appropriated to the Board rather than to the individual agencies.

Following a brief discussion, upon a motion by Mr. Patterson, seconded by Representative Mangum, the Budget and Control Board authorized the reimbursement of \$73,802.27 to Clemson University from funds appropriated to the Board for employer contributions.

Because the Budget and Control Board had, on March 15, 1978, authorized the State Auditor and the Retirement System to approve the payment of the cost



of employer contributions associated with the establishment of non-member or prior years' service credit from funds appropriated to the Board, the Budget and Control Board took no further action in response to the second category of problems cited by Mr. Barnette. The Board took the position that that previous action provides a basis upon which Clemson University might be reimbursed for any of these costs previously paid.

The third category of problems identified by Mr. Barnette relates to employees on leave without pay but who may remain in the Retirement System by remitting the employee portion of the contribution. Mr. Barnette takes the position that no funds were requested or provided to pay for the employer portion of these costs and that they should be paid from funds appropriated to the Board rather than by each individual agency.

Following a brief discussion in which Board members took the position that these costs should be paid by each individual agency from the funds appropriated to them, upon a motion by Mr. Patterson, the Board agreed to continue its consideration of this question.

Information relating to these matters has been retained in these files and is identified as Exhibit X.

GRANTS AND CONTRACTS REVIEW SUBCOMMITTEE - GRANT AND CONTRACT REQUESTS -

Grants Services Administrator George F. Oliver presented a list of 40 projects approved by the Board Subcommittee involving federal funds in the amount of \$4,035,034, State funds in the amount of \$455,801 and \$252,215 of other funds, for a total of \$4,743,050. Mr. Oliver called the Board's attention to requests number 20 and number 30 which involve conditional approvals. Mr. Oliver also distributed a summary of Budget and Control Board actions on grants and contracts to date.

In the ensuing discussion, Board members raised questions on several projects and Governor Edwards commended Mr. Oliver for his knowledge of the federal programs involved.

Senator Dennis expressed the hope that the Budget and Control Board could devote considerable time during budget hearings next fall to the question of State government employment. Senator Dennis observed that the ever-increasing number of State employees means that the State cannot provide adequately for its employees.

Governor Edwards pointed out that the 1,300 new employees included in the budget bill as passed by the House represent a future obligation of more than \$1,000,000,000 for South Carolina taxpayers.

Mr. Morris suggested that the Budget and Control Board invite the gubernatorial nominees to sit in with the Board during the hearings next fall and Governor Edwards expressed a willingness to extend such an invitation.

The Budget and Control Board without objection approved the recommendations of the Grants and Contracts Review Subcommittee on the 40 projects included on the list presented by Mr. Oliver.

Information relating to this matter has been retained in these files and is identified as Exhibit XI.

STATE PERSONNEL DIVISION - AMENDMENT OF PERSONNEL POLICY MANUAL SECTION ON GRIEVANCES AND APPEALS - State Personnel Division Director Jack Mullins presented and recommended Board approval of an amendment to Section 6.02 State-ments of Policy, of the Personnel Policy Manual, to incorporate Board policy regarding the deduction from reinstatement pay of any unemployment compensation and wages earned during the period between the date of dismissal and reinstatement and a Grievance Committee revision to that Committee's rules and regulations for incorporation into the Personnel Policy Manual.

Following a brief discussion, upon a motion by Mr. Morris, the Budget and Control Board without objection approved both items as recommended by Dr. Mullins.

Information relating to this matter has been retained in these files and is identified as Exhibit XII.

STATE PERSONNEL DIVISION - DUAL EMPLOYMENT POLICY REPORTING PROCEDURES -

A request by Dr. Jack Mullins that the Board suspend Article VIII of the Dual Employment Policy, relating to reporting procedures, and authorize the Personnel Division, the Comptroller General, the State Treasurer and the State Auditor to implement revised reporting requirements and procedures was carried over to a future meeting in order to allow Board members an opportunity to review the proposed revised procedures. Dr. Mullins' request was prompted by the necessity to incorporate the dual employment request form and the Comptroller General's inter-department transfer form into one document.

FUTURE MEETING - The Budget and Control Board agreed to meet at 12:00 noon on Wednesday, June 7, 1978 in the Governor's Conference Room.

EXECUTIVE SESSION - Governor Edwards announced that three personnel matters and two Grievance Committee items had been proposed for consideration in Executive Session. The Budget and Control Board without objection agreed to consider these matters whereupon Governor Edwards declared the meeting to be in Executive Session.

RATIFICATION OF EXECUTIVE SESSION ACTIONS - Following the Board's consideration of Executive Session items, the meeting was opened and the following actions taken by the Board in Executive Session were ratified without objection:

- (1) Postponed, because of the illness of the appellant's attorney, hearing an appeal on a Retirement System decision;
- (2) Approved a special salary increase for an employee of the Manpower Division of the Division of Administration;
- (3) After a review of the record, accepted the recommendation of the State Employee Grievance Committee in a case involving the Department of Mental Retardation;
- (4) After a review of the record, rejected the recommendation of the Employee Grievance Committee in a case involving the Educational Television



Commission; and

(5) Received as information a briefing on an Attorney General's opinion relating to the receipt of salary supplements from private sources.

The meeting was adjourned at 6:45 p.m.

STATE, BUDGET AND CONTROL BOARD

EXHIBIT I

MEETING OF May 23, 1978

AGENDA ITEM NUMBER

2 5/23/78

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Agency: University of South Carolina

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Subject: Renovation of Benson School

Consider further the request for approval of the project to renovate this facility (to be leased for five years) for laboratory space at an estimated cost of \$400,000 from "Renovation Reserve."

USC Vice President Brunton has provided a summary of the proposal and he will be present at the meeting to discuss the matter.

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Board Action Requested:

Consider

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Staff Comment:

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Attachments:

Brunton summary of proposal.

University of South Carolina  
Proposed Lease of Benson School

1. Current University Space Problems

- a. Psychology Labs and Animal Research  
Loss of Barnwell (42,893 sq. ft.) because of fire  
Classes assigned to other buildings, but no available lab space
- b. Public Health Labs  
No available space for programs in Hypertension, Epidemiology,  
Air Pollution, Water Pollution and Toxicology
- c. University Affiliated Facilities  
Temporarily using Kirkland Apartments; need observation lab space

2. Alternatives Considered and Their Problems

- a. Increased Classroom Utilization  
Difficult to adapt available classrooms into lab space
- b. Renovate Barnwell floor-by-floor  
Entire building needs to be substantially gutted
- c. Rent Commercial Space  
Most suitable is near Richland Memorial; cost \$6.50 - \$7.50 per sq. ft.

3. Benson Advantages

- a. Available Space - 38,867 sq. ft.
- b. Location - Pickens Street; directly adjacent to campus
- c. Length of Lease - 5 years
- d. Proposed Rent  
Computer Services (no additional cost to USC)  
Renovation Cost (much recoverable after 5 years)  
 $\$400,000 \div 5 \text{ years} \div 38,867 \text{ sq. ft.} = \$2.06 \text{ per sq. ft.}$

H.B.  
5/18/78



# The State of South Carolina



## Office of the Attorney General

DANIEL R. MCLEOD  
ATTORNEY GENERAL

WADE HAMPTON OFFICE BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S. C. 29211  
TELEPHONE 803-758-3970

May 19, 1978

Phillip M. Grier, Esquire  
University Counsel  
University of South Carolina  
Columbia, South Carolina 29208

Dear Mr. Grier:

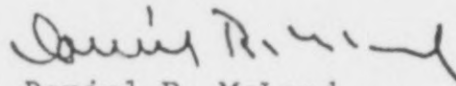
You have inquired into the scope of the prohibition on construction at the institutions of higher education as laid out in Act No. 410. This Act prohibits "further construction of physical plants," pending the completion of a "master plan" to be written by the modified State Commission on Higher Education. Specifically you have inquired as to whether it was the intent of the Act to include renovations as being prohibited construction activity.

In light of the apparent purpose of the Act, it is my opinion that the renovation of a leased building to implement present University programs would not be in contravention of the legislation. It is a useful tool of statutory construction to interpret ambiguous terms through the statute's contextual meaning. 2A Sutherland on Statutory Construction § 47.01 at 70 (1973). Reading the statute as a whole, it is apparent that the legislature intended that construction should cease until such time as the Commission had a sufficient opportunity to reflect on the best course for each institution to follow in light of their present status and objectives. This is apparent from language in section 4 of the Act which directs the Commission to formulate a master plan, making the "best

Phillip M. Grier, Esquire  
Page two  
May 19, 1978

possible use of existing plants and administrative and instructional staffs," in consideration of the institution's offerings, goals and plans. The Commission is also directed to address major academic and public service programs in "terms of goals and objectives, costs versus benefits...." The intention of the Act is to halt further construction of major physical plants until the future direction of the institution can be determined. Renovation of a leased school to accommodate present programs would not be included in this prohibition.

Sincerely,



Daniel R. McLeod  
Attorney General

DRM/jvh

cc: Mr. Howard R. Boozer  
Executive Director  
Commission on Higher Education  
Rutledge Building  
1429 Senate Street  
Columbia, South Carolina 29201

STATE BUDGET AND CONTROL BOARD

MEETING OF May 9, 1978

AGENDA ITEM NUMBER 1

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Agency: University of South Carolina

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Subject: Renovation of Benson School

USC Vice President Brunton requests approval of a project to renovate the 39,000 square feet in Benson School which is being leased from Richland School District 1 for a 5-year period. Mr. Brunton estimates that \$400,000 will be required to finance the renovations needed. These funds are to come from the "Renovation Reserve" (from a \$10 per student per semester fee) which was approved by the Board on 7/14/77.

The proposed lease of this property has been reviewed and given tentative approval by the Division of General Services. (See the last page of the lease for the consideration involved.)

---

Board Action Requested:

Consider approval of the project and the use of \$400,000 from the USC "Renovation Reserve."

---

Staff Comment:

The so-called "Lake Bill" (Act) may be relevant.

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Attachments:

Brunton 5/3/78 letter to McEachern plus proposed lease (not yet finally approved by General Services).



STATE BUDGET AND CONTROL BOARD

MEETING OF May 9, 1978

AGENDA ITEM NUMBER 1

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cc: Mr. William T. Putnam, State Auditor  
Mr. John McPherson, State Engineer  
President James B. Holderman  
Vice President B. A. Daetwyler

UNIVERSITY OF SOUTH CAROLINA

COLUMBIA, S. C. 29208

DIVISION OF OPERATIONS

RECEIVED  
MAY 4 1978

May 3, 1978

Mr. Furman E. McEachern, Jr.  
Director  
S. C. Division of General Services  
300 Gervais Street  
Columbia, South Carolina 29201

BUDGET AND  
CONTROL BOARD

SUBJECT: University Use of Benson School

Dear Furman:

On January 26, I wrote you and personally discussed the University's proposed lease of Benson School to meet space problems created by the Barnwell fire. Since that time, several modifications to our proposed lease have taken place.

First we discovered that Benson School had been severely vandalized to the extent that it would cost approximately \$150,000 merely to put it back in its previous state. Next, we determined that the approximately 39,000 square feet of space in Benson would be ideal to answer acute space problems not only in Psychology but in Public Health, University Affiliated Facilities, and Theatre. We now have made specific engineering studies as to how these needs could be accommodated and have determined that it would cost \$400,000 to make the necessary renovations and alterations. Because of the magnitude of this expense, we felt it could only be justified with a five-year lease, which finally has been agreed to by School District One.

Attached to this memo are the following:

1. A proposed lease with School District One. You will notice that this uses your new State lease form but because of the special arrangements with Benson, the main elements of our lease are included in the attachment.
2. An "Application for Approval of a Permanent Improvement Project" (Form-E-1) together with a cost justification. As noted in this request, the University proposes to pay for the \$400,000 renovation with funds in the Renovation Reserve. When the Budget and Control Board approved the establishment of this reserve last year, they requested that projects charged to this account be handled in the same manner as permanent improvements.

It is our hope that much of Benson can be made available for use by academic programs at the start of the Fall Semester. For this reason, we are naturally interested in anything that can be done to accelerate consideration of this project.



Mr. Furman E. McEachern, Jr.  
May 3, 1978  
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By copy of this letter to Bill Putnam, I am inquiring as to whether he believes the lease and/or the Form-E-1 can be approved administratively or needs to go before the Budget and Control Board. In the latter case, we would like to know whether a University representative should be present at the Board meeting.

Yours truly,

H. Brunton  
Vice President - Operations

HB/mf/bt

Enclosure

John → The attached copy is only for your info.  
I've given Furman the (2) official copies  
Let me know if you have any questions

HB

UNIVERSITY USE OF BENSON SCHOOL

JUSTIFIABLE RENOVATION COST

Comparable Commercial Rents (if available)

Office Space	\$5.50 per sq. ft. per year
Wet Space	\$6.50 - \$7.50 per sq. ft. per year.
(based on study by U.S.C. School of Medicine)	

Allowable Rent for Office/Lab Space

Assume	\$6.00 per sq. ft. per year (conservative)
Less Utilities	1.00 " " " " "
Custodial	1.00 " " " " "
Allowable pure rent	\$4.00 per sq. ft. per year

Justifiable Renovation Cost

$\$4.00 \times 5 \text{ years less } \$4.00 \text{ per sq. ft. to return} = \$16.00/\text{sq. ft.}$

$\text{Justifiable cost} = \$16.00 \times 38,867 \text{ sq. ft.} = \$621,872$

UNIVERSITY USE OF BENSON SCHOOL

JUSTIFIABLE RENOVATION COST

Comparable Commercial Rents (if available)

Office Space	\$5.50 per sq. ft. per year
Wet Space	\$6.50 - \$7.50 per sq. ft. per year.
(based on study by U.S.C. School of Medicine)	

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$\text{Justifiable cost} = \$16.00 \times 38,867 \text{ sq. ft.} = \$621,872$

## UNIVERSITY USE OF BENSON

### 1. PSYCHOLOGY

Problem: Loss of Barnwell because of fire (42,893 sq. ft.)

Proposal: Double-up space in Gambrell, Hamilton, 1619 Pendleton,  
and Kirkland Apartments

Use middle wing of Benson (8,540 sq. ft.)

### 2. PUBLIC HEALTH

Problem: No space for new labs; Hypertension, Epidemiology, etc.

Proposal: Use upper wing of Benson (8,540 sq. ft.)

### 3. UNIVERSITY AFFILIATED FACILITIES

Problem: Located only temporarily in 503 Main and Kirkland Apartments;  
need observation rooms

Proposal: Use lower wing of Benson (9,213 sq. ft.)

### 4. THEATRE SHOP AND PRACTICE

Problem: Must vacate BTW for Art Department

Proposal: Use Benson kitchen and part of cafeteria (2,320 sq. ft.)

NOTE: There will be approximately 4,700 square feet unassigned in Benson  
which is currently being analyzed for best possible use.

5/2/78 H.B.

APPLICATION FOR APPROVAL OF A PERMANENT IMPROVEMENT PROJECT

DATE May 2, 19 78

Institution or Agency University of South Carolina

Name of Project Benson School Renovations

Total Estimated Cost - - - - - \$ 400,000.00

To:—State Budget and Control Board

Columbia, South Carolina

In accord with procedures outlined in your "Manual for the Planning and Execution of State Permanent Improvement Projects", your approval of the project described herein is requested.

I. JUSTIFICATION

(The Owner should attach hereto a full and complete resume of facts contributing to the need of this proposed project. The objective should be to provide sufficient information to fully acquaint the Board with conditions, prospective growth and/or other circumstances that led the Owner to propose this particular project.

Copies of studies or surveys, made either by the Owner or by an outside commercial or other firm, should be made available to the Board. Comments should be included concerning any alternative proposals, if any, considered by the Owner).

II. DESCRIPTION OF PROJECT

A. Type (New building, addition to existing building, renovation, alteration, etc.):

Existing Building to be renovated.

B. Intended Use: To house elements of the Departments of Psychology, Public Health,

University Affiliated Facilities, Speech and Hearing, Theatre

C. If New Construction is Involved:

1. Attach (a) Architect's schematic drawing with facilities labeled.  
(b) Outline specifications.  
(c) Small scale locality map.  
(d) Analysis of Architect's Preliminary Construction Estimate.

2. No. Square Feet: 38,867

3. Principal Facilities (No. of stories, rooms, offices, etc.) \_\_\_\_\_

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MAY 4 1978

B. C. BUDGET AND  
CONTROL BOARD

D. If renovation and/or alteration of an existing building is involved, attach a statement outlining generally the principal work to be done.

E. If land acquisition is involved, attach a plat of the property, showing general location and acreage. Comment on any problems of acquisition or title that may exist.

F. For any unusual type project, the Owner should confer with the Board in the preparation of this Request, and attach such descriptive data as the Board may require in this particular instance.



### III. ESTIMATED COST

Site - - - - -	\$ 0
Grading - - - - -	0
Construction - - - - -	0
Fees - - - - -	0
Renovation - - - - -	370,000
Basic Equipment and Supplies - - - - -	0
Landscaping - - - - -	0
Builder's Risk Insurance - - - - -	400
Other (Specify) <u>advertisements</u>	400
Contingencies - - - - -	29,200
<b>TOTAL ESTIMATED COST - - - - -</b>	<b>\$ 400,000</b>

It is further estimated that this project will add \$ 90,000 per year to operation and maintenance costs of this agency.

### IV. FINANCING PLAN

A. Funds already in Hand - - - - -	\$ 400,000
Source: <u>Renovation Reserve Account</u>	
B. Proposed Bond Issue - - - - -	
(If a bond issue is proposed, the Board should be consulted prior to preparation of this application, to determine the details to be submitted herewith).	
C. Other (describe) _____	
* TOTAL - - - - -	\$ 400,000

Has your governing board taken formal action authorizing the submission of this Application?

(Signed)

Title

H. Brunton  
Vice President - Operations

### BOARD'S ACTION

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
State Auditor

~~EXPOSED DRAFT~~

DIVISION OF GENERAL SERVICES  
PROPERTY PLANNING AND CONTROL  
300 GERVAIS STREET  
COLUMBIA, S.C.

DATE April 3, 1978

REQUEST FOR BUDGET APPROVAL FOR LEASED PROPERTY

Requesting Agency: UNIVERSITY OF SOUTH CAROLINA

Lessor: SCHOOL DISTRICT NO. ONE OF RICHLAND COUNTY

Address of Property: PICKENS STREET - 100 BLOCK

Square Feet Requested: 38,867 - 3.5 acres

Annual Rent: \$ Renovation and Computer Services Amount for Current Fiscal Year: \$                     

Initial Request ☒ Additional Request ☐

If request is for additional space in same area, please show information on current space:

Square Feet                      Annual Rent \$                      Expiration Date                     

Indicate impact on Budget for next year:                     

Approximately \$90,000 utility, custodial, security\*

Proposed usage of space: Psychology Department while Barnwell being renovated

Public Health while Science Wing being built

Engineering Lab while Science Wing being built

University Affiliated Facilities and Theatre Department

Proposed source of funding:

Current Year: State \$ - Federal                      Other                     

Next Year: State/\$ 90,000\* Federal                      Other                       
and Fees

If Federal Grant is source, please show:

Federal Grant #                      State Identifier                     

Submitted by: General Services

Approved: State Auditor's Office  
Budget Section

[Signature]  
Real Property Manager Date                      State Budget Analyst Date                     

\*Does not include renovation, which will be funded by Renovation Fee Reserve

GOVERNMENTAL REAL ESTATE LEASE

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

AGENCY OR DEPARTMENT: UNIVERSITY OF SOUTH CAROLINA

1. PARTIES

THIS LEASE is made this 28<sup>th</sup> day of April, 19 78, by and between the Owner, an individual, partnership, or corporation whose name is SCHOOL DISTRICT NO. ONE OF RICHLAND COUNTY, represented by \_\_\_\_\_, hereinafter called LESSOR, and UNIVERSITY OF SOUTH CAROLINA, an agency, institution, department or political subdivision of the State of South Carolina, hereinafter called AGENCY. (Occupant is herein defined as the AGENCY or its division which is actually housed in the premises.)

2. TERM OF LEASE

This lease shall begin on the 1st day of May, 19 78, and end on midnight on the 1st day of May, 19 83.

3. LOCATION

This lease covers the demised premises located in Richland County, South Carolina, in the City of Columbia, at the address 100 block of Pickens (Benson School). The demised premises contains 38,867 square feet of school space and 3.5 acres, to be used for the following purpose: University of South Carolina academic functions.

4. RENT

(a) The annual rental shall be \$(see responsibilities) payable in equal monthly installments of \$ \_\_\_\_\_ before the tenth day of each calendar month, except that the first monthly installment shall be paid upon commencement of this lease as determined by paragraph five (5). Rental payments shall be payable at the following address: \_\_\_\_\_.

~~(b) It is further understood and agreed that the rent set out in subparagraph (a) above shall be firm for the first year and is not subject to any additional costs, assessments or increases throughout this first rental year.~~

~~At the end of the first year and each year thereafter rental may be subject to adjustment for the succeeding rental year, provided any adjusted increases shall be based on the costs of the immediate prior rental year and limited as hereinafter determined and agreed;~~

~~(i) that in no event shall the adjusted annual rent exceed six (6%) per cent of the previous year's annual rent;~~

~~(ii) that the adjustment shall be limited to only the additional agency pro-rata cost increases approved by audit or inspection of appropriate documents, bills, meter readings, assessments, or other records that apply to the following items:~~

~~(a) increase in the costs of insurance premiums for fire and extended coverage insurance and liability insurance applying to the demised premises only on the face value amount in force at the commencement date of this lease, as verified by appropriate documents from the LESSOR'S insurer or insurers; provided, the AGENCY shall be responsible for increases in premiums if the rate is adjusted due to the AGENCY'S particular use or what it may store on the premises;~~



(b) the pro-rata share of any increases in real estate taxes beyond the taxes assessed during the prior year;

(c) the pro-rata share of the increase in costs for consumption or use of water, sewer, electricity, gas, or fuel oil of the AGENCY, if applicable, above the prior rental year; and

(d) the pro-rata share of any increases in applicable employee wage payments for those employees of the LESSOR who are regular or part-time employees whose services are primarily in and for the operation and maintenance of the said premises, excluding, however, special or particular contract services for specialized repairs;

(iii) for the purpose of determining the pro-rata percentage share of the AGENCY, the square footage of space occupied by the AGENCY shall be divided by the total actual rented square footage of the demised premises or the square footage of eighty-five (85%) per cent of the rentable space of the demised premises, whichever is the greater divisor;

(iv) the AGENCY or its representative, upon any request for adjustment of rent for any ensuing rental year, shall have the right to inspect or audit, for the purpose of adjusting rent, the documents, books, bills or other records upon which the request is based and such documents, books, bills, and other records shall be made available for that purpose at the offices of the Leasing Agency, by the LESSOR, or the owner, if different, prior to actual agreement of adjusted rent;

(v) in the event the total pro-rata costs to the LESSOR or owner for the operation of the demised premises shall decrease during any rental year, then the AGENCY shall receive a credit or reduction in rent to the extent of the AGENCY'S pro-rata decrease in costs;

(vi) no losses sustained for any reason by the LESSOR in the rental or operation of the demised premises during any rental year shall be included or recaptured by the LESSOR by assessment to the AGENCY, nor shall any demand of such losses be made by LESSOR;

(vii) it is further agreed as to rent that the AGENCY shall only pay its pro-rata share of the above determined costs up to six (6%) per cent of the AGENCY'S past year's annual rental, and in the event the LESSOR shall prove an increase in rental above six (6%) per cent then the AGENCY shall have the continuing right to cancel this lease upon sixty day written notice, provided that during the month or months that the AGENCY shall remain in the premises the AGENCY shall pay the actual determined rental increase, but in no event shall such month to month rental exceed eight (8%) per cent above the prior year's monthly rental. Any holdover terms pursuant to this provision when the increase in rental paid shall be more than six (6%) per cent shall be deemed month to month, unless otherwise agreed to in writing and approved by the Budget and Control Board or its representative;

(viii) notice or request for additional rent shall be given the AGENCY in writing not less than sixty (60) days prior to the end of any rental year; and

(ix) in the event there shall be no adjustments for additional rent as determined pursuant to this paragraph four (4), the rent for the succeeding year shall be the same as the prior year, except for credit provided in paragraph 4(v).

##### 5. CANCELLATION PRIVILEGE

Notwithstanding the commencement and expiration dates above set out in paragraph two (2) above, it is understood and agreed by the parties hereto that this lease is subject to approval by the State Budget and Control Board or its authorized representative, the Division of General Services; if approval is not granted this lease is null and void, ab initio.

It is further understood and agreed that while the lease term as above set out is five years, this lease may be cancelled by the AGENCY upon the occurrence of any one or more of the following:

(a) at the end of any fiscal year (June 30) after the commencement date when sufficient appropriations, revenues, income, grants or other funding from whatever source are not available to the Occupant in the space to carry on the purposes or programs of the AGENCY with a remainder over of funds to make the rental payments herein agreed, this sufficiency of funds to be solely determined by the State Budget and Control Board; or

(b) at any time upon sixty (60) days notice when the Occupant in the space is dissolved and no longer performs the function and purposes prescribed to it; or

(c) at any time upon four (4) months notice when sufficient and adequate square footage or other space is not available for use by the Occupant in the space for normal operations and maximum efficiency, including necessary expansion, to be solely determined by the renting AGENCY or Occupant and approved by the State Division of General Services; or

(d) upon the breach of any covenant or condition of this lease; or

(e) it is understood and agreed that at any time after the first six (6) months from the commencement date of this lease the AGENCY or Occupant of the space hereby reserves the right to cancel this lease and vacate the above referred to premises without penalty or charge by giving one hundred twenty (120) days written notice to the LESSOR provided the AGENCY or Occupant of the space moves into a building owned or otherwise controlled by the State of South Carolina.

#### 6. COMMENCEMENT

Notwithstanding the commencement and expiration dates set forth herein, the commencement date of this lease shall be the date the AGENCY or Occupant of the space agrees the demised premises is ready for occupancy or the date the AGENCY takes possession of the demised premises, whichever is earlier.

#### 7. OPTIONS TO RENEW

The LESSOR hereby agrees that the AGENCY shall have the option to renew this lease upon the same terms and conditions expressed herein for such duration as may be mutually agreed to by the LESSOR, AGENCY, and the State Division of General Services. No option to renew or other extension of the original lease shall be valid without prior written approval by the Division of General Services.

Notice of intent to exercise any option to renew or extension of this lease shall be given by the AGENCY to the LESSOR at least sixty (60) days prior to the termination of the original lease term and such notice shall show the written approval of the Division of General Services.

Any holdover term without an approved written agreement between LESSOR and AGENCY shall be deemed month to month, which either party may cancel upon sixty (60) days notice in writing.

#### 8. ASSIGNMENT

The AGENCY shall have the right to assign or sublease the demised premises to any State agency, institution, department or political subdivision, or State operated entity without the written permission of the LESSOR, provided that such assignment or sublease shall be on the same terms and conditions as those of the AGENCY, and the requirements of the subleasee or assignee shall not exceed the requirements of the AGENCY as to persons and equipment for the herein rented space. Any assignment made pursuant to this provision shall be upon the condition that the assigned agency shall not interfere with the peaceful and quiet enjoyment of other tenants.

The AGENCY shall not assign or sublease the demised premises to any other person, except as herein approved, without written permission of the LESSOR.



## 9. SERVICES

Unless otherwise waived or amended in writing, LESSOR agrees to provide the AGENCY with the same services common to other tenants in the demised premises, including, but not limited to, heating, air conditioning, electrical, elevator service, and janitorial service, the costs of said services to be determined on a pro-rata basis with other tenants and is hereby agreed to be included in the rental payment herein provided. If feasible, the AGENCY at its option and cost shall be entitled to meter or otherwise determine its water, electricity and other utility costs.

The following services incidental to the use and enjoyment of the premises are not contracted for in this lease and shall be provided by the AGENCY at its option and cost;

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## 10. EXEMPTIONS

Notwithstanding any other provision of this lease, amendments hereto, or incorporations, the LESSOR and its principal, agent, or successor hereby grants to the AGENCY a waiver and exemption of the following requirements, and the AGENCY shall not be required to furnish, provide, or pay for any of the following:

- (a) a security deposit for rental, or any other service;
- (b) the payment of liquidated, punitive, or penalty damages for any cause or reason;
- (c) any kind of indemnity, public liability, fire protection, accident, or other insurance for the protection of the LESSOR or any person or property other than the AGENCY and its employees, at its option;
- (d) any indemnification, release, waiver, or hold harmless agreement, for any cause or reason, it being expressly understood that the AGENCY does not waive, either expressly or impliedly, its right to assert sovereign immunity or any other affirmative or defensive right or claim it may have under law; and
- (e) pay any late charges for past due rental.

## 11. COVENANTS OF AGENCY

The AGENCY covenants and agrees that it shall:

- (a) pay the rent when due without notice or demand, provided, that should the rent become more than fifteen (15) days past due the LESSOR shall give the AGENCY notice in writing to pay within fifteen (15) days after receipt of said notice;
- (b) maintain the leased premises clean and in good order, and in substantially the same condition as received, excepting reasonable wear and tear and damage by fire and other casualty over which the AGENCY has no control; provided that the AGENCY shall not be responsible for janitorial service negligence when provided by the LESSOR;
- (c) comply with all lawful rules, regulations, and laws;
- (d) use reasonable precautions to protect persons and property against fire or other casualty;
- (e) give the LESSOR notice of any accident or damage;



(f) use reasonable precautions in the conservation of energy and utilities; and

(g) allow LESSOR reasonable access for inspection.

(h) provide services outlined in attached "Lease of Benson School"

#### 12. LESSOR COVENANTS

The LESSOR covenants and agrees that it shall:

(a) not discontinue any facility or service herein contracted for without thirty (30) days written notice to the AGENCY, which notice shall provide for adequate compensation or reduction in rent for the loss of any service;

(b) keep the demised premises in good repair including, but not limited to, lighting, heating, air conditioning, access, ingress, egress, sanitary facilities, water facilities, and other services incidental to the demised premises;

(c) make reasonable improvements suitable to the good appearance and usefulness of the demised premises;

(d) keep the demised premises protected against flood, storm, leaking ceilings and roofs, and other hazards of nature, and to repair or protect same from such hazards within reasonable time after notice; and

(e) not allow the peaceful enjoyment of the AGENCY to the demised premises be disrupted or interfered with by any one claiming under the LESSOR or any other person or thing within the control of the LESSOR.

#### 13. ARCHITECTURAL BARRIERS

The LESSOR further covenants and agrees that the demised premises and the buildings, or access to the demised premises, if open to the public shall comply with any applicable state law with respect to architectural barriers or design that would prohibit free and full access and use to the demised premises and facilities by the aged, disabled, or physically handicapped; in the event the leased premises do not comply with such applicable state law as aforesaid at the commencement date of this lease then LESSOR agrees, at his own cost, to alter, repair, or otherwise provide such reasonable access and use as may be required by State law applicable to these leased premises.

#### 14. UNTENABLE CONDITION

In the event the demised premises which is the subject of this lease becomes untenable in whole or in part by damage due to fire, storm, riot or other casualty, so that the AGENCY has no substantial use of such premises, this lease may be cancelled by either party without cost, penalty, or any other obligation.

#### 15. IMPROVEMENTS

The AGENCY shall not make any alterations or improvements to the demised premises without the written consent of the LESSOR, which written consent shall provide for compensation or credit to the AGENCY, if any, for making such improvements. Such alterations or improvements shall remain the property of the LESSOR unless the AGENCY removes the same prior to the expiration or cancellation of this lease and restores the demised premises to substantially the same condition prior to alteration or improvement; provided that the AGENCY shall not be obligated to remove such improvements unless otherwise agreed to in writing.

#### 16. MINOR REPAIRS

If, at any time prior to actual occupancy or any time thereafter, the AGENCY shall find minor discrepancies or items in need of repair or replacement, which are LESSOR'S responsibility, including but not limited to, torn carpet, improper lighting, faulty workmanship in construction, door locks, and other similar inconveniences necessary to the enjoyment and use of

the demised premises, when the cost of repair or replacement is less than two hundred (\$200.00) dollars, including labor, the AGENCY shall give written notice to the LESSOR of such discrepancies. Upon receipt of such notice the LESSOR shall, at his own cost, repair, replace, or otherwise eliminate such discrepancies prior to occupancy or within thirty (30) days after notice. Should such discrepancies not be repaired, replaced, or otherwise eliminated after the thirtieth (30th) day, then and in that event, the AGENCY shall have the right to make such repairs and deduct the cost thereof from the next month's rent without any penalty, cost or breach. If such discrepancy is not finally corrected by LESSOR within sixty (60) days after notice and the AGENCY desires not to make the repairs itself, then the AGENCY may cancel this lease, without penalty, cost, or breach, and neither party shall be further obligated to the other hereunder from the date of such notice of cancellation; provided, the AGENCY agrees to repair at its cost any damage caused by its employees, agents, or invitees.

17. DEFAULT

Except as provided in paragraph sixteen (16), if at any time one party shall default in any of its obligations under this lease, the other party shall give written notice to the defaulting party of its intention to terminate this lease, together with a statement of the nature of such default. If the default is of such a nature that it cannot be cured within sixty (60) days, necessary steps will be duly and diligently taken to cure such default and if no action is taken the aggrieved party may cancel after the ninetieth (90th) day after the first notice. If the default can be cured within sixty (60) days after notice and is not so cured by the defaulting party, the aggrieved party may cancel after the sixtieth (60th) day without further obligation or penalty.

18. SUBORDINATION

The AGENCY'S rights under this lease shall remain subordinate to any bona fide mortgage or deed to secure debt which is now, or may hereafter be placed upon the premises, provided that no State or AGENCY property shall be subject to any lien or mortgage, nor shall the covenants and conditions of this lease be invalidated or changed by any subordination.

19. ADDITIONAL PROVISIONS

Additional provisions covering matters not in this lease or at variance with the provisions of this lease shall be set out in writing, signed by the authorized representative of each party, duly approved by the Division of General Services, and attached to this lease.

When such additional provisions shall conflict with other provisions of this lease and the same have been duly approved by the Division of General Services, the additional provisions shall supersede the earlier provisions and be binding on the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

WITNESS:

*[Signature]*  
Margie Greenland  
Julie A. Elnopen  
C.R. Marsh, Jr.

*[Signature]*  
AGENCY Vice President for Finance  
Bill M. Holcomb, Supt.  
LESSOR  
Richland Co. School District Exec

APPROVAL BY THE STATE BUDGET AND CONTROL BOARD OR ITS REPRESENTATIVE SHALL BE GIVEN BELOW:



University of South Carolina

Lease of Benson School

University Responsibilities

1. The University will place Benson School in good condition and maintain it in good condition for the entire period of the lease.
2. The University will be responsible for the security of the building and for damages which might occur through vandalism or similar cause.
3. All modifications or additions to the building will have prior approval of the Superintendent prior to the accomplishment of such alterations.
4. Any modifications made to the building which would prohibit the School District from using the building for its intended purpose when returned to the School District will be removed at University expense.
5. The University will be responsible for all utilities, maintenance and operating costs during the period of the lease.
6. The Computer Services contract between the University and Richland County School District One as part of the sale of Booker T. Washington will be extended from August 1, 1979, to August 1, 1989. Computer Services would include the following:
  - a. Education and Training - Various types of education and training programs will be provided by the University, in conjunction with the University's internal training programs, at no cost.
  - b. Software Systems - Software systems such as the encumbrance accounting system will be available to the school district at no cost.
  - c. Computer Time and Mass Storage - Up to 2½ hours of CPU\* time and 27,000,000 bytes of mass storage will be available to the School District at no cost until August 1, 1984, and thereafter at only actual cost.
  - d. Terminals - All cost associated with any terminals, telephone lines and communication equipment necessary to process work will be paid for by the School District.
  - e. Programmers and Systems Analyst Staff - The School District will pay for all staff.

Insurance Responsibilities

2. The University will be responsible for maintaining insurance coverage on University equipment.

\*This amount of time is based on the effective speed of the current 370/168 computer (four times the speed of the preceding 360/65). If the current computer is replaced in the future with a still faster computer, appropriate adjustments of available time would be made.





UNIVERSITY OF SOUTH CAROLINA

COLUMBIA, S. C. 29208

RECEIVED

MAY 15 1978

DIVISION OF  
GENERAL SERVICES  
May 10, 1978

DEPARTMENT OF PSYCHOLOGY

State Budget and Control Board  
300 Gervais Street.  
Columbia, 29201

Dear Sirs:

I have just read in the paper that the State Budget and Control Board has delayed action on the leasing of Benson Elementary School for use by the Department of Psychology. Your lack of concern for the faculty and students of this department is reprehensible.

It has been almost four months now since the fire at Barnwell and this department is still operating on a day-to-day basis with no firm commitments as to its future well-being.

A university is not simply a place to go to classes, it is also a place where scientists can conduct research in order to further our understanding of the world. You seem to be unaware of this fact. Much of this research can not be conducted on a day-to-day basis. It takes many months of planning, years of work, and carefully controlled conditions. It is for these purposes that it is necessary that the department have a place to go while Barnwell is being remodeled.

In fact, some of the research I am currently involved in was so disrupted by the fire that things are still not back to normal. Attempting to conduct research while construction is underway would be impossible. Noise and dust would disturb the animals, our safety here would be jeopardized, and, also, the construction workers would be inconvenienced.

Our research here is federally funded by the National Institute on Drug Abuse and the National Institute of Mental Health. Approximately 50% of these funds go directly to the state (not the University, but the state) in order to provide overhead for our activities. It seems to me that the state is not giving us our money's worth. We are still working in our lab in the basement of Barnwell (just where we were before the fire.) Conservatively stated, this place looks like a dungeon. The plaster and paint on the walls is peeling and cracking. The ceilings in the hall fell in after the fire and have been covered with unpainted sheet rock. Plus, this place smells like the inside of a chimney.

I doubt that there is a university in the country that would not move as quickly as possible to accommodate a department displaced by fire. \$80,000 per year seems a reasonable price in these extraordinary circumstances, particularly at a university where almost every department has brand new or recently remodeled facilities. But what do we get? A burned out old building for research, with classes and offices spread out all over campus.

This is the current state, but what about the future? How can a department expect to attract good faculty when the department can't even get decent facilities? They can't. Only rejects from respectable departments would come here. And what about students? This is supposed to be a place for learning, but what graduate student would go to a department where he will not even be assured he will have a place to do research for his thesis and dissertation? Again, only rejects from other institutions. As for the graduate

students currently enrolled in this program, they will be the hardest hit. They are required to do research in order to get a degree, but the state won't allow the University to set up suitable laboratories in which to conduct this research. So what do they do?

I simply cannot understand your motives for opposing Mr. Brunton's proposition. You built a new building for the Department of Highways and Public Transportation, new office buildings for the legislators, have considered buying the SCN building, the Wade Hampton and the Five Points buildings, but you can't approve a measly \$80,000 a year for a department displaced by fire.

We do not have \$3,000 desks, \$900 chairs and we do not conduct our research meetings over a \$10,000 conference table, but we work hard. Probably harder than most people who work for this state. I've been told all my life that that's what counts. Around here, however, it seems that the people who work the hardest in this department are the ones who will be hurt the most, while those who do not do much research will be little affected and could probably care less.

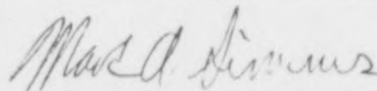
The professor I work for is well respectd<sup>e</sup>, not only in this department, but he is a distinguished scientist in his field. He has over 100 research publications, not to mention the countless ones done by people he has trained. He has presented numerous papers before scientific conferences all over the country and this summer will leave for Europe where he will present his findings to still more interested scientists.

He came to this University and this state bringing with him federal grant money. He employs secretaries, research assistants and gives assistantships to graduate students with this money. And, as I stated earlier, gives about half of his funds to the state. But what thanks does he get? He gets inconvenience, hassles, and has to "double up on space." If we don't get some good facilities he may lose his grants.

I think this terribly unjust. It seems to me to be a very good example of fascism--concern for the state over concern for the individual.

Any responses you may have will be more than welcome. In fact, we would like to invite you or any of your staff to come by our laboratory in Rm. 118 Barnwell in order to see what we do and to get a first-hand look at the conditions here.

Sincerely yours,



Mark A. Simmons  
Research Assistant  
Behavioral Pharmacology Laboratory

STATE BUDGET AND CONTROL BOARD

POLL OF \_\_\_\_\_ May 23 \_\_\_\_\_, 1978

POLL ITEM NUMBER \_\_\_\_\_

EXHIBIT II  
1 5/23/78

Agency: The Citadel

(SEE ALSO POLL ITEMS 2+3, ATTACHED.)

Subject: Selection of A&E Firm (Carried over from 5/9/78)

General Grimsley advises that the following firms, listed in preference order, have been selected to provide the services required in connection with the study of McAlister Field House and Daniel Library roof problems and the preparation of plans and specifications for correcting such problems:

- (1) Lockwood-Greene, Spartanburg;
- (2) Demetrios C. Liollo & Associates, Charleston; and
- (3) Keane/Sherratt, Hilton Head.

Please refer to attached letter from Col. Baker for a statement on the overriding consideration involved in the selection of the firm with the most State work during the past two years.

Board Action Requested:

Approve the selection of Lockwood-Greene for the referenced project.

Vote Of Board Member: (Please indicate by initialing appropriate line below.)

- \_\_\_\_\_ I approve of the above action.
- \_\_\_\_\_ I disapprove of the above action.
- \_\_\_\_\_ Hold for regular meeting.

Attachments:

Baker 5/8/78 letter to McPherson; Grimsley 4/28/78 letter to McPherson plus attachments.



THE CITADEL  
THE MILITARY COLLEGE OF SOUTH CAROLINA  
CHARLESTON, S. C. 29409

8 May 1978

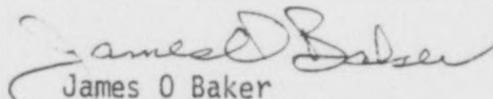
Mr. John A. McPherson  
Chief Engineer  
State Budget & Control Board  
Post Office Box 11333  
Columbia, South Carolina 29211

RE: A-E Contract for Roof Repairs  
at The Citadel

Dear Mr. McPherson:

Lockwood-Greene, Spartanburg, South Carolina was selected as the best qualified firm for this contract because of their extensive experience in design and construction of sheet copper on wood deck roofs. This type of construction is unusual in recent years. Neither of other responding firms had any experience with this type of construction.

Sincerely,

  
James O Baker  
Colonel, USA, RET

JOB:rb

RECEIVED  
MAY 11 1978  
S. C. BUDGET AND  
CONTROL BOARD

**THE CITADEL**  
THE MILITARY COLLEGE OF SOUTH CAROLINA  
CHARLESTON, S. C. 29409

OFFICE OF THE  
VICE PRESIDENT  
FOR ADMINISTRATION  
AND FINANCE

28 April 1978

Mr. John A. McPherson, Jr.  
Chief Engineer  
State Budget & Control Board  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. McPherson:

Inclosed is a copy of a proposed A-E contract with Lockwood-Greene of Spartanburg, South Carolina for a study of roof design of repairs and preparation of specifications on McAlister Field House and the Daniel Library. (Inclosure 1) Due to the nature of the work to be performed, the proposed contract is considered more equitable to both The Citadel and the Architect-Engineer than a fixed price contract. It is anticipated that the repair plans and specifications prepared will contain several unit price items to cover work quantities that cannot be determined until existing roofs are removed.

A copy of newspaper request for submission of resumes of qualifications is attached at Enclosure 2.

The firms that responded in order of qualification are:

1. Lockwood-Greene - Spartanburg, S. C.
2. Demetrios C. Liollio & Associates - Charleston, S. C.
3. Keane/Sherratt - Hilton Head, S. C.

**RECEIVED**  
MAY 2 1978  
**S. C. BUDGET AND  
CONTROL BOARD**

The first two firms submitted projects undertaken for the state in the past two years and their construction costs. (Inclosure 3) This information was considered in making the selection for the best qualified firm.

In the past three years, The Citadel has awarded A-E contracts as follows:

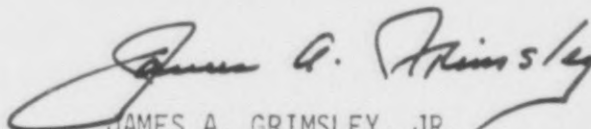
1. 1977 - Lucas & Stubbs, Charleston, S.C. - Update Master Plan - \$31,895 (Total Fee and reimbursements)
2. 1978 - George B. Rast, Charleston, S.C. - Family Quarters Heating Study - \$3,500 (Fee)



Mr. John A. McPherson, Jr.  
Page 2

Request State Budget and Control Board's approval of attached contract.

Sincerely,

A handwritten signature in dark ink, appearing to read "James A. Grimsley, Jr.", with a stylized flourish at the end.

JAMES A. GRIMSLEY, JR.  
Major General, USA, Retired  
Vice President for Administration  
and Finance

JAGJR:rb

INCL  
a/s



# LOCKWOOD GREENE

ARCHITECTS • ENGINEERS

LOCKWOOD GREENE ENGINEERS, INC. • POST OFFICE BOX 491 • SPARTANBURG, SOUTH CAROLINA 29301 • 823 592-2351

April 17, 1978

Colonel J. O. Baker  
Resident Construction Engineer  
The Citadel  
Charleston, South Carolina 29409

Re: 78009.03

Dear Jim:

We appreciate very much the opportunity to make a proposal to The Citadel in accordance with the recent advertisement for A/E services in connection with a study and specifications for corrections of roofing problems on the Library and McAlister Field House.

As you know, providing fixed budget information for restoration and repairs to older buildings is difficult at best and the quotation of a fixed engineering fee would be equally difficult because of the many unknown factors that can only be brought to light during the investigation. For this reason, we propose to provide the architectural/engineering service to you at an hourly rate of 2.5 times our payroll cost plus out-of-pocket expenses in accordance with the attached schedule. We will execute this work for you as efficiently as possible. We believe that the A/E services for the two buildings can be provided on a budget of \$8,000 to \$9,000 and we propose that our total fee and expenses will not exceed \$9,000 without prior written approval from The Citadel.

The estimate of fee does not include field supervision and we believe this can be held to a minimum by utilizing the services of Joe Teal who is now at The Citadel.

W. E. Helms, Jr. would be assigned as Project Manager on this work. In his 27 years of experience he has investigated many roof problems and prepared reports for corrective action.

Colonel J. O. Baker  
78009.03

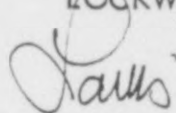
-2-

April 17, 1978

We look forward to working with you on these projects and continuing to serve The Citadel as we have for many years. Your signature in the space provided will confirm the agreement.

Yours truly,

LOCKWOOD GREENE ENGINEERS, Inc.



Louis S. Booth

LSB:ebr

Attachment

ACCEPTED:  
THE CITADEL

By *James A. Trinsley*  
Title *Vice President/Admin & Finance*  
Date *28 April 1978*

LOCKWOOD GREENE ENGINEERS, Inc.

By *J. Carroll Cox*  
Title *Vice President*  
Date *April 17, 1978*

### REIMBURSABLE EXPENSES

The following expense items are reimbursable to Lockwood Greene Engineers when directly relating to the project:

- 1) Communication - telephone and telegraph toll charges; postage cost.
- 2) Lodging and Food - reasonable living expenses incurred while on assignment or travel away from office.
- 3) Outside Services and Special Supplies - actual cost of services contracted by Lockwood Greene; all major expenditures with Owner's prior approval.
- 4) Computer Charges - when used in direct connection with project design.
- 5) Printing and Reproduction -
  - 8¢ per square foot for prints
  - 10¢ per xerox copy
  - 3¢ per multilith page
  - Standard charges for miscellaneous reproductions
- 6) Travel - 17¢ per mile via personal automobile; actual cost of other modes of travel.

This schedule is applicable until January 1, 1979.

January 1, 1978

Spartanburg, S. C.



P.O. 61969

☒ **The News and Courier**

☐ **CHARLESTON EVENING POST**

State of South Carolina

County of Charleston

Personally appeared before me

the undersigned advertising Clerk of the  
above indicated newspaper(s), published  
in the City of Charleston, County and  
State aforesaid, who, being duly sworn.  
says that the advertisement of

(copy attached)

appeared in the issues of said newspaper(s)

on the following day(s):

March 29, 1978

at a cost of \$ 9.50

Acct. # 16060

Subscribed and sworn to  
before me this 4th day  
of April  
A.D. 19 78

*Lita A. Warkes*

*Frank W. Parks*  
NOTARY PUBLIC, S.C.

NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission expires September 9, 1984

ARCHITECT-ENGINEER  
QUALIFICATION REQUEST  
The Director of Physical Plant,  
The Citadel, Charleston, South Caro-  
lina 29409 will receive resumes of  
qualifications from Architect-Engi-  
neers interested in providing serv-  
ices for the study of roof problems  
and development of plans to correct  
them.  
Work consists of analysis of an 18  
year old, 5 ply built up roof and a 39  
year old copper on wood deck roof,  
development of plans to correct defi-  
ciencies and an estimate of cost of  
work.  
Resumes must be received within  
15 days of the date of this advertise-  
ment.

APR 7 1978

INCL 2

ARCHITECTURAL-ENGINEERING CONTRACTS WITH STATE OF SOUTH CAROLINA AGENCIES  
AWARDED TO LOCKWOOD GREENE SINCE MARCH 1, 1976

---

<u>Projects</u>	<u>Construction Cost</u>
S. C. School for Deaf & Blind Fire Alarm System	\$ 150,000
S. C. Medical University Master Plan for Centralized Data Process Center	Not Applicable
U. of S. C. Regional Campus Multi/Media Building Joint Venture with Westmoreland, McGarity & Pitts	\$1,100,000

ARCHITECTURAL-ENGINEERING CONTRACTS WITH STATE OF SOUTH CAROLINA AGENCIES  
AWARDED TO LOCKWOOD GREENE SINCE MARCH 1, 1976

---

<u>Projects</u>	<u>Construction Cost</u>
S. C. School for Deaf & Blind Fire Alarm System	\$ 150,000
S. C. Medical University Master Plan for Centralized Data Process Center	Not Applicable
U. of S. C. Regional Campus Multi/Media Building Joint Venture with Westmoreland, McGarity & Pitts	\$1,100,000





DEMETRIOS C. LIOLLO AIA ARCHITECT & ASSOCIATES LTD.  
ARCHITECTS ENGINEERS PLANNERS  
1812 SAVANNAH HIGHWAY-PO DR. 30309-CHARLESTON S.C. 29407

April 24, 1978

Col. James O. Baker  
U.S.A., Retired R.E.T.  
The Citadel  
Charleston, S.C. 29409

Re: Study of Roof Problems and Development of  
Plans to correct same for The Citadel

Dear Col. Baker:

Thank you for your telephone call this date regarding State Contracts on which our Firm has performed.

The only Contract executed between our Firm and the State in the last two years has been with the Medical University of South Carolina which Contract was an open end Contract in connection with Architectural Services and Consulting as required (for one year). The year ended March 1, 1978. Our total fee was about \$57,000.00.

Services for the Medical University of South Carolina included a complete exterior signage program and investigation of the entire campus for compliance with the new Federal Barrier Free Laws, and other services as required from time to time by the Physical Plant Department of the Medical University.

If we can furnish additional information please let us hear from you.

With best wishes, I am

Very truly yours,

Raymond G. Larkin II, P.E.

RGL/gb

cc: Mr. Demetrios C. Liollo, AIA

(803) 556-6200

THE CITADEL  
THE MILITARY COLLEGE OF SOUTH CAROLINA  
CHARLESTON, S. C. 29409

8 May 1978

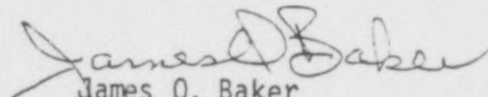
Mr. John A. McPherson  
Chief Engineer  
State Budget & Control Board  
Post Office Box 11333  
Columbia, South Carolina 29211

RE: A-E Contract for Roof Repairs  
at The Citadel

Dear Mr. McPherson:

Keane/Sherratt, Hilton Head Island, South Carolina has had no  
state contracts in the past two years.

Sincerely,

  
James O. Baker  
Colonel, USA, RET

JOB:rb

RECEIVED

MAY 11 1978

S. C. BUDGET AND  
CONTROL BOARD

STATE BUDGET AND CONTROL BOARD

POLL OF May 23, 1978

POLL ITEM NUMBER

**2**

---

Agency: Department of Corrections

---

Subject: Selection of A&E Firm (Carried over from 5/9/78)

Commissioner Leeke advises that the J. Clifton Hawkins and Associates firm which had been selected (and approved by the Board on 2/15/78) for civil engineering services on in-house maintenance, repair and renovation projects for a one-year period has been dissolved. Mr. Leeke also advises that his agency has re-interviewed the second and third choice firms of those originally selected. In preference order (as before), they are:

- (2) McNair, Gordon, Johnson & Karasiewicz; and
- (3) Johnny T. Johnson & Associates.

Please refer to Commissioner Leeke's 5/18/78 letter for statement in support of having selected as first preference the firm which has had the greater volume of State work in the two preceding years.

---

Board Action Requested:

Approve the selection of McNair, Gordon, Johnson & Karasiewicz.

---

Vote Of Board Member: (Please indicate by initialing appropriate line below.)

- ☐ I approve of the above action.
- ☐ I disapprove of the above action.
- ☐ Hold for regular meeting.

---

Attachments:

Leeke 5/18/78 letter to Putnam





# south carolina department of corrections

P. O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221  
TELEPHONE (803) 758-6444  
WILLIAM D. LEEKE, Commissioner

May 18, 1978

Mr. William T. Putnam  
State Auditor  
P. O. Box 11333  
Columbia, S. C. 29211

Dear Mr. Putnam:

In December 1977, the South Carolina Department of Corrections selected the engineering firm of J. Clifton Hawkins & Associates, Inc. as the civil engineering firm for our in-house designed and accomplished construction needs. Soon after their selection, the firm was dissolved and J. Clifton Hawkins was employed by Wilbur Smith & Associates.

The Department of Corrections felt it was to our best interest, based on the dissolution of J. Clifton Hawkins & Associates and the amount of work under contract by the Department to Wilbur Smith & Associates to reinterview the two original alternate selections referred to in the December 27, 1977 letter to Governor Edwards.

The selection committee was favorably impressed with both the firm of McNair, Gordon, Johnson & Karasiewicz and the firm of Johnny T. Johnson & Associates as being qualified to accomplish the necessary design work. It was felt by the selecting committee that the firm of McNair, Gordon, Johnson & Karasiewicz was better qualified to perform the scope of work necessary by the Department of Corrections.

Their broad base of experience is drawn from a staff of nine graduate engineers, seven of whom are registered professional engineers. The firm of Johnny T. Johnson & Associates has a staff of three graduate engineers, two of whom are registered professional engineers and, although they appear to be adequately qualified to perform the work, it was felt by the selection committee that based upon the amount of work and the limited professional staff of Johnny T. Johnson & Associates, they would not be able to give the Department of Corrections the broad based experience offered by the firm of McNair, Gordon, Johnson & Karasiewicz.

Based on these reinterviews, I am listing below, in preferential order, for your approval, those firms which appear to be qualified to accomplish the necessary design work.

## CIVIL ENGINEERING

1. McNair, Gordon, Johnson & Karasiewicz
2. Johnny T. Johnson & Associates

BOARD OF  
CORRECTIONS

CHARLES C. MOORE  
Chairman  
Spartanburg, S.C.

CLARENCE E. WATKINS  
Vice Chairman  
Camden, S.C.

EUGENE N. ZEIGLER  
Secretary  
Florence, S.C.

NORMAN KIRKLAND  
Member  
Bamberg, S.C.

W. M. CROMLEY, JR.  
Member  
Saiuda, S.C.

BETTY M. CONDON  
Member  
Mt. Pleasant, S.C.

GOV. JAMES B. EDWARDS, Member, Ex-Officio, Columbia, S.C.

Mr. William T. Putnam  
Page Two  
May 18, 1978

The following attachments were part of the original interviews in December and are included as required.

1. List of all firms submitting.
2. Certification of newspaper announcements.
3. Construction projects - previous three (3) years.
4. List of State projects accomplished by selected firms - previous two (2) years.

Upon receipt of your approval of the above listed firm, we shall proceed to enter into a contractual agreement for the engineering services.

Sincerely,



William D. Leeke

WDL:wa

## LIST OF FIRMS SUBMITTING

1. Century Southern Engineers  
Greenville, South Carolina
2. B. P. Barber & Associates  
Columbia, South Carolina
3. Harwood Bebee Company  
Spartanburg, South Carolina
4. Highlands Engineering Corp.  
Greenville, South Carolina
5. W. B. Leland Consulting Engineer  
Charleston, South Carolina
6. R. S. Herman, Inc.  
Greenville, South Carolina
7. Russell & Axon  
Anderson, South Carolina
8. Buford Guff & Associates  
Columbia, South Carolina
9. Architects Rouleaux  
Columbia, South Carolina
10. Leon Campbell & Associates  
Columbia, South Carolina
11. Energy Conservation Systems  
West Columbia, South Carolina
12. Ewright Associates, Inc.  
Columbia, South Carolina
13. Fellers & Associates  
Columbia, South Carolina
14. Mr. R. M. Gaddy, P. E.  
Columbia, South Carolina
15. J. C. Hawkins & Associates  
Columbia, South Carolina
16. Johnny T. Johnson & Associates  
Columbia, South Carolina
17. MBIB  
Greenville, South Carolina
18. MGJK  
Columbia, South Carolina
19. J. E. Serrine Co.  
Greenville, South Carolina
20. Wilbur Smith & Associates  
Columbia, South Carolina







RECEIVED

SEP 26 1977

THE GREENVILLE NEWS-PIEDMONT COMPANY

POST OFFICE BOX 1688

GREENVILLE, SOUTH CAROLINA 29602

ENGINEERING

AFFIDAVIT

Allen Dedwyler, being duly sworn, says that he is the legal representative

of { THE GREENVILLE NEWS  
GREENVILLE-PIEDMONT } a newspaper printed and published in the

City of Greenville, in the State of South Carolina. That the attached advertisement ap-

peared in \_\_\_\_\_ 4 \_\_\_\_\_ inches in the issue

of September 6, 14, 20, 1977

*Allen Dedwyler*

Sworn to and subscribed before me

this 21st day of September 19 77

*Robert P. Lupton*  
Notary Public for State of S.C.

Total Due \$ \_\_\_\_\_



CONSTRUCTION PROJECTS  
PREVIOUS THREE (3) YEARS

<u>Architectural/Engineering Firm</u>	<u>Nature of Project</u>	<u>Construction Contract Amount</u>
1. Player & Associates	Addition to Supply Complex (21-59)	200,000.00
2. Geiger McElveen & Kennedy	Construct Administration Building Annex (21-60)	1,626,002.00
3. Department of Corrections	Roof repair, dormitory & kitchen, MacDougall Youth Correction Center (21-63)	101,134.60
4. Department of Corrections	Construct Commissary Warehouse (21-64)	12,000.00
5. Lucas & Stubbs	Upper Savannah Regional Correctional Center (21-68)	Project Canceled
6. Freeman, Wells & Major	Appalachian Regional Correctional Center - Greenville (21-69)	Project Canceled
7. Greenwood Greene, Engineers, Inc.	Appalachian Regional Correctional Center - Spartanburg (21-70)	Project Canceled
8. Department of Corrections Bruce Fleming & Associates	Goodman Dormitory Additions (21-71)	** 409,586.00
9. Geiger McElveen & Kennedy	Hospital Complex (21-72)	Project Canceled
10. Player & Associates	Supply Complex Addition (21-74)	* 125,000.00
11. Greenwood Associates, Inc.	Renovation, Greenwood Correctional Center (21-75)	Project Canceled
12. Greenwood Associates, Inc.	Renovation, Laurens Correctional Center (21-76)	Project Canceled
13. Department of Corrections	Paint Spray Booth, MacDougall Youth Correction Center (21-77)	49,389.36

14.	Carson & Williams	Campbell Pre-Release Center (21-78)		721,300.00
15.	Department of Corrections	Renovation, Savannah River Pre-Release Center (21-79)		
16.	Samuel Harper	Palmer Pre-Release Center (21-80)		607,299.00
17.	Department of Corrections	Renovation, Duncan Pre-Release Center (21-78)		21,500.00
18.	Department of Corrections	Renovation, Northside Pre-Release Center (21-82)		28,000.00
19.	McMillian James Townsend & Bowen	Relocation of Facilities, Hampton Street Extension CCI (21-83)	**	273,390.00
20.	Geiger McElvaen & Kennedy	Dormitories and Multipurpose Building Women's Correctional Center (21-84)		1,306,000.00
21.	Leon Campbell & Associates	Traffic Facilities, Broad River Road Complex (21-85)		395,000.00
22.	Department of Corrections	Private Visitation Center, Wateree River Correctional Institution (21-87)	**	42,666.00
23.	Department of Corrections	Retube Boiler #1, CCI (21-88)		45,000.00
24.	Department of Corrections	Renovate Guard Towers & Cells MDRC (21-89)		19,035.00
25.	Department of Corrections	Construct Toilets - Manning Correctional Institution (21-90)	.	2,000.00
26.	Department of Corrections	Water Treatment System, Wateree River Correctional Institution (21-92)	*	13,000.00
27.	Department of Corrections	Construct Boiler Room & Install New Boiler North Sumter Correctional Center (21-93)	*	9,000.00
28.	Department of Corrections	Addition, Reception & Evaluation Center (21-94)	**	7,292.00

29.	Department of Corrections	Install Ventilation Equipment, Reception & Evaluation Center (21-95)	12,000.00
30.	Department of Corrections	Renovate Guard Quarters CCI (21-96)	8,000.00
31.	Department of Corrections	Construct Greenhouse, Kirkland Correctional Institution (21-97)	5,000.00
32.	Department of Corrections	Construct Greenhouse, Women's Correctional Center (21-98)	6,064.00
33.	Department of Corrections	Sewer Trunk Line, Greenwood Correctional Center (21-100)	* 45,000.00
34.	Department of Corrections	Toilet Renovations, Watkins Pre-Release Center (21-101)	2,200.00
35.	Department of Corrections	Toilet Renovations, Wilson Youth Center (21-102)	2,000.00
36.	J. E. Siering Co.	Comprehensive Tower Improvements (21-103)	352,794.00

\*Under Design

\*Under Construction - Inmate Labor



Attachment #4

LIST OF STATE PROJECTS ACCOMPLISHED BY SELECTED FIRM  
PREVIOUS TWO (2) YEARS

McNair, Gordon, Johnson & Karasiewicz

National Guard Armory & Organizational Maintenance Shop, Military Department,  
State of South Carolina, Hartsville, S. C. - \$940,000

Rembert C. Dennis Building (in association with Fellers & Associates), Division  
of General Services, State of South Carolina, Columbia, S. C. - \$3,500,000.

Johnny T. Johnson & Associates, Inc.

Broad River Trunk Line, S. C. Department of Corrections, Department of Youth  
Services, Harbison Development Corp., - \$475,000

S. C. Department of Parks, Recreation & Tourism Upgrade 8 Wastewater Treatment  
Plants, design 3 water wells and distribution system, Division of State Parks,  
Suite 113, Edgar A. Brown Bldg., 1205 Pendleton Street, Columbia, S. C. 29201,  
\$3,000,000.

STATE BUDGET AND CONTROL BOARD

POLL OF May 23, 1978

POLL ITEM NUMBER 3

---

Agency: Lander College

---

Subject: Selection of A&E Firm (Carried over from 5/2/78)

Lander College advises that the following firms, listed in preference order, have been selected to design tennis courts and related minor structures and prepare a master plan of the courts area:

- (1) Wilbur Smith & Associates;
- (2) Clark Associates, Inc.; and
- (3) Gilliland-Bell Associates, Inc.

The required selection procedure has been followed.

Please refer to President Jackson's 5/12/78 letter for statement in support of having selected as first preference the firm which has had the greatest volume of State work during the two preceding years.

---

Board Action Requested:

Approve selection of Wilbur Smith & Associates for referenced project.

---

Vote Of Board Member: (Please indicate by initialing appropriate line below.)

- ☐ I approve of the above action.
  - ☐ I disapprove of the above action.
  - ☐ Hold for regular meeting.
- 

Attachments:

Jackson 5/12/78; Franke 4/14/78 letter to McPherson plus attachments.

# Lander

COLLEGE

Greenwood, South Carolina 29646  
Telephone (803) 229-8300

Office of the President

May 12, 1978

Mr. William A. McInnis  
Assistant State Auditor  
P. O. Box 11333  
Columbia, South Carolina 29211

Re: Design of Certain Tennis Courts and Related Minor Structures

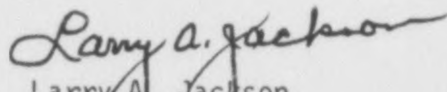
Dear Mr. McInnis:

The firm of Wilbur Smith and Associates was selected after a team of seven professionals on our campus interviewed a number of firms, and they felt that Wilbur Smith and Associates would give the State of South Carolina the best job for the money involved.

The committee was especially impressed with the previous work experience of the group of professionals working with Wilbur Smith. Prior to Lander becoming a state college, three tennis courts were built on this campus which were not adequately drained and which were not aligned properly with the sun. We wanted a professional team which would be certain that all aspects of this project were carefully planned and executed, and we believe we will get this kind of service from Wilbur Smith and Associates.

The fact that Wilbur Smith and Associates have never done any project for Lander College was also taken into consideration, but this was not a primary concern. The quality of the work which this firm promises to be able to do is the primary concern.

Sincerely,

  
Larry A. Jackson  
President

LAJ:h1b



# Lander

COLLEGE

Greenwood, South Carolina 29646  
Telephone (803) 229-5521

April 14, 1978

Mr. John A. McPherson, Jr., P.E., State Engineer  
Office of the State Auditor  
P. O. Box 11333  
Columbia, South Carolina 29211

Dear Mr. McPherson,

The following is a request to enter into a contract with Wilbur Smith and Associates for design of Tennis Courts at Lander College. (Project No. H21-001).

Interviews were conducted with the following firms:

Clark Associates Inc.  
Fellers and Associates  
W. E. Gilbert & Associates, Inc.  
Gilliland - Bell Associates, Inc.  
Wilbur Smith and Associates

RECEIVED  
APR 18 1978  
B. & BUDGET AND  
CONTROL BOARD

We chose the following three which were, in our opinion, best able to meet our requirements:

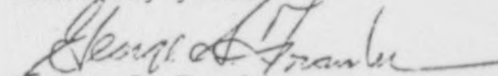
- (1) Wilbur Smith and Associates
- (2) Clark Associates Inc.
- (3) Gilliland - Bell Associates, Inc.

Consideration was given to the amount of State projects the firms have had in the past two years.

Attached are:

- (1) Copy of contract negotiated with Wilbur Smith and Associates,
- (2) Copy of newspaper advertisement,
- (3) List of all firms responding to advertisement, and
- (4) List of all A & E contracts awarded by Lander College in the past three years.

Sincerely yours,

  
George S. Franke  
Director of Physical Plant

GSF:sm

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document B141

**Standard Form of Agreement Between  
Owner and Architect**

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH  
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

**AGREEMENT**

made this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Nineteen  
Hundred and Seventy Eight

BETWEEN the Owner: Lander College

and the Architect: Wilbur Smith and Associates

RECEIVED  
APR 18 1978

BUDGET AND  
CONTROL BOARD

For the following Project:

(Include detailed description of Project location and scope)

Tennis courts and related minor structures and site development,  
and a master plan for the development of the courts area and  
adjacent tracts of land, all at the College campus.

The Owner and the Architect agree as set forth below.

	FIXED FEE
--	-----------

- AIA DOCUMENT B141 • OWNER-ARCHITECT AGREEMENT • JANUARY 1974 EDITION • AIA® • ©1974  
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006



- 14.24 Under Paragraph 5.1, delete Subparagraph 5.1.2 in its entirety.
- 14.25 Add new Subparagraph 5.1.6 as follows:
- "5.1.6 Expense of furnishing a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths."
- 14.26 Add new Subparagraph 5.1.7 as follows:
- "5.1.7 Expense of furnishing the services of soil engineers or other consultants including test borings, test pits, soil bearing values, percolation tests, necessary operations for determining subsoil conditions, with reports and appropriate professional recommendations."
- 14.27 Delete Subparagraph 6.1.2 in its entirety and substitute therefor the following:
- "6.1.2 Subsequent payments for Basic Services shall be made on the completion of each Phase as follows:
- |                                     |               |
|-------------------------------------|---------------|
| Programming and Master Plan Phases: | \$2,032.00    |
| Schematic Design Phase:             | 1,383.00      |
| Design Development Phase:           | 706.00        |
| Construction Documents Phase:       | 2,773.00      |
| Bidding Phase:                      | 1,320.00      |
| Construction Phase:                 | 4,301.00      |
| Post-Construction Phase:            | <u>760.00</u> |
| TOTAL                               | \$13,275.00"  |
- 14.28 In Subparagraph 6.1.3 add new sentence as follows:
- "No additional compensation will be paid for services in connection with semi-final and final inspections."

ARCHITECTURAL/ENGINEERING  
RESUMES

Lander College will accept resumes from interested architectural, engineering firms for the design and preparation of documents for the construction of ten tennis courts and ancillary structures on the Lander College Campus, Greenwood, South Carolina. Firms submitting resume of qualifications shall include a list of all contracts, including construction cost, the firm has executed on State work in the past two years. Also requested is a list of all tennis courts previously designed including location and year of construction.

Correspondence should be addressed to:

George S. Franke  
Director of Physical Plant  
Lander College  
Greenwood, South Carolina 29446  
Resumes will be received through  
January 15, 1978

COLUMBIA NEWSPAPERS, INC.

Columbia, South Carolina

Publishers of

**The State**

Mornings and Sunday

AND

**The Columbia Record**

Evenings except Sunday

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Personally appeared before me Carl M. Regal, Retail Advertising Manager  
of THE STATE, and makes oath that the advertisement,

Architectural/Engineering Resumes - Lander College

a clipping of which is attached hereto, was printed in THE STATE,  
a daily newspaper of general circulation published in the City  
of Columbia, State and County aforesaid, in the issues of

December 29, 30, 1977 and January 2, 1978

Carl M. Regal

Subscribed and sworn to before me  
this 3rd day of January 1978.

James Lee Snodden Notary Public

McMillan Associates Architects  
Greenville, S. C. 29601

none

Fred J. Parrish Architectual Associates  
Columbia, S. C. 29204

none

Neil R. Phillips  
Spartanburg, S. C. 29301

\$ 80,000.00

Prather Thomas Campbell Pridgeon Inc.  
Spartanburg, S. C. 29304

550,000.00

J. G. Richards, IV  
Columbia, S. C.

none

Russell & Axxon  
Anderson, S. C. 29621

(fee of \$6,000)

Kenneth B. Simmons, Associates  
Columbia, S. C.

none

Wilbur Smith & Associates  
Columbia, S. C. 29202

see attached

Stephen A. Usry  
Myrtle Beach, S. C.

none



A/E Firms Responding to Advertisement

showing construction cost of commissions awarded 1976-78

A D E P Architectual Design Environmental Planning, P.A.	none
Alexander - Moormann & Associates Aiken, S. C. 29801	\$ 2,107,879.00
William Anderson AIA Architects/Planners Columbia, S. C. 29201	300,000.00
Arbor Engineering Greenville, S. C. 29602	118,888.00
Clark Associates Inc. Anderson, S. C. 29621	none
Enwright Associates, Inc. Greenville, S. C. 29606	failed to state
Fellers and Associates Architects - Landscape Architects Columbia, S. C. 29204	9,000,000.00
W. E. Gilbert & Associates Inc. Greenwood, S. C. 29646	750,000.00
Gilliland - Bell Associates, Inc. Greenwood, S. C. 29646	none
Charles M. Gorman, Jr., A.S.L.A. Columbia, S. C. 29210	none
J. Alison Lee, AIA Greenwood, S. C. 29646	227,990.00
MBTB Architects Engineers Greenville, S. C. 29602	2,307,000.00

Wilbur Smith and Associates

20.

LIST ALL CONTRACTS FOR THE STATE OF SOUTH CAROLINA (ANY AGENCY) DURING LAST TWO YEARS

NAME OF PROJECT AND PHASE OF WORK	LOCATION	AGENCY	YEAR YOUR FIRM WAS FILED	ESTIMATED CONSTRUCTION COST OF		COM- PLETED (Yes or No)	FIRM ASSOCIATED WITH
				ENTIRE PROJECT	WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE		
East Cooper & Berke- ley RR Survey, De- sign, Construction Management	Berkeley County	S.C. Public Railways Commission	1978	\$9,000,000 (pd by Amoco through SC Rwy. Com.)	100%	Yes	None
South Carolina Retiree Study	Statewide	Division of Ad- ministration	1976	\$ 9,500.00 (Fee)	\$ 9,500.00 (Fee)	NA	None
Arsenal Hill Master Plan	Columbia, South Carolina	Division of Ad- ministration	1977	\$10,329.00 (Fee)	\$10,329.00 (Fee)	NA	None
Little River Pro- ject, Phase II	McCormick County	Clark Hill Authority	1977	\$ 7,300.00 (Fee)	\$ 7,300.00 (Fee)	NA	None
Expert Testimony - Widen Rosewood Drive	Columbia, South Carolina	Department of Highways and Public Trans- portation	1977	\$ 2,455.16 (Fee)	\$ 2,455.16 (Fee)	NA	None
South Carolina Rail Plan	Statewide	Division of Ad- ministration	1977	\$40,434.00 (Fee)	\$40,434.00 (Fee)	NA	None
Fire Academy Devel- opment, Phase I	Lexington County	State Board of Technical Edu- cation	1977	\$ 6,600.00 (Fee)	\$ 6,600.00 (Fee)	NA	None
Central Correctional Institute Proto- types	Statewide	Department of Corrections	Open	\$17,000,000	\$8,500,000	Under Design	Hellmuth, Obata & Kassabaun
South Carolina Transportation Model	Statewide	Division of Ad- ministration	1977	\$57,941.00 (Fee)	\$57,941.00 (Fee)	NA	None
TOTAL NUMBER OF COMPLETED PROJECTS:			TOTAL ESTIMATED CONSTRUCTION COST OF WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE:				

VO.

LIST ALL CONTRACTS FOR THE STATE OF SOUTH CAROLINA (ANY AGENCY) DURING LAST TWO YEARS

NAME OF PROJECT AND PHASE OF WORK	LOCATION	AGENCY	YEAR YOUR FIRM WAS CLOSED PROJECT	ESTIMATED CONSTRUCTION COST OF		CON- STRUCTED (Yes or No)	FIRM ASSOCIATED WITH
				ENTIRE PROJECT	WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE		
Charleston Inner Belt Study	Charleston, South Carolina	Department of Highways and Public Trans- portation	1977	\$20,000.00 (Fee)	\$20,000.00 (Fee)	NA	None
James Island Ex- pressway, Phase I	Charleston, South Carolina	Department of Highways and Public Trans- portation	1977	\$227,800.00 (Fee)	\$227,800.00 (Fee)	NA	Lucas and Stubbs Associates, Ltd.
Land Use Study	Statewide	South Carolina Aeronautics Commission	1976	\$ 6,000.00 (Fee)	\$ 6,000.00 (Fee)	NA	None
Statewide Land Use Plan	Statewide	Division of Ad- ministration	1978	\$27,500.00 (Fee)	\$27,500.00 (Fee)	NA	None
James Island Ex- pressway, Phase II	Charleston, South Carolina	Department of Highways and Public Trans- portation	Open	\$33,000,000	\$33,000,000	Under Design	Lucas and Stubbs Associates, Ltd.
TOTAL NUMBER OF COMPLETED PROJECTS:			TOTAL ESTIMATED CONSTRUCTION COST OF WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE:				



The following A & E contracts have been awarded by Lander College in the past three years.

1975	Neal Architects, Inc.	\$ 1,325,000
1975	Craig & Gaulden Architects, Inc.	2,200,000
1975	Heaner Engineering Co., Inc.	152,000
1977	Enwright Associates	9,000
1977	Hearst Coleman and Associates, Inc.	9,000
1977	Tarleton-Tankersley Architectual Group, Inc.	4,200,000
1977	Barry A. Bankes	31,000

STATE BUDGET AND CONTROL BOARD

EXHIBIT III

POLL OF May 23, 1978

POLL ITEM NUMBER

7 5/23/78

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Agency: Division of General Services

---

Subject: Positions Above Authorized Number (Other Funds)

Request is for the approval of the following positions:

- (a) One Management Specialist I (position has been approved by State Personnel at grade 23 with a salary range of \$11,243 - 15,626). To be funded from Division revenues.
- (b) One Centrex Operator part-time position approved by State Personnel at grade 11, salary range \$6,177 - 8,382.

---

Board Action Requested:

Approve

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Vote Of Board Member: (Please indicate by initialing appropriate line below.)

- ☐ I approve of the above action.
- ☐ I disapprove of the above action.
- ☐ Hold for regular meeting.

---

Attachments:

McEachern agenda notes

STATE BUDGET AND CONTROL BOARD  
DIVISION OF GENERAL SERVICES  
AGENDA

May 23, 1978

→ I. New Positions

- A. We request authorization to employ a Management Specialist I in our Internal Audit section to provide technical planning of the Division Five Year Plan and support schedules for annual budget. Additional duties will include cost studies on all sections of the Division, price decisions for services provided by the Division, monthly management report, and interpret and implement federal cost allocation plan. This position has been approved by State Personnel at grade 23 with a salary range of \$11,243-15,626. This position can be funded from revenue portion of our budget. It is respectfully requested that the Board approve this position.
- B. We request authorization to employ a Centrex Operator grade 11 with salary range of \$6177-8382 on a parttime basis. This operator will be used in the Columbia Centrex office when permanent operators are out due to illness and during vacations. It is necessary to man the switchboards with a full staff and this will afford the most economical means of providing this service. Funding for this position will come from Centrex revenue sources. This position has been approved by State Personnel. It is respectfully requested that the Board approve this position.

I I. Printing Equipment

- A. The College of Charleston requests permission to lease with an option to purchase one AB Dick Model 360 Offset Press with model 1-3-501 Organizer, and model 675 M Platemaker at an approximate cost of \$337 per month. This is a replacement for existing equipment, some of which will be disposed of as surplus and some will be transferred and utilized in other areas to permit better quality copy production. The acquisition of this equipment will not require any increase in personnel.
- B. Clemson University requests permission to lease two Xerox 9200 Copiers at an approximate cost of \$4300 per month. The University has averaged over 1,900,000 impressions per month. Copies of this total can be produced on this Xerox 9200 at a cost avoidance of approximately \$8,000 annually. Over the past twelve months the University has endeavored to modernize their duplicating service center to provide improved services at reduced costs by replacement of obsolete equipment with faster, more modern and cost effective equipment. Part of this program has been previously accomplished and this acquisition will complete the present program of modernization.

These requests have been reviewed by the State Printing Officer and he concurs in their justification. It is, therefore, recommended that the Board approve these requests for printing equipment.



STATE BUDGET AND CONTROL BOARD

POLL OF \_\_\_\_\_ May 23 \_\_\_\_\_, 1978

POLL ITEM NUMBER \_\_\_\_\_

EXHIBIT IV

4 5/23/78

---

Agency: Highways and Public Transportation

---

Subject: Revision of Approved Consultant Services Contract

State Highway Engineer Coffey advises that, as a result of an honest oversight, \$11,200 of costs for the drafting of all topographic features in the area covered by mapping were left out of the total contract amount as approved by the Board on 4/5/78.

Mr. Coffey points out that with this amount included the total cost proposed by this firm (Kucera and Associates, Inc., Atlanta) is still about \$11,000 less than the next lowest cost. He also notes that with the \$11,200 included in the Kucera price for the particular part of the services to be provided is almost \$8,000 less than the next lowest cost proposed.

---

Board Action Requested:

Approve correction of contract between the Department of Highways and Public Transportation and Kucera and Associates, Inc. for aerial mapping services so as to include an \$11,200 cost item which through error was not included in the contract as approved previously.

---

Vote Of Board Member: (Please indicate by initialing appropriate line below.)

\_\_\_\_\_ I approve of the above action.  
\_\_\_\_\_ I disapprove of the above action.  
\_\_\_\_\_ Hold for regular meeting.

---

Attachments:

Coffey 5/15/78 letter to Putnam



SOUTH CAROLINA

DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

P.O. BOX 191  
COLUMBIA, S.C. 29202

May 15, 1978

Mr. William T. Putnam  
State Auditor  
Post Office Box 11333  
Columbia, South Carolina 29211

Subject: Approval for Kucera and Associates, Incorporated of Atlanta, Georgia to provide aerial mapping services for Preliminary Engineering work on improvements to I-85 - Anderson and Greenville Counties; improvements to I-85 - Spartanburg County

Dear Mr. Putnam:

Approval for the subject services was requested by letter of March 15, 1978, a copy of which is attached. On April 5, 1978, the Budget and Control Board approved such services by the consultant in the amount of \$22,961.00.

During the preparation of the final consultant's agreement, the consultant discovered an omission in the amount of \$11,200.00 in the quoted price for supplying Item 4, page 2, 50 scale - 2' contour - topo mapping in the attached letter.

When the Department requested proposals and costs for performing aerial mapping services as noted on page 1 of the attached letter, Kucera and Associates furnished the attached fee schedule. As indicated on the fee schedule, a cost of \$11,200.00 was quoted for 1" = 50' final scribe planimetric maps (drafting of all topographic features in the area covered by mapping) and a cost of \$13,726.00 was quoted for 1" = 50' with 2' contours final draft scribe topographic mapping (addition of 2' contours to the topographic features in the area covered). Total cost for the final 50 scale - 2' contours would be the sum of the two costs quoted or \$24,926.00.

When the costs were totaled for all firms furnishing proposals and costs as listed at the bottom of page 1 of the attached letter, a cost of \$13,726.00 for furnishing 50 scale - 2' contours was used for Kucera and Associates instead of the cost of \$24,926.00. Using the corrected cost, Kucera and

Mr. William T. Putnam  
Page 2  
May 15, 1978

Associates total costs would be \$53,071.00. Their total cost would still be \$10,979.00 less than the next lowest cost. Further review of all proposals indicate that the lowest proposed cost for the same item of service was \$32,800.00 as compared to Kucera and Associates price of \$24,926.00.

When Kucera and Associates was contacted by telephone concerning a reduced scope of work and costs as indicated on page 2 of the attached letter, they failed to add the two abovementioned costs of \$11,200.00 and \$13,726.00 for services quoted under Item 4 even though both these figures had been indicated on their original fee schedule. Correcting this oversight, the total cost of the reduced services, would be \$34,161.00.

This matter has been discussed by telephone between Mr. William A. McInnis of your staff and Mr. George A. Weathers of our Department. We feel that an honest oversight has occurred and request that you approve an amount of \$34,161.00 for these services in lieu of the previous amount of \$22,961.00.

If additional information is required, please advise.

Yours very truly,

  
E. S. Coffey  
State Highway Engineer





SOUTH CAROLINA

DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

BOX 191

COLUMBIA, S. C. 29202

March 15, 1978

Approval for Kucera and Associates, Incorporated, of Atlanta, Georgia, to provide aerial mapping services for Preliminary Engineering work on improvements to I-85 - Anderson and Greenville Counties; improvements to I-85 - Spartanburg County.

Mr. Walter T. Putnam  
State Auditor  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Putnam:

The Department has contacted five (5) qualified firms for Proposals to perform the following services on the above projects:

1. Set ground controls for approximately 21 miles for aerial mapping.
2. Furnish aerial photography for same area.
3. Furnish 200 scale - 5' contours - for 2000' either side of I-85
4. Furnish 50 scale - 2' contours - topographic mapping for 300' either side of existing centerline of I-85.
5. Furnish 50 scale - no contour - planimetric mapping for 300'; either side of existing centerline of I-85.

As a result of our solicitation, all five (5) firms furnished proposals and costs as listed below:

Kucera and Associates, Inc., Atlanta, Georgia	<del>\$41,871</del> \$53,071
Photogrammetric Services, Incorporated, Reynoldsburg, Ohio	\$ 64,050
John J. Harte Associates, Inc., Atlanta, Ga.	\$ 72,075
Lowe Engineers, Inc., Atlanta, Georgia	\$ 84,535
Alster and Associates, Inc., Columbia, S. C.	\$102,180

Mr. Walter T. Putnam  
State Auditor  
March 15, 1978  
Page 2

The Department reviewed all proposals to insure that costs was quoted for the same services and the same level of service. After the review of all proposals, the firm of Kucera and Associates appeared as the logical choice since their proposed costs was considerably lower. Hensley-Schmidt, Incorporated, a consulting firm, was contacted as a reference for the type of work performed by Kucera and Associates. The report was favorable for similar work performed for Hensley-Schmidt in Georgia, along with the statement that they would consider Kucera and Associates for any future mapping work. A copy of Kucera and Associates, Incorporated, proposal is attached.

Further review of mapping needs on the two proposed improvement projects resulted in a reduced scope of work as follows:

1. Set ground controls for 50 scale mapping.
2. Aerial photography for 50 scale and 200 scale.
3. Aerial photography enlargements for 200 scale for a corridor 2000' either side of existing I-85.
4. Finished 50 scale - 2' contours - topographic mapping, 300' either side of I-85.
5. Finished 50 scale mapping - cultural features only, no contours - 300' either side of I-85.

Kucera and Associates, Incorporated, was contacted by telephone for a review of their proposal to furnish such services, and the following costs was furnished by telephone:

1. Ground controls	\$ 5,450
2. Aerial photography	\$ 1,400
3. 200 scale enlargements	540
4. 50 scale - 2' contours - topo mapping.	<del>\$13,726</del> #24,926
5. 50 scale - no contours	<u>\$ 1,845</u>
TOTAL COST:	<del>\$22,961</del> #34,161

Kucera and Associates, Incorporated, was selected to perform the mapping services with the approval of Mr. Paul W. Cobb, Commissioner, on March 13, 1978. This firm has not performed any services for the Department during the past two years. An engineering agreement has been requested from Kucera and Associates covering proposed services in the amount of \$22,961.

Mr. Walter T. Putnam  
State Auditor  
March 15, 1978  
Page 3

Your early approval of this selection is requested in order that aerial photography may be performed prior to tree foliage and growth of grass preventing ground exposure.

If additional information is required, please advise.

Yours very truly,

E. S. Coffey  
State Highway Engineer

ATTACHMENTS



# FEE SCHEDULE

for

SC Department of Highways and Public Transportation  
Topographic Mapping of Two Sections of I-85  
Anderson, Greenville and Spartanburg Counties

Aerial photography for 1" = 50' mapping  
(contacts and indexes). . . . . \$ 1,100.00

Additional fee for aerial photography for  
1" = 200' mapping. . . . . \$ 300.00

Ground Control - horizontal and vertical bench line  
monuments and bench marks. This control would  
be sufficient for 1" = 50' and/or 1" = 200'  
planimetric mapping. . . . . \$ 4,200.00

Additional fee for vertical control for 1" = 50'  
topographic mapping. . . . . \$ 1,250.00

Additional fee for vertical control for 1" = 200' with  
5' contour topographic mapping. . . . . \$ 1,250.00

1" = 50' final drafted scribe planimetric maps. . . . . \$11,200.00

1" = 50' with 2' contours final draft scribe topographic  
mapping. . . . . \$13,726.00

\$24,926.00

Planimetric maps at 1" = 50' as a by-product of the  
topographic mapping for an additional fee of. . . . . \$ 1,845.00

1" = 200' with 5' contour final drafted scribe topographic  
maps. . . . . \$18,200.00

Planimetric maps at 1" = 200' as a by-product of the  
topographic mapping. . . . . \$ 495.00

The above fees are based on 21 miles of highway in two sections of  
approximately twelve and nine mile.

Prepared by  
KUCERA & ASSOCIATES, INC.  
Photogrammetric Consultants

STATE BUDGET AND CONTROL BOARD

EXHIBIT V

5 5/23/78

POLL OF May 23, 1978

POLL ITEM NUMBER

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Agency: General Services

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Subject: Printing Equipment Acquisitions

- A. College of Charleston - lease, with option to purchase, one AB Dick Model 360 Offset Press with Model 1-3-501 Organizer, and Model 675M Platemaker, at an approximate cost of \$337 per month.
- B. Clemson University - lease two Xerox 9200 Copiers, at an approximate cost of \$4,300 per month. Clemson averages 1,900,000 impressions per month at which volume a cost avoidance of about \$8,000 annually can be achieved through use of the Xerox 9200.

---

Board Action Requested:

Approve A because it is to replace existing equipment;

Approve B because it would complete a modernization program underway over the past year aimed at replacing obsolete equipment with faster, more modern and cost-effective equipment.

---

Vote Of Board Member: (Please indicate by initialing appropriate line below.)

\_\_\_\_\_ I approve of the above action.

\_\_\_\_\_ I disapprove of the above action.

\_\_\_\_\_ Hold for regular meeting.

---

Attachments:

McEachern agenda notes.

STATE BUDGET AND CONTROL BOARD  
DIVISION OF GENERAL SERVICES  
AGENDA

May 23, 1978

I. New Positions

- A. We request authorization to employ a Management Specialist I in our Internal Audit section to provide technical planning of the Division Five Year Plan and support schedules for annual budget. Additional duties will include cost studies on all sections of the Division, price decisions for services provided by the Division, monthly management report, and interpret and implement federal cost allocation plan. This position has been approved by State Personnel at grade 23 with a salary range of \$11,243-15,626. This position can be funded from revenue portion of our budget. It is respectfully requested that the Board approve this position.
- B. We request authorization to employ a Centrex Operator grade 11 with salary range of \$6177-8382 on a parttime basis. This operator will be used in the Columbia Centrex office when permanent operators are out due to illness and during vacations. It is necessary to man the switchboards with a full staff and this will afford the most economical means of providing this service. Funding for this position will come from Centrex revenue sources. This position has been approved by State Personnel. It is respectfully requested that the Board approve this position.

→ I. Printing Equipment

- A. The College of Charleston requests permission to lease with an option to purchase one AB Dick Model 360 Offset Press with model 1-3-501 Organizer, and model 675 M Platemaker at an approximate cost of \$337 per month. This is a replacement for existing equipment, some of which will be disposed of as surplus and some will be transferred and utilized in other areas to permit better quality copy production. The acquisition of this equipment will not require any increase in personnel.
- B. Clemson University requests permission to lease two Xerox 9200 Copiers at an approximate cost of \$4300 per month. The University has averaged over 1,900,000 impressions per month. Copies of this total can be produced on this Xerox 9200 at a cost avoidance of approximately \$8,000 annually. Over the past twelve months the University has endeavored to modernize their duplicating service center to provide improved services at reduced costs by replacement of obsolete equipment with faster, more modern and cost effective equipment. Part of this program has been previously accomplished and this acquisition will complete the present program of modernization.

These requests have been reviewed by the State Printing Officer and he concurs in their justification. It is, therefore, recommended that the Board approve these requests for printing equipment.



STATE BUDGET AND CONTROL BOARD

POLL OF May 23, 1978

POLL ITEM NUMBER 6

EXHIBIT VI  
5/23/78  
6

Agency: Clemson University

Subject: Positions Above Authorized Number

Request is for the approval of the following positions which have existed for two or more years as temporary part-time slots in the Department of Agricultural Economics and Rural Sociology:

- (a) 17 Enumerators (collect data from Livestock Auction Markets, Livestock producers and farm operators); and
- (b) 1 Library Technician Assistant III.

If approved, the required State funds would be transferred from the Other Personal Services category to Classified Positions.

Board Action Requested:

Approve

Vote Of Board Member: (Please indicate by initialing appropriate line below.)

- ☐ I approve of the above action.
- ☐ I disapprove of the above action.
- ☐ Hold for regular meeting.

Attachments:

Price 4/28/78 letter to Hutto

5/1/78

Gene-

I recommend these 18 positions be authorized using to the extent needed state appropriated funds transferred from Other Personal Service. Transfer would be needed both 1977-78 & 1978-79. There would be in excess of the number of positions appropriated.

ADY  
7

These positions have been on ~~the~~ Board but have been charged as temporary/part time.

✓

Ed

What does J. mean  
have to say about this?

WSP

Bill,

I think that there need  
to go to the Board

Ed





BUSINESS AND FINANCE  
Personnel Division

April 28, 1978

Mr. A. D. Hutto  
State Auditor's Office  
P. O. Box 11333  
Columbia, S. C. 29211

Dear Mr. Hutto:

We are in the process of reviewing the status of all temporary positions at Clemson University to determine the appropriateness of their assigned status. As a result of this review, we have determined, that because of their nature and duration, and in fairness to the employees encumbering these positions, that the attached positions should be submitted for classification.

The temporary positions listed below are from the Department of Agricultural Economics and Rural Sociology and all have been in existence for at least two (2) years in either a seasonal/on-call basis, or functioning year round in a part-time capacity. Following are descriptions of these positions:

Enumerators: Our records reflect that nearly all of the seventeen (17) attached enumerator positions have been on our temporary system for two (2) years or longer. All serve under the State Statistician on a part-time six (6) month basis and are considered to be functioning at a grade nine (9) level. If this request is approved, we will make a permanent change in funding sources from the appropriate personnel services account to a classified employees account.

Library Technician Assistant III: This position has existed in the department in a temporary part-time basis for over two (2) years and has been tentatively classified as an LTA III, grade 16. This position was mentioned to you in my letter of April 13, 1978 and as I outlined in that correspondence this position, if classified, would serve in a permanent/part-time capacity (FTE twelve months/25% time) and we would permanently change its funding sources from both the Department's Personnel Services Account (75% State) and their Temporary Federal Funds Account (25% Federal) to the appropriate classified accounts.

We realize that if these actions are approved it will increase the aggregate number

Mr. A. D. Hutto

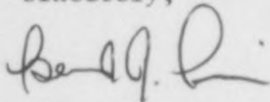
2

April 28, 1978

of classified employees here at Clemson, and that it will require a permanent shift in funding sources, but we consider these changes to be essential to insure both equity and proper classification maintenance.

As always, your assistance is most appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bernard J. Price". The signature is fluid and cursive, with a prominent initial "B" and a trailing flourish.

Bernard J. Price  
C & C Manager

Attachments

nd

The State of South Carolina

EXHIBIT VII  
5/23/78



Office of the Attorney General

KAREN LeCRAFT HENDERSON  
ASSISTANT ATTORNEY GENERAL

WADE HAMPTON OFFICE BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S. C. 29211  
TELEPHONE 803-758-3970

DANIEL R. McLEOD  
ATTORNEY GENERAL

May 23, 1978

Honorable William T. Putnam  
State Auditor  
Wade Hampton State Office Building  
Columbia, South Carolina

Re: \$1,800,000 Berkeley County, South  
Carolina, Pollution Control Revenue  
Bonds (Mobay Chemical Corporation  
Project, Phase I)

Dear Mr. Putnam:

Regarding the above-referenced bonds, we have reviewed the Petition and other documents submitted to the State Budget and Control Board for its approval pursuant to Sections 48-3-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, and the same appear, in our opinion, to be in order.

With kind regards,

A handwritten signature in cursive script that reads "Karen LeCraft Henderson".

Karen LeCraft Henderson  
Senior Assistant Attorney General

KLH/jvh



SINKLER GIBBS & SIMONS  
PROFESSIONAL ASSOCIATION  
ATTORNEYS & COUNSELLORS AT LAW  
2 PRIOLEAU STREET  
CHARLESTON, S. C. 29402

POST OFFICE BOX 340

TELEPHONE 722-3366  
AREA CODE 803

May 16, 1978

Mr. William A. McInnis  
State Auditor's Office  
Post Office Box 11333  
Columbia, South Carolina 29211

Re: \$1,000,000 Lexington County, South Carolina,  
Industrial Revenue Note, Series 1978 (Summit  
Container Corporation Project)

Dear Bill:

Enclosed herewith are eight (8) copies of a proposed Resolution relating to the above Note. If this Resolution is approved, I would appreciate your returning seven executed copies to me.

Also enclosed is the financial information relating to the above referenced note issue.

Thank you for your held in this matter.

Sincerely,

TAH:jpw  
Enclosures  
cc: Karen L. Henderson

SINKLER GIBBS & SIMONS  
PROFESSIONAL ASSOCIATION  
ATTORNEYS & COUNSELLORS AT LAW  
2 PRIOLEAU STREET  
CHARLESTON, S. C. 29402

POST OFFICE BOX 340

TELEPHONE 722-3366  
AREA CODE 803

May 19, 1978

Karen L. Henderson, Atty.  
Assistant Attorney General  
Wade Hampton Office Building  
Post Office Box 11549  
Columbia, South Carolina 29211

Re: \$1,800,000 Berkeley County, South Carolina,  
Pollution Control Revenue Bonds (Mobay Chemical  
Corporation Project, Phase I)

Dear Karen:

I am enclosing herewith the following in connection  
with the above bonds:

1. Resolution authorizing Petition to State Budget  
and Control Board;
2. Original Petition of Budget and Control Board  
requesting approval of these bonds;
3. Draft Bond Purchase and Loan Agreement.

5483  
Mike Davis of DHEC advised yesterday that he would be  
forwarding the DHEC Certificates relating to these facilities  
directly to the Budget and Control Board.

I discussed this issue with Bill McInnis yesterday and  
understand that he has placed this issue on the Agenda  
for the May 23rd meeting of the Budget and Control Board.

Should you have any questions, please do not hesitate  
to call me. Best personal regards.

Yours very truly,

*For Father*

TAH:bjh

Enclosures

cc: Sandra J. Schecter  
Joseph A. Mullins  
W. Michael Weaber  
William A. McInnis

RECEIVED  
S. C. ATTORNEY GENERAL  
DATE 5-32-78

ORIGINAL  
5/23/78

A RESOLUTION

APPROVING THE UNDERTAKING OF BERKELEY COUNTY TO ISSUE \$1,800,000 BERKELEY COUNTY, SOUTH CAROLINA POLLUTION CONTROL REVENUE BONDS, (MOBAY CHEMICAL CORPORATION PROJECT, PHASE I) PURSUANT TO TITLE 48, CHAPTER 3, CODE OF LAWS OF SOUTH CAROLINA, 1976, AND APPROVING THE POLLUTION CONTROL FACILITIES TO BE FINANCED THEREBY.

WHEREAS, Berkeley County (the County) pursuant to Title 48, Chapter 3, Code of Laws of South Carolina, 1976, (the Act), has petitioned the State Budget and Control Board of South Carolina (the State Board) seeking the approval of the State Board to an undertaking by the County pursuant to the Act, and to the pollution control facilities to be financed thereby; and

WHEREAS, the proposed undertaking consists of the issuance of \$1,800,000 Berkeley County, South Carolina, Pollution Control Revenue Bonds (Mobay Chemical Corporation Project, Phase I) (the Bonds) by the County pursuant to the Act, the proceeds of which will be loaned to Mobay Chemical Corporation, a New Jersey corporation (the Company) and used in order to defray costs of acquiring, constructing and installing certain water pollution control facilities more fully described in the attached Exhibit "A" (the Facilities), at the Company's Verona Dyestuff Division plant located in Berkeley County; and



WHEREAS, the County, the Company and The Aetna Casualty and Surety Company (the purchaser of the Bonds) propose to enter into a Bond Purchase and Loan Agreement prescribing the terms and conditions of the Bonds and pursuant to which the Company will agree to make payments sufficient to provide for the payment of the Bonds above described; and

NOW, THEREFORE, BE IT RESOLVED BY THE STATE BUDGET AND CONTROL BOARD, IN MEETING DULY ASSEMBLED:

1. It has been found and determined by the State Board:

A. That the statement of facts set forth in the recitals of this Resolution are in all respects true and correct.

B. That the County has filed a proper petition to the State Board in accordance with the provisions of the Act, setting forth a brief description of the Facilities, the action taken by the South Carolina Department of Health and Environmental Control in connection therewith, an estimate of the cost of the Facilities and a general summary of the terms and conditions of the Loan Agreement.

C. The financing of the Facilities by the County through the issuance of the Bonds will promote the purposes of the Act, and the Facilities may be reasonably anticipated to eliminate, mitigate or prevent water pollution.

D. The South Carolina Department of Health and Environmental Control has certified that the Facilities are necessary and that the design thereof will result in the elimination, mitigation and prevention of water pollution.

2. On the basis of the foregoing finding, the proposed undertaking of the County (i) to enter into the Loan

Agreement and to issue the Bonds; and (ii) to loan the proceeds thereof to the Company to be used in order to defray costs of acquiring, constructing and installing the Facilities at the Company's Verona Dyestuff Division plant in Berkeley County; such changes in said undertaking as finally consummated which do not materially affect the said undertaking), be and the same is hereby approved, and the County may proceed therewith.

3. Notice of the action taken by the State Board in giving approval to the above described undertaking of the County shall be published in the Charleston, South Carolina THE NEWS & COURIER, which is a newspaper having general circulation throughout Berkeley County.

4. That the Notice to be published shall be in form substantially as set forth in EXHIBIT "B" of this Resolution.

EXHIBIT "A"

PHASE I - WASTE WATER TREATMENT PLANT:

1. Conversion of one Aeration Pond and aerated lagoon to an activated sludge return system.
2. Installation of four (4) 15 hp each floating aerators in SP 1 to prevent low DO and/or anaerobic conditions in SP 1.
3. Expansion of power supply to wastewater treatment plant.
4. One activated sludge circulation system, complete with clarifier.
5. Installation of a caustic soda neutralization system including 20,000 gallon storage tank for 50% lime solution.
6. Expansion of electrical and pipe system.



EXHIBIT "B"

NOTICE PURSUANT TO TITLE 48, CHAPTER 3,  
CODE OF LAWS OF  
SOUTH CAROLINA, 1976

NOTICE IS HEREBY GIVEN that following the filing of a Petition by Berkeley County (the County) to the State Budget and Control Board of South Carolina (the State Board), approval has been given by the State Board to the following undertaking (including changes in any details of the said undertaking as finally consummated which do not materially affect the said undertaking), viz:

The issuance by the County of \$1,800,000 Berkeley County, south Carolina, Pollution Control Revenue Bonds (Mobay Chemical Corporation Project, Phase I) (the Bonds) pursuant to Title 48, Chapter 3, Code of Laws of South Carolina, 1976, (the Act), the proceeds of which shall be loaned by the County to Mobay Chemical Corporation, a New Jersey corporation (the Company), and used to defray costs of acquiring, constructing and installing certain water pollution control facilities (the Facilities) at the Company's Verona Dyestuff Division plant located in Berkeley County; and the execution and delivery of a Loan Agreement among the County, the Company, and the purchaser of the Bonds, pursuant to which the Company will unconditionally

agree to make payment sufficient to repay the principal of and interest on the Bonds when due; and prescribing the terms and conditions under which the Bonds will be issued and pledging to the payment of the Bonds the loan repayments to be made pursuant to the Loan Agreement.

The Facilities to be financed with the proceeds derived from the same of the Bonds will be owned by the Company and the County will have no interest therein.

The South Carolina Department of Health and Environmental Control has certified that the Facilities above described are necessary and that the design thereof will result in the elimination, mitigation and prevention of water pollution.

NOTICE IS FURTHER GIVEN that any interested party may at any time within twenty (20) days after the date of publication of this Notice, but not afterwards, challenge the validity of (i) the action of the South Carolina Department of Health and Environmental Control as to the necessity for, and (ii) the action of the State Board in approving the Facilities and the said undertaking of the County, by action de novo, instituted in the Court of Common Pleas for Berkeley County.

THE STATE BUDGET AND CONTROL BOARD  
OF SOUTH CAROLINA

By: WILLIAM T. PUTNAM

PUBLICATION DATE:

May \_\_, 1978.



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, WILLIAM T. PUTNAM, Auditor of the State of South Carolina, and Secretary of the State Budget and Control Board, DO HEREBY CERTIFY:

That the said State Budget and Control Board is composed of the following:

His Excellency, James B. Edwards, Governor of South Carolina and Chairman of the Board;

The Honorable Grady Leslie Patterson, Jr., State Treasurer;

The Honorable Earle E. Morris, Jr., Comptroller General of South Carolina;

The Honorable Rembert C. Dennis, Chairman of the Senate Finance Committee; and

The Honorable Tom Mangum, Chairman of the House Ways and Means Committee.

That due notice of meeting of said Board, called to be held at the Office of the \_\_\_\_\_, in the \_\_\_\_\_ Building, at Columbia, South Carolina, at \_\_\_\_\_ M., on May 23, 1978, was given to all members in writing, and at least four (4) days prior to said meeting; that all of the members of said Board were present at said meeting with the exception of:

That at said meeting, a Resolution, of which the attached is a true, correct and verbatim copy, was introduced by \_\_\_\_\_, who moved its adoption; said motion was seconded by \_\_\_\_\_, and upon vote being taken and recorded it appeared that the following votes were cast:

FOR MOTION

AGAINST MOTION

That Chairman thereupon delivered the Resolution unanimously adopted, and the original thereof has been duly entered in the permanent records of minutes of said Board, in my custody as its Secretary.

\_\_\_\_\_  
Secretary

May \_\_, 1978

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

\_\_\_\_\_  
TO THE STATE BUDGET AND CONTROL  
BOARD OF SOUTH CAROLINA  
\_\_\_\_\_

)  
)  
)  
)  
)  
)  
P E T I T I O N

The Petition of Berkeley County Council pursuant to Title 48, Chapter 3, Code of Laws of South Carolina, 1976 (the Act) respectfully shows:

1. The act authorized the County, subject to obtaining the approval and findings from the State Budget and Control Board of the South Carolina Department of Health and Environmental Control, required by the Act, to enter into agreements with any industry located in the County to finance the construction of pollution control facilities, to enter into loan agreements with such industry prescribing the terms and conditions of the payments to be made by the industry to the County, or its assignee, to meet the payments that shall become due on bonds issued pursuant to the Act; and to issue bonds for the purpose of defraying the cost of acquiring pollution control facilities.

2. The County did heretofore under date of August 1, 1974, agree with Mobay Chemical Corporation (then "Baychem



Corporation"), a corporation organized and existing under the laws of the State of New Jersey, and duly qualified to do business in the State of South Carolina (the Industry), that the County would undertake to finance the cost of proposed water pollution control facilities at the Industry's Verona Dyestuff Division plant in the County.

3. The County is advised by the Industry that the cost of acquiring, constructing and installing such water pollution control facilities (the Pollution Control Facilities), more fully described in the attached Appendix A, including the cost of issuing the bonds hereinafter described, requires that the County issue up to \$1,800,000 Berkeley County, South Carolina, Pollution Control Revenue Bonds (Mobay Chemical Corporation Project, Phase I) (the Bonds), the proceeds of which shall be loaned to the Industry and used to defray the cost of acquiring, constructing and installing the Pollution Control Facilities.

4. The Industry has advised the County that the Industry has applied to the South Carolina Department of Health and Environmental Control for the finding required from such Department by the Act, and in that connection there is included with this Petition a certificate setting forth the finding by the South Carolina Department of Health and Environmental Control Relating to the Pollution Control facilities required by the Act.

6. For the reasons set forth above and hereinafter disclosed, it is found as follows:

A. The pollution Control Facilities will result in the elimination, mitigation and prevention of water pollution resulting from the operation of the plant of the Industry in Berkeley County, South Carolina, and the financing of the Pollution Control Facilities will serve the purposes of the Act.

B. By reason of the financing of the Pollution Control Facilities no pecuniary liability will result to the County nor will there be any charge against the County's general credit or taxing power.

C. The Bond Purchase and Loan Agreement (the Loan Agreement) to be entered into by the County, the Industry and The Aetna Casualty and Surety Company will contain a covenant obligating the Industry to effect the completion of the Pollution Control Facilities if the proceeds of the Bonds issued by the County prove insufficient and further obligates the Industry (a) to pay the principal of, premium, if any, and interest on the Bonds; and (b) to pay the cost of maintaining the Pollution Control Facilities in good repair and the cost of keeping them properly insured. In view of the well established credit of the Industry, there is no need to establish and maintain any reserves in connection with the issuance of the Bonds.

D. The Loan Agreement will further provide as permitted by the Act that the Pollution Control Facilities will be owned by the Industry upon the acquisition thereof, and the County shall have no interest herein.

E. The principal of, premium, if any, and interest on the Bonds shall be secured by a pledge of the revenues payable to the County pursuant to the Loan Agreement, and neither the Bonds nor any coupons attached thereto shall ever constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation, nor ever constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.

7. Pursuant to the Act, the County sets forth the following information:

A. The Pollution Control Facilities to be financed out of the proceeds of the Bonds consist of facilities designed for the elimination, mitigation and prevention of water pollution at the plant of the Industry above described.

B. Pursuant to the request of the Industry, the South Carolina Department of Health and Environmental Control has made the findings required by the Act.

C. The cost of the Pollution Control Facilities is estimated to aggregate \$1,800,000, including the costs of issuing the Bonds.

D. The proposed Loan Agreement will provide in general:

(a) To finance the cost of the acquisition, construction and installation of the Pollution Control Facilities, the County will issue, at the times specified in the Loan Agreement, the Bonds; which will be secured by a pledge of the payments to be made by the Industry pursuant to the Loan Agreement.

(b) Proceeds derived from the sale of the Bonds will be applied solely from the payment of the costs incident to the acquisition, construction and installation of the Pollution Control Facilities (including the repayment to the Industry of advances made for such purposes) and the issuance of the Bonds.

(c) Under the terms of the Loan Agreement, the Industry will obligate itself to effect the completion of the Pollution Control Facilities if the proceeds derived from the sale of the Bonds prove insufficient, to pay the amount necessary to meet the payment of principal and interest and premium, if any, on the Bonds as the same become due and to pay the cost of maintaining the Pollution Control Facilities in good repair and the cost of keeping them properly insured.

(d) As permitted by the Act, the Loan Agreement will provide that the Pollution Control Facilities are to become the property of the Industry and the County shall have no interest therein.



(d) As permitted by the Act, the Loan Agreement will provide that the Pollution Control Facilities are to become the property of the Industry and the County shall have no interest therein.

(e) The Loan Agreement will contain no provision imposing any pecuniary liability upon the County or which would create a charge upon its general credit or taxing power.

8. The Loan Agreement will prescribe the terms and conditions upon which the Bonds will be issued, and will make provision for the initial issuance of Bonds pursuant thereto and will provide for the payment and redemption of the Bonds.

9. The Bonds will mature on June 15, 2003, and will bear interest at the rate of six and one-half per centum (6.50%) per annum.

10. The Industry has advised the County, and the Loan Agreement so provides, that the Bonds will be sold to The Aetna Casualty and Surety Company, on the terms and conditions contained in the Loan Agreements.

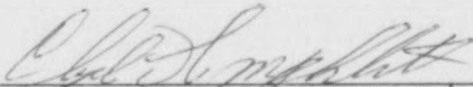
Upon the basis of the foregoing, the County respectfully prays that the State Budget and Control Board accept the filing of this Petition and the documents enclosed herewith above described, and that the State Board as soon as practicable make such investigation as it deem advisable, and that if it finds that the Pollution Control Facilities are intended to promote the purposes of the Act and may be reasonably anticipated to effect such result, that it approve the Pollution Control Facilities and the proposed financing

thereof by the County through the issuance of the Bonds pursuant to the Act, including changes in any details of the said financing as finally consummated which do not materially affect the said undertaking of the County, and give published notice of its approval in the manner set forth in the Act.

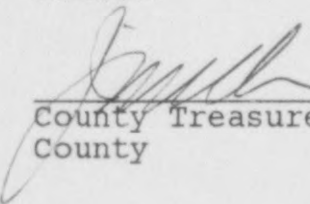
May 19, 1978

Respectfully submitted,

BERKELEY COUNTY, SOUTH CAROLINA

By   
Chairman, County Supervisor of  
Berkeley County

Attest:

  
County Treasurer of Berkeley  
County

APPENDIX "A"

PHASE I - WASTE WATER TREATMENT PLANT:

1. Conversion of one Aeration Pond and aerated lagoon to an activated sludge return system.
2. Installation of four (4) 15 hp each floating aerators in SP 1 to prevent low DO and/or anaerobic conditions in SP 1.
3. Expansion of power supply to wastewater treatment plant.
4. One activated sludge circulation system, complete with clarifier.
5. Installation of a caustic soda neutralization system including 20,000 gallon storage tank for 50% lime solution.
6. Expansion of electrical and pipe system.



RECEIVED  
MAY 17 1978  
Office of Envir. Quality Control  
S. C. Dept. of Health & Envir. Control

CERTIFICATE

WHEREAS, the South Carolina Department of Health and Environmental Control (the Department) has been advised by Mobay Chemical Corporation (the Company) that Berkeley County, South Carolina, proposes to finance the acquisition, construction and installation of the water pollution control facilities described in the attached Appendix "A" at the Company's Verona Dyestuff division plant located in Berkeley County through the issuance of Pollution Control Revenue Bonds in the amount of not exceeding \$1,800,000, pursuant to the authorization of Title 48, Chapter 3, Code of Laws of South Carolina, 1976, and in that connection must obtain, in accordance with Section 7 of said Act, a finding from the Department (as successor to the Pollution Control Authority of South Carolina) that the proposed water pollution control facilities are necessary and that the design thereof will result in the elimination, mitigation and prevention of water pollution; and

WHEREAS, the Commissioner of the Department has been duly authorized by the Department to determine whether or not the findings required by Section 48-3-60, Code of Laws of South Carolina, 1976, be made in the instance of any proposed pollution control facilities revenue bonds, and the Commissioner has made a determination in this instance that

such findings can be made and is further empowered by the Department to issue its Certificate to that effect;

NOW, THEREFORE, THIS IS TO CERTIFY on behalf of the South Carolina Department of Health and Environmental Control that the said water pollution control facilities on the attached Appendix "A" described (i) are necessary, and (ii) that the design thereof will result in the elimination, mitigation and prevention of water pollution. It is to be clearly understood that this certification is for bonding purposes only, and shall not be construed as a certification for the establishment of any property tax exemptions whatsoever.

DONE at Columbia, South Carolina, this 23<sup>rd</sup> day of May, 1978.

SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

By Albert G. Randall, MD  
Commissioner

PHASE I - WASTE WATER TREATMENT PLANT:

1. Conversion of one Aeration Pond and aerated lagoon , to an activated sludge return system.
2. Installation of four (4) 15 hp each floating aerators in SP 1 to prevent low DO and/or anaerobic conditions in SP 1.
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6. Expansion of electrical and pipe system.



SINKLER GIBBS & SIMONS  
PROFESSIONAL ASSOCIATION  
ATTORNEYS & COUNSELLORS AT LAW  
2 PRIOLEAU STREET  
CHARLESTON, S. C. 29402

POST OFFICE BOX 340

TELEPHONE 722-3366  
AREA CODE 803

May 18, 1978

William A. McInnis, Esq.  
Post Office Box 11333  
Columbia, South Carolina 29211

Re: \$1,800,000 Berkeley County, South Carolina,  
Pollution Control Revenue Bonds (Mobay Chemical  
Corporation Project, Phase I)

Dear Bill:

Enclosed are ten (10) copies of a proposed Resolution of the State Budget and Control Board in connection with the above issue. If this issue is approved, I would appreciate your returning the executed copies of the Resolution to me at your earliest possible convenience.

Mike Weaber, of Mobay Chemical Company, is forwarding the financial information directly to you from Pittsburg.

Thank you for your help in this matter. Best personal regards.

Yours very truly,

*Thomas A. Hitchens*  
STH

TAH:bjh

Enclosures

DRAFT 5/15/78

---

BERKELEY COUNTY, SOUTH CAROLINA

MOBAY CHEMICAL CORPORATION

---

BOND PURCHASE AND LOAN AGREEMENT

---

Dated as of June 15, 1978

\$ \_\_\_\_\_ Berkeley County, South Carolina  
Pollution Control Revenue Bonds  
(Mobay Chemical Corporation Project, Phase I)

---

*Revised Exhibit C*

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ATTACHMENTS TO BOND PURCHASE AND LOAN AGREEMENT:

- EXHIBIT A - Form of Bond
- EXHIBIT B - List of Subsidiaries
- EXHIBIT C - Description of Business and Property
- EXHIBIT D - Description of Closing Opinion of New York  
Counsel for the Company
- EXHIBIT D-1 - Description of Closing Opinion of South  
Carolina Counsel for the Company
- EXHIBIT D-2 - Description of Closing Opinion of the Company's  
General Counsel
- EXHIBIT E - Description of Closing Opinion of Counsel to  
the Issuer
- EXHIBIT F - Description of Closing Opinion of Purchaser's  
Special Counsel
- EXHIBIT G - Description of Closing Opinion of Bond  
Counsel
- EXHIBIT H - Legality Certificate
- EXHIBIT I - Information Certificate
- EXHIBIT J - Description of Project

BOND PURCHASE AND LOAN AGREEMENT

\$                      Berkeley County, South Carolina  
Pollution Control Revenue Bonds  
(Mobay Chemical Corporation Project, Phase I)

Dated as of June 15, 1978

The Aetna Casualty and Surety Company  
151 Farmington Avenue  
Hartford, Connecticut 06156  
Attention: Bond Investment Department

Gentlemen:

The undersigned, BERKELEY COUNTY, SOUTH CAROLINA (the "Issuer"), a body politic and corporate and a political subdivision of the State of South Carolina, and MOBAY CHEMICAL CORPORATION, a New Jersey corporation (the "Company"), confirm their agreement with each other and you as follows:

SECTION 1. PURCHASE AND SALE OF BONDS.

1.1. Description of Bonds. The Issuer, acting by and through the County Council of Berkeley County (the "County Board"), has authorized, pursuant to the authority conferred by Title 48, Chapter 3 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), the issuance and sale of \$                      aggregate principal amount of its Pollution Control Revenue Bonds (Mobay Chemical Corporation Project, Phase I) (the "Bonds") bearing interest at the rate of 6-1/2% per annum (computed on the basis of a 360-day year of 12 consecutive 30-day months), payable semi-annually, on December 15 and June 15 in each year, maturing on June 15, 2003. The Bonds are issuable in registered form without coupons in the denomination of \$5,000 or any integral multiple thereof and shall be substantially in the form annexed hereto as Exhibit A, with such changes therein as shall be approved by you, the Issuer and the Company. The Bonds will be secured by the assignment hereunder by the Issuer to you of all right, title and interest of the Issuer in and to the payments to be made by

the Company on account of the Loan (as hereinafter defined) from the Issuer to the Company and all of the Issuer's rights against the Company under this Agreement, except for its rights pursuant to Sections 2.3, 8.6 and 8.7 hereof.

1.2. Purchase and Sale of the Bonds. Subject to the terms and conditions hereof and on the basis of the representations and warranties hereinafter set forth or provided for, the Issuer hereby agrees to sell and deliver to you, and you agree to purchase from the Issuer, \$ principal amount of the Bonds at a price of 100% of the principal amount thereof. Delivery of the Bonds will be made at the offices of Messrs. White & Case, 14 Wall Street, New York, New York 10005, at 11:00 A.M. New York time, on June 15, 1978, or such later date, not later than July 18, 1978, and at such other location, as may be mutually agreeable to you, the Issuer and the Company (the "Closing Date") against payment therefor in federal funds current and available in New York City on the Closing Date.

The Bonds shall be typewritten and shall be delivered to you in the form of one fully registered Bond, shall be dated and bear interest from the Closing Date, and shall be registered in your name or in the name of such nominee as you may specify at least three business days prior to the Closing Date.

1.3. Failure to Deliver. If on the Closing Date the Issuer fails to tender the Bonds to you or if the conditions specified in Section 6 hereof have not been fulfilled, you may thereupon elect to be relieved of all further obligations under this Agreement. Nothing in this Section shall operate to relieve the Company or the Issuer from its obligations hereunder or to waive any of your rights against the Company or the Issuer.

## SECTION 2. LOAN OF BOND PROCEEDS.

The Company and the Issuer agree as follows:

2.1. Loan of Bond Proceeds. The Issuer shall loan the entire proceeds of the sale of the Bonds received by it pursuant to Section 1.2 hereof to the Company by endorsement of your instrument of payment for the Bonds over to the Company without recourse or by delivery of federal or



other funds current and available in New York City on the Closing Date to the Company at the closing. The lending of such funds by the Issuer and the borrowing thereof by the Company shall hereinafter be referred to as the "Loan". From and after the closing, this Agreement shall constitute evidence of the Company's obligation with respect to the Loan.

2.2. Repayment of the Loan. Subject to the provisions contained in Section 16.3 hereof, the Company hereby absolutely and unconditionally covenants and agrees to repay the Loan by paying to the Issuer, for the benefit of the holder or holders of the Bonds, amounts sufficient to pay principal and premium, if any, and interest on the Bonds as they become due, whether at maturity, by optional prepayment, required prepayment or acceleration, and all amounts with respect to overdue principal and premium, if any, at such time and in such manner as set forth herein or in the Bonds.

2.3. Issuer's Expenses. Until repayment of the Loan in full through payment of the Bonds in full, the Company shall pay or reimburse the Issuer for any reasonable expenses of the Issuer, which may include expenses of travel, communication and legal services, which the Issuer may deem reasonably necessary in the exercise of its rights or the performance of its obligations hereunder.

### SECTION 3. WARRANTIES AND REPRESENTATIONS OF COMPANY.

The Company warrants and represents to you and the Issuer that:

3.1. Subsidiaries. Exhibit B to this Agreement states the name of each of the Company's Subsidiaries, its jurisdiction of incorporation and the percentage of its Voting Stock owned by the Company and each other Subsidiary. Each of the Company and its Subsidiaries has good and marketable title to all of the shares it purports to own of the stock of each Subsidiary, free and clear in each case of any Lien. All such shares have been duly issued and are fully paid and non-assessable.

3.2. Corporate Organization and Authority. The Company has duly qualified and is authorized to do business

and is in good standing as a foreign corporation in the State of South Carolina.

The Company, and each Subsidiary,

(a) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation,

(b) has all requisite corporate power and authority to own and operate its Properties and to carry on its business as now conducted, and

(c) has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the character of its Properties or the nature of its activities makes such qualification necessary.

3.3. Business, Property and Indebtedness. (a) Exhibit C to this Agreement correctly describes the general nature of the business and the location of the principal Properties of the Company and its Subsidiaries.

(b) Neither the Company nor any of its Subsidiaries has outstanding any Funded Debt or Current Debt except Debt permitted by paragraph 6C(2) of the Note Agreements referred to in Section 9 hereof. There exists no default under the provisions of any instrument evidencing such indebtedness or of any agreement relating thereto. (The terms Funded Debt and Current Debt as used in this Section 3.3 shall have the meanings given to them in the aforesaid Note Agreements.)

3.4. Financial Statements. (a) The consolidated balance sheets of the Company and Subsidiaries as of December 31 in the years 1975, 1976 and 1977 and the related income and retained earnings statements for the fiscal years ended on such dates, all accompanied by reports thereon containing opinions without qualification, except as therein noted, by Haskins & Sells, independent certified public accountants and the consolidated balance sheet of the Company and its Subsidiaries as at March 31, 1978 and a consolidated income and retained earnings statement of the Company and its Subsidiaries for the three months' period ended on such date, prepared by the Company, copies of which

have been delivered to you and to the Issuer, are complete and correct (subject, as to interim statements, to changes resulting from audits and year-end adjustments), have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of the Company and Subsidiaries taken as a whole as of such dates and the results of their operations for such periods. These consolidated financial statements include the accounts of all Subsidiaries of the Company for the respective periods during which a subsidiary relationship has existed.

(b) Since March 31, 1978, there has been no material adverse change in the business, operations or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole.

3.5. Full Disclosure. The financial statements referred to in Section 3.4 do not, nor does this Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. No written statement furnished by the Company to you in connection with the negotiation of the sale of the Bonds contains any untrue statement of a material fact. There is no fact which the Company has not disclosed to you and to the Issuer in writing which materially affects adversely the ability of the Company to perform this Agreement.

3.6. Pending Litigation. There are no proceedings pending, or to the knowledge of the Company threatened, against the Company or any Subsidiary in any court or before any governmental authority or arbitration board or tribunal which might materially and adversely affect the business, operations or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole, or the ability of the Company to perform this Agreement. Neither the Company nor any Subsidiary is in default in any material respect with respect to any order of any court, governmental authority or arbitration board or tribunal.

3.7. Title to Properties. The Company, and each Subsidiary, has good and marketable title to all the real property, and has good title to all the other Property, it purports to own, including that reflected in the most recent balance sheet referred to in Section 3.4 (except



as disposed of in the ordinary course of business or pursuant to the Bond Purchase Agreement, dated as of March 1, 1978 among the State Environmental Improvement Authority (Missouri), the Company and you), free from Liens not permitted by Section 9 hereof. The Company and its Subsidiaries enjoy peaceful and undisturbed possession of all leases necessary in any material respect for the operation of their respective properties and assets, none of which contains any unusual or burdensome provisions which might materially affect or impair the operation of such properties and assets. All such leases are valid and subsisting and are in full force and effect.

3.8. Patents and Trademarks. The Company, and each Subsidiary, owns or controls all the patents, trademarks, service marks, trade names, copyrights, licenses or rights with respect to the foregoing necessary in any material respect for the ownership, maintenance and operation of their respective properties and assets, or for the conduct of their respective businesses as now conducted, without any known conflict in any material respect with the rights of others.

3.9. Transaction is Legal and Authorized. The execution, delivery and performance of this Agreement and compliance with all the provisions hereof by the Company:

(a) are within the corporate powers of the Company; and

(b) are legal and will not conflict with, result in any breach in any of the provisions of, constitute a default under, or result in the creation of any Lien upon any Property of the Company or any Subsidiary under the provisions of, any agreement, charter instrument, by-law or other instrument to which the Company or any Subsidiary is a party or by which any of them may be bound on the date hereof.

3.10. No Defaults. No event has occurred and no condition exists which, upon the issue of the Bonds, would constitute a Default or an Event of Default.

3.11. Governmental Consent. Neither the nature of the Company or of any Subsidiary, or of any of their respective businesses or Properties, nor any relationship between the Company or any Subsidiary and the Issuer or any other Person, nor any circumstance in connection with the execution, delivery and performance of this Agreement or the offer, issue, sale or delivery of the Bonds is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than the Issuer) on the part of the Company as a condition to the execution and delivery of this Agreement or the offer, issue, sale or delivery of the Bonds except for the approvals heretofore issued of the State Budget and Control Board of South Carolina and the Department of Health and Environmental Control of South Carolina pursuant to the Act.

3.12. Taxes. All tax returns which, to the knowledge of the officers of the Company, are required to be filed by the Company or any Subsidiary or any corporation merged into the Company on September 30, 1971 in any jurisdiction have in fact been filed, and all taxes shown to be due on such returns, and all assessments, fees and other governmental charges upon the Company or any Subsidiary, or any corporation merged into the Company on September 30, 1971 or upon any of their respective Properties, income or franchises, of which the Company, any Subsidiary or any corporation merged into the Company on September 30, 1971 has received notice which are due and payable have been paid. Except as disclosed to you in a letter dated the date hereof, neither the Company nor any Subsidiary has received written notice of any proposed additional tax assessment against it.

3.13. Use of Proceeds. The Company will cause the proceeds from the sale of the Bonds to be applied solely to defray the Cost of acquiring or constructing the Project. None of the transactions contemplated in this Agreement (including, without limitation thereof, the use of the proceeds from the sale of the Bonds) will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations G, T and X of the Board of Governors of the Federal Reserve System,

12 C.F.R., Chapter II. No "broker", "dealer" or "member of a national securities exchange" (as such terms are defined in the Federal Securities Exchange Act of 1934, as amended) arranged, directly or indirectly, for the extension of credit to be made pursuant to this Agreement. Neither the Company nor any Subsidiary owns or intends to carry or purchase any "margin security" within the meaning of said Regulation G, including margin securities originally issued by it. None of the proceeds from the sale of the Bonds will be used to purchase or carry (or refinance any borrowing the proceeds of which were used to purchase or carry) any "margin security" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of said Regulation G.

3.14. Earnings Coverage. The net earnings available for fixed charges of the Company and subsidiary institutions, consolidated as required pursuant to Section 81(2) of the New York Insurance Law, for the period of the five fiscal years most recently audited have averaged per year not less than one and one-half times their average consolidated annual fixed charges applicable to such period, and during one of the last two years of such period, such net earnings available for fixed charges were not less than one and one-half times their consolidated fixed charges for such year. As used in this Section, the terms "net earnings available for fixed charges", "subsidiary institutions" and "fixed charges" have the meanings assigned to them in Section 81(2) of the New York Insurance Law.

3.15. Compliance with Law. Neither the Company nor any Subsidiary:

(a) is in violation of any laws, ordinances, governmental rules or regulations to which it is subject, or

(b) has failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its Property or to the present conduct of its business,

which violation or failure to obtain might materially adversely affect the business, operations or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole.



3.16. Restrictions on Company and Subsidiaries.

Neither the Company nor any Subsidiary is a party to any contract or agreement, or subject to any charter or other corporate restriction, which materially and adversely affects the business of the Company and its Subsidiaries taken as a whole. As of the Closing Date, neither the Company nor any Subsidiary will be a party to, or otherwise subject to any provision contained in, any instrument evidencing indebtedness of the Company or such Subsidiary, any agreement relating thereto or any other contract or agreement (including its charter) which restricts or otherwise limits the incurring of debt as contemplated by this Agreement. Neither the Company nor any Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its Property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 9 hereof.

3.17. ERISA. No employee pension benefit plan within the meaning of Section 3(3) of ERISA or related trust maintained by the Company or any Subsidiary has incurred any material accumulated funding deficiency within the meaning of Section 412 of the Internal Revenue Code of 1954, as amended, and neither the Company nor any Subsidiary has incurred any material liability to the Pension Benefit Guaranty Corporation established under ERISA (or any successor thereto under ERISA) in connection with any such employee pension benefit plan.

3.18. Nature of the Project. (a) The Project is designed for the elimination, mitigation or prevention of water pollution. All parts of the Project, as designed, have been certified by the Department of Health and Environmental Control of the State of South Carolina as being necessary for, and being designed to result in the elimination, mitigation and prevention of water pollution.

(b) The Project consists, and will at all times consist, of land or of property which is subject to the allowance for depreciation provided in Section 167 of the Code and all expenditures for the Cost of the Project paid from Bond proceeds will be charged to a capital account for Federal income tax purposes.

(c) Substantially all (90% or more) of the Bond proceeds will be used to provide pollution control facilities within the meaning of Section 103(b)(4) of the Code.

No part of the Bond proceeds will be used to provide working capital for the Company.

(d) In estimating the Cost of the Project, no amount has been included which, under the Code, will be deducted by the Company in the year in which paid or incurred, except through an allowance for depreciation or investment tax credit.

(e) The Project is located within the territorial boundaries of Berkeley County, South Carolina.

(f) Construction of the Project was not commenced prior to August 1, 1974.

(g) The proceeds of the sale of the Bonds will be used solely to pay, or to reimburse the Company for the payment of, the Cost of the Project.

(h) The Project was not placed in service prior to July 18, 1977.

3.19. Absence of Foreign or Enemy Status. Neither the Company nor any Subsidiary is a "national" of a foreign country designated in Executive Order No. 8389, as amended, or of any "designated enemy country" as defined in Executive Order No. 9193, as amended, of the President of the United States of America within the meaning of said Executive Orders, as amended, or of any regulation issued thereunder, or a "national" of any "designated foreign country" within the meaning of the Foreign Assets Control Regulations or of the Cuban Assets Control Regulations of the United States of America, 31 CFR, sub-title B, Chapter V, as amended, or a "person" in Southern Rhodesia or is acting on behalf of or for the benefit of a "person" in Southern Rhodesia within the meaning of the Rhodesian Sanctions Regulations, 31 CFR, sub-title B, Chapter V, as amended.

3.20. No Leases or Title Retention Agreements Affecting Balance Sheet Values. No material amount of the assets or property the value of which is reflected in the latest audited consolidated balance sheet referred to in Section 3.4 is held by the Company or any Subsidiary as lessee under any lease (excluding capitalized lease obligations) or as conditional vendee under any conditional sales contract or other title retention agreement.

3.21. Company Certificates. Any certificate signed by any officer of the Company and delivered to you, bond counsel or your special counsel, the representations of the Company contained in Section 5 of this Agreement and any written statement furnished by or on behalf of the Company to you or your special counsel shall be deemed a representation and warranty by the Company to you as to the statements made therein.

SECTION 4. WARRANTIES, REPRESENTATIONS AND COVENANTS OF THE ISSUER.

The Issuer warrants and represents to you and the Company that:

4.1. Organization and Authority. The Issuer is a body politic and corporate and a political subdivision of the State of South Carolina, and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and the Bonds.

4.2. Authorization of Transaction. The County Board has duly adopted an Ordinance (the "Ordinance") authorizing the Issuer's execution and delivery of this Agreement, the issuance and sale of the Bonds and the pledge and assignment hereunder of all its right, title and interest in and to the payments to be made by the Company on account of the Loan and all of the Issuer's rights against the Company under this Agreement (except for its rights pursuant to Sections 2.3, 8.6 and 8.7 hereof) to secure the Bonds, and the Ordinance shall be in full force and effect as of the Closing Date.

4.3. No Conflict. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound, or constitute a default under any of the foregoing or to the knowledge of the Issuer, any law, administrative regulation, court order or consent decree to which the Issuer is subject.



4.4. Binding Obligations. When delivered to and paid for at the closing in accordance with the provisions of this Agreement, the Bonds will have been duly authorized, executed, authenticated, issued and delivered and will constitute valid and binding limited obligations of the Issuer in conformity with, and entitled to the benefit and security of this Agreement and the Act.

4.5. Use of Proceeds. The Issuer will apply the proceeds of the sale of the Bonds as set forth in Section 2.1 hereof.

4.6. Issuer Certificates. Any certificate signed by any officer on behalf of the Issuer and delivered to you or your special counsel and any written statement furnished by or on behalf of the Issuer to you or your special counsel shall be deemed a representation and warranty by the Issuer to you as to the statements made therein.

SECTION 5. LIMITATION ON USE OF BOND  
PROCEEDS ARBITRAGE COVENANTS.

(a) The Company certifies and represents that the Bonds are industrial development bonds under Section 103(b)(2) of the Code, and are being issued pursuant to Section 103(b)(4)(F) thereof, which, as interpreted by regulations and public rulings issued under authority of the U.S. Treasury Department, allows the exclusion from gross income of interest on obligations issued by an instrumentality or a political subdivision such as the Issuer for the purpose of providing air or water pollution control facilities. As the parties intend that interest on the Bonds shall continue to be exempt from Federal income taxation, the Company covenants with the Issuer and the holders of the Bonds that it will (i) not make, or permit to be made on its behalf, any payment out of the proceeds of the Bonds if, as a result of such payment, less than substantially all of the proceeds of the Bonds expended at such time would be considered as having been used for the acquisition, construction or installation of air or water pollution control facilities within the meaning of such Section 103(b)(4)(F) of the Code and (ii) take no action with respect to the use of the proceeds of the Bonds that is inconsistent with the exemption from Federal income tax for interest payable on the Bonds under Section 103(b)(4)(F) of the Code.

(b) The Company certifies and represents to the Issuer that all of the proceeds of the Bonds will be expended on the date of delivery of the Bonds to reimburse the Company for Costs of the Project or expended for Costs of the Project on or before December 14, 1978, except for proceeds of the Bonds applied to the prepayment of the Bonds as provided in Section 7.2 hereof.

(c) The Company covenants and agrees with the Issuer and the holders of the Bonds that it will take no action which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 103(c) of the Code.

#### SECTION 6. CLOSING CONDITIONS.

Your obligation to purchase and pay for the Bonds to be delivered to you at the closing shall be subject to the following conditions precedent:

6.1. Opinions of Counsel. You shall have received opinions dated the Closing Date and addressed to you of Messrs. Cravath, Swaine & Moore, New York counsel for the Company, Messrs. Sinkler Gibbs & Simons, P.A., South Carolina counsel for the Company, Ray W. Brown, Esq., General Counsel of the Company, R. Markley Dennis, Esq., counsel for the Issuer and of Messrs. White & Case, your special counsel and bond counsel, substantially as described in Exhibits D, D-1, D-2, E, F and G hereto respectively, and with respect to such other matters relating to the transactions contemplated by this Agreement as you may reasonably request.

6.2. Closing Certificate of the Company. You shall have received a certificate dated the Closing Date signed by the President or any Vice President or the Treasurer or any Assistant Treasurer of the Company, which shall be satisfactory in form and substance to you and to Messrs. White & Case, to the effect that:

(a) all warranties and representations contained in Section 3 of this Agreement are true and correct as of the Closing Date with the same force and effect as though made on and as of such Closing Date, and no event which would be an Event of Default has occurred and is continuing on the Closing Date;

(b) the representations of the Company contained in Section 5 and Section 8.5 of this Agreement are true and correct as of the Closing Date;

(c) all of the conditions and agreements required in this Agreement to be satisfied or performed by the Company at or prior to the Closing Date have been satisfied or performed in the manner and with the effect contemplated herein; and

(d) the condition specified in Section 6.5 hereof (insofar as concerns the Company) has been satisfied.

6.3. Closing Certificate of the Issuer. You shall have received a certificate dated the Closing Date and signed by the Chairman and the Clerk of the County Board which shall be satisfactory in form and substance to you and to Messrs. White & Case to the effect that:

(a) all warranties, representations and covenants contained in Section 4 of this Agreement are true and correct as of the Closing Date with the same force and effect as though made on and as of such Closing Date, and no event which would be an Event of Default has occurred and is continuing on the Closing Date;

(b) all of the conditions and agreements required in this Agreement to be satisfied or performed by the Issuer at or prior to the Closing Date have been satisfied or performed in the manner and with the effect contemplated herein; and

(c) the condition specified in Section 6.5 hereof (insofar as concerns the Issuer) has been fulfilled.

6.4. Ordinance; Approvals. Prior to the issuance and sale of the Bonds the Ordinance shall have been adopted by the County Board and be in full force and effect on the Closing Date. Prior to the issuance and sale of the Bonds, the Issuer shall have obtained from the Department of Health and Environmental Control of South Carolina a Finding of Necessity pursuant to Section 48-3-60 of the Act which shall be in full force and effect on the Closing Date.



Prior to the issuance and sale of the Bonds the State Budget and Control Board of South Carolina shall have approved the issuance of the Bonds by the Issuer and notice of such approval shall have been published at least once in a newspaper having general circulation in Berkeley County, South Carolina, the date of which publication shall have been at least twenty days prior to the Closing Date, and such approval shall be in full force and effect on the Closing Date.

6.5. No Litigation. No litigation or proceeding shall be threatened or pending in any court or before any other official body (i) to restrain or enjoin the issuance or delivery of any of the Bonds, (ii) which in any way questions or affects the validity of any of the Bonds, any provisions thereof, this Agreement, or any proceedings taken with respect to the foregoing, (iii) which questions the Issuer's existence, authority under the Act or the titles to office of any of its officers, (iv) which in any way questions or affects the exemption from Federal taxation or exemption from taxation in the State of South Carolina of interest on the Bonds.

6.6. Proceedings Satisfactory. All proceedings taken in connection with the issue and sale of the Bonds, and the execution and delivery of this Agreement and all documents and papers relating thereto shall be reasonably satisfactory to you and Messrs. White & Case. You shall have received copies of such documents and papers as you or Messrs. White & Case may reasonably request in connection therewith or as a basis for such counsel's closing opinion, all in form and substance satisfactory to you and such counsel.

6.7. Warranties and Representations True as of Closing. The warranties and representations contained in Sections 3, 4 and 5 shall be true in all material respects on the Closing Date with the same effect as though made on and as of that date.

6.8. Tax Matters. None of the following events shall have occurred between the date hereof and the Closing Date:

(1) legislation shall have been enacted by the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House by any committee thereof to which such

legislation has been referred for consideration,  
or

(2) a decision shall have been rendered by  
any court of the United States, or

(3) an order, ruling, regulation or official statement shall have been made by the Treasury Department of the United States or the Internal Revenue Service,

with the purpose or effect, directly or indirectly, of imposing Federal income taxation upon any of the revenues or other income which would be derived by the Issuer under this Agreement or any of the interest payments which would be received by you or your transferees or assigns as the holder of any of the Bonds.

6.9. Arbitrage. You shall have received certificates, in form satisfactory to Messrs. White & Case, dated the Closing Date, of the appropriate officers of, respectively, the Issuer and the Company setting forth that it is not expected that the proceeds from the Bonds will be used in any manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended. The arbitrage certificate of the Issuer may be based in part (as to certain factual matters) upon the arbitrage certificate of the Company.

6.10. Legality of Investment. The purchase of the Bonds by you shall be permitted by, and the Bonds shall qualify as legal investments for you under, the laws and regulations of each jurisdiction to which you may be subject, and on or prior to the Closing Date you shall have received a certificate of the Treasurer or Assistant Treasurer of the Company in the form of Exhibit H hereto setting forth the earnings' computations pursuant to subdivision 2(b) of Section 81 of the New York Insurance Law and demonstrating compliance therewith. The purchase and payment for the Bonds to be purchased by you shall not be prohibited by, and shall not subject you to any penalty or other onerous condition under or pursuant to, any applicable law or governmental regulation.

6.11. Completion of Information Certificate. The Company shall have completed and delivered to you the Information Certificate in the form of Exhibit I to this Agreement, with a copy of the Company's most recent audited

annual financial statements attached thereto, which certificate and statements you have informed the Company may be used as a basis for filings which you may be required to make with certain regulatory bodies and with the National Association of Insurance Commissioners.

6.12. Amendment of Existing Agreements. (a) The Agreement between the Company and The Equitable Life Assurance Society of the United States dated November 15, 1972, as amended (herein called the "1972 Agreement"), shall have been further amended (i) to permit the incurring of the obligations contemplated hereunder and (ii) to include the Loan within the definition of "Senior Debt" contained in paragraph 10F thereof. The Agreement between the Company and The Prudential Insurance Company of America dated October 15, 1973, as amended (herein called the "1973 Agreement"), shall have been further amended (i) to permit the incurring of the obligations contemplated hereunder, and (ii) to include the Loan within the definition of "Senior Debt" contained in paragraph 10F thereof. The Agreements between the Company on the one hand, and The Prudential Insurance Company of America, New York Life Insurance Company, and The Equitable Life Assurance Society of the United States on the other hand, dated July 15, 1975, as amended (herein called the "1975 Agreements") shall have been further amended (i) to permit the incurring of the obligations contemplated hereunder, and (ii) to include the Loan within the definition of "Senior Debt" contained in paragraph 10F thereof. The Agreements between the Company on the one hand, and The Prudential Insurance Company of America, New York Life Insurance Company, and The Equitable Life Assurance Society of the United States on the other hand, dated September 1, 1976 (herein called the "1976 Agreements") shall have been amended (i) to permit the incurring of the obligations contemplated hereunder, and (ii) to include the Loan within the definition of "Senior Debt" contained in paragraph 10F thereof. [1978 Agreements]

(b) The Credit Agreement between the Company and Chemical Bank dated as of October 8, 1971, as amended, shall have been further amended to provide that the promissory notes issued thereunder shall be subordinated to the obligations of the Company hereunder to the same extent as they are now subordinated to the notes issued under the 1972 Agreement, the 1973 Agreement, the 1975 Agreements and the 1976 Agreements.



6.13. Exchange of Subordinated Notes. The Company shall have issued new subordinated promissory notes containing the provisions set forth in paragraph 10F of the 1976 Agreements as amended as contemplated in Section 6.13(a) hereof in exchange for all outstanding subordinated promissory notes which contain the provisions of paragraph 10F of the 1976 Agreements, and the Company shall have delivered to you a certificate of the Treasurer or Assistant Treasurer of the Company to such effect.

6.14. Accountants' Certificate. The Company shall have delivered to you the certificate of Haskins & Sells, addressed to you, stating that such firm has reviewed the provisions for Federal and State income taxes (including the amounts allocated to the Company by its parent company), including applicable reserves, of the Company and its Subsidiaries contained in the financial statements for the latest fiscal year ended more than 90 days prior to the Closing Date, and that, in the opinion of such firm, the Company and its Subsidiaries have paid, or have provided reserves in reasonable amounts for the payment of, all Federal and State income taxes for the fiscal year so ended and all prior years.

## SECTION 7. PREPAYMENT OF BONDS.

7.1. Prepayment by Issuer. The Bonds may not be called for prepayment except as expressly provided in this Section 7. The Issuer agrees that it shall make a prepayment of the Bonds as provided for in this Section 7 at each time the Company shall make a payment with respect to the Loan as provided in this Section 7. In the event of any prepayment by the Issuer under this Section 7, such prepayment shall be made by the Company, on behalf of the Issuer, directly to the holders of the Bonds. The Issuer shall have no liability to the holders of the Bonds with respect to any actions taken by the Company on its behalf pursuant to this Section 7. Notwithstanding any provision contained in this Section 7, upon payment in full of all Bonds outstanding (including interest accrued thereon and premium, if any, applicable thereto) the obligations of the Issuer hereunder shall terminate and be of no further force and effect. The Issuer shall in no event be deemed to have any obligation

pursuant to paragraphs (e) and (f) and paragraph (g) (insofar as said paragraph (g) pertains to payments other than payments representing principal and interest on the Bonds) of Section 7.5 hereof.

7.2. Required Prepayments. (a) In addition to paying the principal amount of the Bonds outstanding on the maturity date thereof and interest due thereon, the Issuer shall prepay the Bonds, and the Company shall make a corresponding prepayment of the Loan, at a price of 100% of the principal amount plus interest accrued on the amount being prepaid to the prepayment date, on June 15 in each of the years and in the principal amounts set forth in the table below:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
1994	\$	1999	\$
1995		2000	
1996		2001	
1997		2002	
1998			

Upon the payment of the principal amount, together with the interest accrued thereon, of Bonds held by a holder who has elected to take the action permitted by the proviso contained in Section 12.2 hereof, the portion of such payment representing the principal amount of the Bonds so paid shall be applied to reduce the payments due pursuant to this paragraph (a) in inverse chronological order of their due dates.

(b) In addition, to the extent the proceeds of the Bonds exceed the Cost of the Project, the Issuer shall prepay, on the first interest payment date subsequent to December 1, 1978, a principal amount of the Bonds equal to such excess at the same price as other required prepayments made pursuant to this Section 7.2 and the Company shall at such time make a corresponding prepayment with respect to the Loan.

7.3. Option to Prepay With a Premium. The Bonds are subject to prepayment, at the option of the Issuer, at any time after June 15, 1988, either in whole or in part from time to time in multiples of \$10,000, upon payment of the following prepayment prices (expressed as a percentage

of the principal amount of Bonds to be prepaid) plus interest accrued on the principal amount being prepaid to the prepayment date:

<u>Prepayment Date</u> <u>(if prepaid during the 12 months</u> <u>ending June 15,)</u>	<u>Prepayment Price</u>
1989	104.000%
1990	103.715
1991	103.430
1992	103.145
1993	102.860
1994	102.575
1995	102.290
1996	102.005
1997	101.720
1998	101.435
1999	101.150
2000	100.865
2001	100.580
2002	100.285
2003	100.000

The option of the Issuer to prepay the Bonds referred to above shall be exercised by the Issuer only upon the exercise by the Company of the option (which option is hereby granted) to prepay a like principal amount of the Loan by payment of an amount equal to the applicable prepayment price set forth above plus interest accrued on the principal amount being prepaid to the prepayment date.

If the Bonds are prepaid in part pursuant to this Section 7.3 or pursuant to paragraph (b) of Section 7.2, the portion of the prepayment price representing the principal amount of the Bonds so prepaid shall be applied to reduce the payments due pursuant to paragraph (a) of Section 7.2 hereof in inverse chronological order of their due dates.

7.4. Notice of Prepayment. The Company, on behalf of the Issuer, shall cause notice of any prepayment of the Bonds pursuant to paragraph (b) of Section 7.2 or Section 7.3 hereof to be sent in the name of the Issuer by first class mail, postage prepaid, to the Issuer and to the holder of each Bond to be prepaid at its address as it appears on the registration books not less than 30 nor more than 60 days prior to the prepayment date.



On the prepayment date, the Company shall cause funds to be delivered to each Bondholder sufficient to pay the principal of and premium, if any, on the Bonds held by such holder or portions of principal thereof called for prepayment and accrued interest thereon to the prepayment date. Upon the payment of the principal thereof the Bonds or portions of principal thereof thus called for prepayment shall cease to bear interest from and after the prepayment date.

7.5. Required Prepayment Upon Occurrence of Event of Taxability and in Other Events.

(a) (i) If an Event of Taxability occurs as set forth in paragraph (b) of this Section 7.5; or

(ii) If interest on the Bonds becomes subject to Federal income taxation (other than for purposes of a tax on preferences of the type imposed by Section 56 of the Code or any successor statute thereto or any similar Federal tax on preferences or similar items ("Preference Tax")) as a result of a change in the Federal tax laws after the date of the initial issuance of the Bonds (for the purposes of this paragraph (ii), interest on the Bonds becomes subject to Federal income taxation on the date specified in legislation (or if no date is specified, on the date specified in the opinion of counsel referred to below with respect to such legislation) (x) signed into law by the President of the United States of America, (y) approved by a vote of two-thirds of each House of the Congress of the United States, over the President's veto, or (z) not returned by the President within 10 days (Sundays excepted) after it has been presented to him while the Congress is in session, the effect of which legislation, in the opinion of nationally recognized bond counsel satisfactory to at least 66-2/3% of the holders of the Bonds, is that interest on the Bonds is includable (other than for purposes of a Preference Tax) in the gross income of the holders thereof, other than a holder who is a "substantial user" of the Project or a "related person" as such terms are defined in the Code);

then in either of such events the Bonds shall be prepaid pursuant to paragraph (d) of this Section 7.5.

(b) "Event of Taxability" means any holder of a Bond shall have received (i) an opinion of nationally recognized bond counsel satisfactory to at least 66-2/3% of

the holders of the Bonds, to the effect that, other than as a result of a change in the Federal tax laws, amounts paid in respect of the stated interest on the Bonds are includable (other than for purposes of a Preference Tax) in the gross income of such holder (other than a holder who is a "substantial user" of the Project or "related person" as such terms are defined in the Code) for Federal income tax purposes, or (ii) a statutory notice of deficiency or similar notice to the same effect as a statutory notice of deficiency from the United States Internal Revenue Service which states in effect that amounts payable in respect of the stated interest on any of the Bonds is includable (other than for purposes of a Preference Tax) in the gross income of such holder (other than a holder who is a "substantial user" of the Project or "related person" as such terms are defined in the Code); provided, however, that in the event that at any time an assertion is made to a Bondholder by a representative of the Internal Revenue Service that interest on its Bonds is includable in the gross income of such holder for Federal income tax purposes (other than for purposes of a Preference Tax), such holder shall promptly give written notice to the Company that the issue of taxability of the interest on such Bond (the "Issue") has been raised and shall afford the Company an opportunity to furnish such holder memoranda of law and other pertinent material with respect to the Issue.

(c) Within 30 days following receipt by the holder of a Bond of a statutory notice of deficiency or similar notice to the same effect as a statutory notice of deficiency as described in paragraph (b)(ii) of this Section 7.5, or of an opinion of counsel as described in paragraph (a)(ii) or (b)(i) of this Section 7.5, such holder shall notify the Company, and the Issuer in writing of the receipt thereof and shall furnish to the Company a copy of the opinion of counsel, if any, referred to above. Within 30 business days following receipt of such notification the Company shall notify each other holder of the Bonds and the Issuer that said event has occurred.

(d) The Company shall prepay the Loan in full and cause the Bonds then outstanding to be prepaid in full without premium not more than 60 days after receipt by the Company of written notification in accordance with the first sentence of paragraph (c) of this Section 7.5; provided,

however, that, if the Bonds are required to be prepaid solely because of a change in the Federal tax laws, then notwithstanding the foregoing provisions of this paragraph (d) the Loan shall be prepaid in full and the Bonds outstanding at the time shall be prepaid not later than the later of (A) the date 60 days after receipt by the Company of written notification in accordance with the first sentence of paragraph (c) of this Section 7.5 and (B) the first date as of which the legislation described in paragraph (a)(ii) shall require that interest on the Bonds be included in the gross income of the holders thereof as described in such paragraph. On the date on which the Bonds are required to be prepaid as required by the foregoing provisions of this paragraph (d), the Bonds shall become due and payable and shall be prepaid on such prepayment date at an amount equal to the unpaid principal amount thereof plus accrued interest thereon to the prepayment date. On such prepayment date, the Company shall cause funds to be delivered to each Bondholder sufficient to pay the principal of the Bonds held by such holder and accrued interest thereon to the prepayment date.

(e) If either of the events set forth in paragraph (a) of this Section 7.5 shall have occurred, the Company shall also pay to each holder or former holder of a Qualified Bond, within ten (10) days of the receipt of a written request therefor, an amount equal to the excess of (i) the amount which would have been payable as interest on such Bond for the period beginning on the Taxable Date with respect to such Bond and ending on the date of payment or transfer of such Bond if such Bond had borne interest during such period at the rate of 9% per annum over (ii) the interest actually accrued on such Bond during such period; provided, however, that the Company shall not be required to make any payments to such holder or former holder under this paragraph (e) with respect to any period for which the statute of limitations applicable to assessments of Federal income tax has expired as to such holder prior to any payment by such holder or former holder of any Federal income tax for such period as the result of the includability in its gross income of interest on such Bond. Any amounts payable pursuant to this paragraph (e) shall be deemed to represent interest for any and all purposes.

(f) If either of the events set forth in paragraph (a) of this Section 7.5 shall have occurred, the Company covenants to pay from time to time to each holder or former holder of Qualified Bonds, within ten (10) days of the receipt of a written request therefor,



(i) an amount which (after deduction of all taxes, fees or other charges required to be paid by the holder or former holder of such Qualified Bond in respect of the receipt of such amount under the laws or regulations of the United States or of any political subdivision or taxing authority thereof or therein) will be equal to the sum of (A) any interest and (B) any penalties or additions to Federal income tax and additional amounts under subchapter A of Chapter 68 of the Code ("Penalties"), not deductible for Federal income tax purposes, which have been paid or are payable within 30 days of such written request by the holder or former holder of such Qualified Bond with respect to such Qualified Bond because of the failure to include interest on such Bond in the gross income of such holder for Federal income tax purposes, plus

(ii) an amount equal to the sum of any interest and Penalties, deductible for Federal income tax purposes, which have been paid or are payable within 30 days of such written request by the holder or former holder of such Qualified Bond because of the failure to include interest on such Bond in the gross income of such holder for Federal income tax purposes.

The amount of taxes, fees or other charges which are payable by the holder or former holder of any Qualified Bond shall be computed without regard to

(x) any reduction in such amount payable by reason of any setoff, carryover, carry back, credit or loss or gain, or otherwise, or

(y) any reduction in any of such taxes, fees or other charges resulting from payment of any of such taxes, fees or other charges,

which may be available to such holder or former holder.

(g) If all or part of the interest on the Bonds becomes subject to a Preference Tax as a result of a change in the Federal tax laws after the date of the initial issuance of the Bonds (for the purposes of this paragraph (g), interest on the Bonds becomes subject to a Preference

Tax on the date specified in legislation (or if no date is specified, on the date specified in the opinion of counsel referred to below with respect to such legislation), (x) signed into law by the President of the United States of America, (y) approved by a two-thirds vote of each House of the Congress of the United States, over the President's veto, or (z) not returned by the President within 10 days (Sundays excepted) after it has been presented to him while the Congress is in session, the effect of which legislation, in the opinion of nationally recognized bond counsel satisfactory to at least 66-2/3% of the holders of the Bonds, is that all or part of the interest on the Bonds is subject to a Preference Tax), then the Bonds may be prepaid, at the election of the Company which election shall be exercised by prepaying the Loan in full, without premium pursuant to paragraph (h) of this Section 7.5, and the Company shall pay, from time to time, to each holder or former holder of a Bond, within 10 days of receipt of a written request therefor, an amount which (after deduction of all taxes, fees and other charges required to be paid by the holder or former holder of such Bond in respect of the receipt of such amount under the laws or regulations of the United States or any political subdivision or taxing authority thereof or therein) will be equal to the amount of Preference Tax in respect of interest on the Bonds paid or payable within 30 days of such written request by such holder or former holder. For purposes of this paragraph (g), the amount of Preference Tax in respect of interest on the Bonds and taxes, fees and other charges paid or payable by such holder or former holder for any period shall be calculated without regard to any reduction in such amount payable by reason of any setoff, carryover, carry back, credit or loss or gain, or otherwise, which may be available to such holder or former holder as the result of transactions or events unrelated to those contemplated by this Agreement.

(h) Within 30 days following receipt by a holder of a Bond of an opinion of counsel as described in paragraph (g) of this Section 7.5, such holder shall notify the Company in writing of the receipt (and shall furnish the Company a copy) thereof. Within 30 days following receipt of such notification the Company shall notify each holder of the Bonds and the Issuer that such event has occurred and include in such notification notice of whether the Company has elected to cause the Bonds to be prepaid. If the Company has made such election, the Loan shall be prepaid

and the Bonds shall be prepaid on a date not earlier than 30 nor later than 60 days following such notification. On the prepayment date included in such notification, the Company shall cause funds to be delivered to each Bondholder sufficient to pay the principal of the Bonds held by such holder and accrued interest thereon to the prepayment date.

(i) The covenants made by the Company and its obligations under paragraphs (c), (e), (f), (g) and (h) of this Section 7.5 shall survive the termination of this Agreement and the payment in full of the Bonds.

(j) (i) The term "Qualified Bond" shall mean any Bond interest on which is paid on or after a Taxable Date whether or not such Bond has been redeemed or has matured on or after a Taxable Date.

(ii) The term "Taxable Date" shall mean, with respect to each holder or former holder of a Bond, the earliest effective date as of which the amounts payable in respect of the stated interest on such Bond become includable in gross income of such holder or former holder, according to either an opinion of counsel or a notice as described in the definition of "Event of Taxability" or according to paragraph (a)(ii) hereof. For purposes of this definition of "Taxable Date" the term "holder" shall include any person obligated to pay tax in respect of the holding of a Bond by a holder or former holder.

7.6. Pro Rata Payment; Endorsement of Prepayments. If less than the entire principal amount of all the Bonds outstanding is to be prepaid at any time, the principal amount to be prepaid shall be allocated among all the holders of the Bonds in the following manner: There shall be allocated to each holder upon such prepayment, as nearly as practical, the same proportion of such prepayment as the unpaid principal amount of the Bond held by such holder bears to the aggregate unpaid principal amount of all Bonds then outstanding, and to the extent that any proportionate allocation shall not result in an even multiple of \$10,000, adjustment shall be made in the proportionate prepayments to the nearest even multiple of \$10,000. All partial prepayments of principal shall be endorsed by the holder on the Table of Prepayments appearing on each Bond prior to any transfer of such Bond.



SECTION 8. SPECIAL COVENANTS OF THE COMPANY  
AND THE ISSUER.

8.1. Assignment of Rights. The Issuer hereby assigns to you for the benefit of the holders of the Bonds from time to time outstanding all right, title and interest of the Issuer in and to the payments to be made by the Company on account of the Loan and all of the Issuer's rights against the Company under this Agreement, except for its rights pursuant to Sections 2.3, 8.6 and 8.7 hereof. The Company assents to such assignment.

8.2. Unconditional Obligations. The Company hereby agrees that its obligations to repay the Loan as provided in Section 2.2 hereof and to pay such amounts as shall be required to be paid to the Issuer by Sections 2.3 and 8.6 hereof shall be absolute and unconditional, shall be binding and enforceable in all circumstances whatsoever and shall not be subject to set-off, recoupment or counterclaim. The Company shall be obligated to make said payments whether or not the Project has become functional and whether or not the Project has ceased to exist or to be functional to any extent from any cause whatsoever; and the Company shall be obligated to make said payments regardless of whether the Company is in possession or is entitled to be in possession of the Project. Without in any way limiting the generality of the foregoing, such obligations shall not be affected by (a) any exercise of any remedy by the Issuer under Section 12 hereof, (b) termination of this Agreement in part or in whole or diminution or elimination of any of the Company's rights hereunder by judicial decree, legislative enactment or otherwise, (c) failure of consideration or title, (d) frustration of commercial purpose, (e) condemnation, destruction or damage to the Project or other property of the Company, (f) changes of law or regulation, (g) any change in tax or other laws of the United States of America or State of South Carolina or any political subdivision of either by judicial interpretation or otherwise, or (h) inability or failure of the Issuer or Bondholder to perform any obligation hereunder. If for any reason, the amounts paid to the holders of Bonds in satisfaction of the Loan would not be sufficient to make the payments of principal, premium, if any, and interest due on the Bonds, then the Company will pay the amounts required from time to time to make up any such deficiency. Except as otherwise expressly

provided herein, the Company's other obligations under this Agreement shall likewise be unconditional, binding and enforceable in all circumstances whatsoever.

8.3. Special Obligations. Notwithstanding anything herein to the contrary, all covenants and agreements contained in this Agreement on behalf of the Issuer shall be subject to the provisions of this Section 8.3. The Bonds shall not be deemed to constitute a pledge of the full faith and credit of the Issuer, but shall be limited obligations of the Issuer, the principal of, and premium, if any, and interest on, which are payable solely from the amounts to be derived by the Issuer pursuant to this Agreement and from no other source. The Bonds shall never constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation of the State of South Carolina and shall never constitute or give rise to a pecuniary liability of the Issuer, or a charge against its general credit or taxing powers.

8.4. Issuer Not to Own, Possess or Operate Project. The Issuer shall have no ownership or possessory interest in the Project under this Agreement, and nothing herein shall be construed to require or authorize the Issuer to operate the Project or conduct any business enterprise therewith under any circumstance.

8.5. Use of the Project, Governmental Charges and Expenses of Operation, Maintenance and Upkeep. (a) The Company represents to the best of its knowledge (i) that as of the date hereof the Project is not in violation of any applicable subdivision, zoning, building, environmental protection, sanitary, safety or other land use laws, rules and regulations and (ii) that no activity the Company is conducting in the Project is a nuisance under applicable law. The Company covenants that it will use its best efforts to comply with such legal requirements in its use of the Project after the date hereof.

(b) The Company agrees that it will operate and maintain the Project at all times at its own expense so that the Project and all other facilities necessary or incidental thereto relating to the control of air or water pollution shall be kept in good repair and in good operating condition, subject to ordinary wear and tear and obsolescence.

(c) The Issuer and the Company acknowledge that as of the date hereof, treatment facilities or equipment of manufacturing plants which control air or water pollution are exempt from all property taxation in South Carolina and that under present law the income of the Issuer from this Agreement is not subject to either Federal or South Carolina taxation.

However, the Company will pay, as the same become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed by the Company therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income, revenues or receipts of the Issuer from this Agreement, or which will constitute a charge on the income, revenues and receipts from this Agreement). In addition, the Company will pay all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated to pay only such installments as are required to be paid during the term of this Agreement.

The Company may, at its expense and in its own name, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest and any appeal therefrom, unless by nonpayment of any such items the Project or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly.

(d) The Company shall at its own expense keep the Project insured against loss or damage in a manner consistent with customary practices for similar operations and in no event less extensive than the coverage carried on the Plant. The Company shall have the right to determine the disposition of any proceeds of insurance carried pursuant to this paragraph (d).



(e) In the event the Bond proceeds available for payment of the Cost of the Project shall not be sufficient to pay the costs thereof in full, the Company agrees to pay all that portion of the costs of the Project as may be in excess of the moneys available therefor and to complete the Project at its own expense. The Issuer does not make any warranty, either express or implied, that the proceeds of the Bonds which, under the provisions of this Agreement, will be available for payment of the Cost of the Project, will be sufficient to pay all the costs which have been or will be incurred in that connection. The Company agrees that if, notwithstanding the exhaustion of the Bond proceeds, the Company shall not be fully reimbursed for the costs of the Project, it shall not be entitled to any reimbursement therefor from the Issuer or from the holders of any of the Bonds, nor shall it be entitled to any abatement or diminution of the payments required by Section 2.2 hereof.

(f) The Project is in furtherance of the Act and the Company presently intends to operate or cause the Project to be operated as pollution control facilities throughout the life of this Agreement as provided herein; the Project is of a type authorized and permitted by the Act; and the Project will be located within the territorial boundaries of Berkeley County, South Carolina.

(g) The Company may improve or modify the Project at its expense, provided that it shall not modify the Project so that it fails to qualify as "pollution control facilities" as those terms are used in Section 103(b)(4)(F) of the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder.

8.6. Company's Duty to Indemnify. The Company shall indemnify and save harmless the Issuer and the Bondholders (in their capacity as purchasers or holders of the Bonds) against and from (1) any and all claims by or on behalf of any person arising from any cause whatsoever in relation to the Project, either as an activity or as an industrial facility, (2) any and all claims arising from any act or omission of the Company or any of its agents, contractors, servants, employees, or licensees with respect to the Project or to this Agreement, (3) any and all claims arising from the offering, issuance or sale of the Bonds in accordance herewith, and (4) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with

any such claim or action or proceeding brought thereon. In case any action or proceeding be brought against the Issuer or any Bondholder by reason of any such claim, the Company upon notice from the Issuer or such Bondholder, shall resist or defend such action or proceeding. Subject to the foregoing, the Issuer and the Bondholders shall cooperate and join with the Company as may be required in connection with any action taken or defended by the Company. Any right to indemnity which the Issuer or any Bondholder may have under this Section 8.6, whether or not a claim is made against it, shall also extend to its members, directors, officers, employees or agents. In addition, if in the course of any proceeding involving the Issuer under any bankruptcy, reorganization, arrangement, insolvency, adjustment of debt, dissolution or liquidation law, any court shall require any holder of a Bond to repay to the Issuer, or to such court, any receiver, liquidator, trustee or other similar official appointed for the Issuer or its property pursuant to any such law, any amount received by such holder in payment of any portion of the principal of, premium or interest on such Bond, the Company shall, within 10 days of receipt of a written request therefor, reimburse such holder in full for any amount so required to be repaid.

8.7. Protection for Issuer. (a) No failure by the Issuer to perform any of its agreements hereunder shall impose any pecuniary liability upon the Issuer or any charge upon its general credit or against its taxing power, but such performance may be enforced by mandamus or by the appointment of a receiver in equity with such powers as may be necessary to enforce such obligations, all as provided in Section 48-3-40 of the Act.

(b) The Issuer shall at all times cooperate with the Bondholders and use its best efforts to assist the Bondholders in obtaining full and timely payment of the Bonds.

(c) No consent, approval or other concurrence required of the Issuer hereby shall be unreasonably withheld; but, in giving such consent or approval, or in exercising any discretion or in making any determination, the Issuer may consider the interests of the public, as well as the interests of the Company and the Bondholders; however, nothing in this Agreement shall be construed as conferring on any person other than the Company or the Bondholders any right to notice, hearing or participation in the Issuer's

consideration, and nothing in this paragraph (c) shall be construed as conferring on the Company or the Bondholders any right additional to those conferred elsewhere in this Agreement.

(d) No recourse shall be had by the Company or the Bondholders for any claim based on this Agreement or the Bonds against any officer, employee or agent of the Issuer alleging personal liability on the part of such person, unless such claim is based upon the bad faith, fraud or deceit of such person.

8.8. Actions by Issuer. Any action which may be taken by the Issuer hereunder shall be deemed sufficiently taken if taken on its behalf by the Chairman or the Clerk of the County Board or by any other officer or agent which it may designate from time to time.

8.9. Filings. The Company shall cause financing statements to be filed with respect to the security interest intended to be granted under this Agreement in such public office or offices, if any, in which said documents are required by law to be filed in order to constitute constructive notice thereof and to preserve and protect fully the rights and security afforded thereby to the Bondholders. In addition, the Company (a) shall, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Agreement, and (b) shall take all actions that at the time and from time to time may be necessary, including, without limitation, the filing of all financing and continuation statements that may at the time be required under the South Carolina Uniform Commercial Code, to perfect, preserve, protect and secure the interests of the Bondholders in this Agreement. No failure to request such further instruments or further acts shall be deemed a waiver of any right to the execution and delivery of such instruments or the doing of such acts or be deemed to affect the interpretation of any provision of this Agreement.

8.10. Notice of Defaults. The Company and the Issuer covenant that forthwith upon obtaining knowledge of a Default or an Event of Default under this Agreement or a default under the Note Agreements (as defined in Section 9 hereof) the Company or the Issuer, as the case may be, will deliver to each Bondholder a written notice specifying the nature and period of existence thereof and what action the



Company (if such notice is given by the Company) or the Issuer (if such notice is given by the Issuer), is taking or proposes to take with respect thereto; provided, however, that failure by the Issuer to deliver such notice shall not impose any pecuniary liability upon the Issuer or any charge upon its general credit or against its taxing power, all as provided in Section 48-3-40 of the Act.

SECTION 9. BUSINESS COVENANTS OF THE COMPANY.

(a) The Company covenants and agrees that on and after the Closing Date and so long as the Bonds shall be outstanding, it will observe, perform and comply with and be bound by, for the benefit of the holders from time to time of the outstanding Bonds, the covenants set forth in Paragraph 5 and Paragraph 6 of the Note Agreements dated September 1, 1976 between the Company and, severally, The Prudential Insurance Company of America, New York Life Insurance Company and The Equitable Life Assurance Society of the United States providing for the issuance of the Company's 9.80% Promissory Notes due February 1, 1995 (the "9.80% Notes") (the "Note Agreements"), as such covenants shall be modified, altered, amended or waived pursuant to the Note Agreements; provided, however, that the Company shall not amend the Note Agreements so as to eliminate the Loan from the definition of "Senior Debt" in paragraph 10F of the Note Agreements without the consent of the holders of 66-2/3% in principal amount of the Bonds then outstanding; provided further, however, that any remuneration paid directly or indirectly, whether by way of supplemental or additional interest, fee or otherwise (other than by way of reimbursement of expenses), to any holder of the 9.80% Notes as consideration for or as an inducement to the entering into by any holder of the 9.80% Notes of any waiver or amendment of any of the terms or provisions of Paragraph 5 or Paragraph 6 of the Note Agreements, shall be concurrently paid, on the same terms, ratably to the holders of the Bonds then outstanding. The Issuer shall have no liability for or any responsibility in respect of any payments made pursuant to this paragraph (a).

(b) The Company covenants and agrees that any reports or other documents required to be furnished pursuant to Paragraph 5A of the Note Agreements shall be furnished to you, in the quantities indicated in the Note Agreements, at the address specified in Section 16.1 hereof; provided,

however, that the Company shall deliver four copies of the annual financial statements referred to in clause (ii) of Paragraph 5A of the Note Agreements.

(c) Executed or true and correct copies of any waiver, consent or amendment of the Note Agreements relating to Paragraph 5 or Paragraph 6 thereof shall be delivered by the Company to each holder of outstanding Bonds forthwith following the date on which the same shall have been executed and delivered by the holder or holders of the requisite percentage of outstanding 9.80% Notes.

(d) If the Note Agreements shall cease to be in full force and effect due to payment in full of all indebtedness thereunder or otherwise, the Company agrees that it will thereafter observe, perform and comply with and be bound by the covenants set forth in Paragraphs 5 and 6 of the Note Agreements as in effect immediately prior to the date on which the Note Agreements shall have ceased to be in full force and effect.

#### SECTION 10. INDENTURE.

(a) If you propose to sell or otherwise transfer Bonds (other than to an insurance company or other institutional investor which controls, or is controlled by, or is under common control with, you) so that thereafter there will be more than one holder of Bonds, the Issuer may in its discretion and with the consent of the Company, and shall, as soon as reasonably possible after the receipt, at any time after 90 days from the Closing Date, of a written request from you, execute and deliver to a bank or trust company organized under the laws of the State of South Carolina or the State of New York, or organized under the laws of the United States of America and having its principal office in the State of South Carolina or the State of New York, as trustee, satisfactory to you, the Issuer and the Company, and having a capital and surplus of at least \$15,000,000 (if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms), an Indenture of Trust (hereinafter called the "Indenture"), providing for the exchange thereunder of Bonds issued pursuant to this Agreement for bonds in the definitive forms of coupon bonds, registrable as to principal only, registered bonds without coupons, bearer bonds with coupons or (to the extent permitted by law)

bearer bonds without coupons, in denominations of \$5,000 or any multiple or multiples thereof (herein called the "Exchange Bonds"), equal in aggregate principal amount to the aggregate principal amount of Bonds outstanding and unpaid at the time of the execution of the Indenture. The Exchange Bonds shall have the rights provided in Section 10(c) hereof, and in all other respects shall be substantially similar to, and have substantially all the rights and privileges carried by, the Bonds; provided, however, that the Indenture may contain provisions permitting, at the option of the holder or holders of 66-2/3% or more of the principal amount of the then outstanding Bonds, the appointment of a bank or trust company organized under the laws of a jurisdiction other than the State of South Carolina or the State of New York or the United States of America and/or having its principal place of business in a jurisdiction other than the State of South Carolina or the State of New York, as paying agent for the payment of principal, premium if any, and interest on the Bonds.

Any action taken by the Issuer pursuant to this Section 10 shall be taken by the Issuer as soon as practicable (as determined by the Issuer) after such written request from you; however, no such action under this Section 10 shall be required to be taken without the approval of counsel chosen by the Issuer (which approval shall not be unreasonably withheld).

(b) In connection with the execution of the Indenture you shall assign to the trustee under the Indenture, to be held by such trustee for the benefit of the holders of the Bonds, all of the rights of the Issuer assigned to you pursuant to this Agreement, and in that connection will execute and deliver all such instruments and documents and will deliver all such showings as may be deemed necessary or appropriate by you and by Messrs. White & Case (hereinafter referred to in this Section 10 as "Independent Counsel").

(c) The Indenture and the Exchange Bonds to be issued thereunder shall, insofar as may be appropriate, respectively embody the substance of all covenants, conditions and provisions of this Agreement and the Bonds, together with such other provisions as may be desirable (not inconsistent with the provisions of this Agreement, the Ordinance and the Bonds) and as are usually contained in indentures providing for tax-exempt bonds of comparative



aggregate principal amount and maturity, or are usually contained in such tax-exempt bonds. The Indenture and the Exchange Bonds shall be, respectively, in form and substance satisfactory to you, the Company, the Issuer and Independent Counsel and in such form as may be necessary to comply with any applicable recording or other statutes and with any rules or regulations thereunder and with the decisions of Federal and state courts. The Exchange Bonds shall be issuable in definitive form as coupon bonds, registrable as to principal only, as registered bonds without coupons, as bearer bonds with coupons or (to the extent permitted by law) as bearer bonds without coupons, in denominations of \$5,000 or any multiple or multiples thereof. Exchange Bonds may also be issuable in temporary form.

(d) At the time of the execution of the Indenture, Independent Counsel shall furnish to you, the Company, the Issuer and the trustee under the Indenture an opinion to the effect that (i) the Indenture and the Exchange Bonds are in form in compliance with this Section 10, (ii) the Indenture has been duly authorized, executed and delivered by the Issuer and is a valid and legally binding instrument enforceable against the Issuer in accordance with its terms, (iii) the Indenture (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) has been properly recorded or filed for record in all public offices in which recording or filing is necessary to perfect the lien and security interest provided by the Indenture as a valid first lien on and security interest in the rights assigned pursuant to Section 8.1 of this Agreement, (iv) the remedies provided therein are enforceable in accordance with their terms (except as such remedies may be limited by bankruptcy laws, or by similar laws relating to or affecting the enforcement of the Indenture which do not, in the opinion of such Independent Counsel, materially interfere with the practical realization of the benefits provided by the Indenture for Exchange Bonds outstanding thereunder or make inadequate the remedies necessary for such realization), (v) the Exchange Bonds have been duly authorized, and when executed, authenticated and delivered as herein and in the Indenture provided, will constitute legal, valid and binding obligations of the Issuer in accordance with their terms and will be entitled to the benefits of the Indenture, as aforesaid and (vi) the Exchange Bonds will be exempt from Federal income taxation to the same extent that the Bonds are so exempt immediately prior to the issuance of the Exchange Bonds. In the event

that the Issuer requests the creation of the Indenture pursuant to paragraph (a) of this Section 10, or the Exchange Bonds are issued pursuant to this Section 10 upon your request, the Company will bear all the reasonable expenses of creating the Indenture and issuing the Exchange Bonds thereunder, including taxes (other than taxes imposed on you or your transferee solely by reason of your transfer of any of the Bonds or Exchange Bonds to a subsequent holder thereof) and the reasonable fees and disbursements and expenses of Independent Counsel, the Issuer and counsel for the Issuer; provided, however, that unless otherwise agreed to by the Company, the Indenture shall be typewritten.

(e) Thereafter, upon surrender of any Bond by the holder thereof, the Issuer will, without charge to the holder thereof, deliver to or upon the order of such holder, in exchange therefor, Exchange Bonds, in the same aggregate unpaid principal amount as the Bond surrendered, in such authorized form and denomination as such holder may elect, and bearing interest from the date to which interest shall have been paid on the Bond so surrendered.

SECTION 11. TRANSFER, EXCHANGE AND SUBSTITUTION  
OF BONDS.

11.1. Transfer of Bonds; Persons Treated as Owners. The Treasurer of the Company shall act as Bond Registrar and shall maintain registration books for the registration of transfer of the Bonds. The transfer of the Bonds may be registered only upon the books kept for the registration and registration of transfer of the Bonds upon surrender thereof to the Bond Registrar together with an assignment duly executed by the registered owner in person or by his duly authorized attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such transfer the Issuer shall execute and deliver in exchange for any such Bond a new Bond or Bonds without coupons, registered in the name of the transferee, in the denomination of \$5,000 or any integral multiple thereof.

The Bond Registrar shall not be required to make any such registration of transfer during the 15 days immediately preceding any date for the payment of interest or the payment or prepayment of principal. Prior to registration of transfer the Issuer and the Company shall treat the registered owner as the person exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner.

11.2. Exchange of Bonds. The Bonds, upon surrender thereof at the principal office of the Issuer may, at the option of the registered owner thereof, be exchanged for another Bond or Bonds of any authorized denomination aggregating the unpaid principal amount of the Bond or Bonds to be exchanged.

Except as otherwise provided by paragraph (e) of Section 10 hereof, the Issuer may impose a charge upon any subsequent Bondholder for every such transfer or exchange of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

11.3. Mutilated, Lost or Destroyed Bonds. Should any Bond become mutilated or be lost or destroyed, the Issuer shall cause to be executed, and shall deliver, a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond. If such Bond shall have matured, instead of issuing a new Bond the Issuer may cause the Company to pay the same without surrender thereof. Such new Bond shall be executed and delivered or such matured Bond shall be paid without surrender only when the registered owner has paid the reasonable expenses and charges of the Issuer in connection therewith and, in the case of a lost or destroyed Bond, has filed with the Issuer and the Company if requested by any of them evidence satisfactory to it that such Bond was lost or destroyed and that such person was the owner thereof and the holder has furnished to the Issuer and the Company indemnity satisfactory thereto (provided that if either you or your nominee is the holder of the Bond, your own agreement of indemnity shall be deemed to be satisfactory).

## SECTION 12. DEFAULT PROVISIONS AND REMEDIES OF BONDHOLDERS.

12.1. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an Event of Default:

(a) Default in the due and punctual payment of interest on any Bond or in a corresponding payment in respect of the Loan, when such interest or payment shall become due and payable and the continuation of such default for a period of 10 days or more; or



(b) Default in the due and punctual payment of the principal of or premium, if any, on the Bonds or in a corresponding payment in respect of the Loan, or portion of either thereof, whether upon stated maturity of the Bonds, or upon mandatory or optional prepayment thereof, or upon the maturity thereof by acceleration; or

(c) Default shall be made by the Issuer in the performance or observance of any other of the covenants, agreements or conditions on its part in this Agreement or in the Bonds contained, and such Default shall continue for a period of 30 days after written notice thereof shall have been received by the Issuer and the Company from any Bondholder; or

(d) The Company fails to perform or observe any covenant required to be performed or observed pursuant to paragraph 6 of the Note Agreements; or

(e) The Company defaults in the performance or observance of any agreement, term or condition contained herein or in paragraph 5 of the Note Agreements and such default shall not have been remedied within 30 days after written notice thereof shall have been received by the Company from any Bondholder; or

(f) Any warranty, representation or other written statement made on behalf of the Company contained herein or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect on the date as of which made; or

(g) The Company or any Subsidiary defaults in any payment of principal of or interest on any other obligation for money borrowed (or any obligation under any conditional sale or other title retention agreement or any obligation issued or assumed as full or partial payment for property whether or not secured by purchase money mortgage or any obligation under notes payable or drafts accepted representing extensions of credit) beyond any period of grace provided with respect thereto or defaults in the performance of any other agreement, term or condition contained in any agreement under which any such obligation is created (or if any other default under any such agreement shall occur and be continuing) if the effect of such default is to cause, or to permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause, such

obligation to become due prior to its stated maturity; provided that no such default with respect to such obligation shall be a Default or an Event of Default at any time during which the Company or such Subsidiary shall be diligently contesting in good faith by appropriate proceedings its obligation to make any such payment to which such default relates, if the Company or such Subsidiary shall have set aside on its books adequate reserves (segregated to the extent required by sound accounting practice) with respect thereto; or

(h) A receiver, liquidator or trustee of the Company or any Subsidiary, or of any substantial part of the assets of either, is appointed by court order and such order remains in effect for more than 60 days; the Company or any Subsidiary is adjudicated bankrupt or insolvent; or any substantial part of the assets of either is sequestered by court order and such order remains in effect for more than 60 days; or a petition is filed against the Company or any Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 60 days of such filing; or

(i) The Company or any Subsidiary files a petition in voluntary bankruptcy or seeking relief under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect (other than in respect of the voluntary liquidation and dissolution of any Subsidiary), or consents to the filing of any petition against it under any such law; or

(j) The Company or a Subsidiary makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Company or a Subsidiary or of any substantial part of the assets of either.

12.2. Acceleration. If an Event of Default under Section 12.1 has occurred and is continuing, the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding may, by notice to the Issuer and the Company, declare the entire unpaid principal of, premium, if any, and interest on the Bonds due and payable and,

thereupon, the entire unpaid principal of, premium, if any, and interest on the Bonds shall forthwith become due and payable; provided that during the existence of an Event of Default described in Section 12.1(a) or 12.1(b) and irrespective of whether the holder or holders of at least 66-2/3% in principal amount of the Bonds then outstanding have declared all the Bonds to be due and payable pursuant to this Section 12.2, any holder of Bonds who or which has not consented to any waiver with respect to such Event of Default may, at his or its option, by notice in writing to the Issuer and the Company, declare the Bonds then held by such holder to be, and such Bonds shall thereupon become, forthwith due and payable together with all interest accrued thereon. The Issuer covenants that upon any such declaration it will forthwith pay to the Bondholders or Bondholder, as the case may be, the entire unpaid principal of, premium, if any, and accrued interest on the Bonds or the Bond, as the case may be, but only from the revenues and receipts herein specifically payable by the Company in respect of the Loan for such purpose. Upon any such declaration of acceleration a corresponding amount with respect to the Loan shall be immediately due and payable.

12.3. Other Remedies; Rights of Bondholders. If an Event of Default has occurred and is continuing, the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding may proceed to protect and enforce the rights of the holders of the Bonds as assignees of the rights of the Issuer under this Agreement as provided herein and may proceed to enforce their rights by mandamus or other suit, action or proceeding at law or in equity for specific performance of any agreement herein, including the right to bring suit for collection of the balance due on the Loan.

No remedy by the terms of this Agreement conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.



No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

12.4. Termination of Proceedings. In case the Bondholders shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Bondholders, then in every such case the Issuer, the Company and the Bondholders shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Bondholders shall continue as if no such proceedings had been taken.

12.5. Waivers of Events of Default. Subject to the proviso contained in paragraph (a) of Section 12.7 hereof, the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding may, in their discretion, waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds and the corresponding declaration with respect to the Loan. Prior to such waiver or rescission, the holders of all the Bonds outstanding shall be entitled to receive payment of all arrears of interest, with interest (to the extent permitted by law) at the rate of 7-1/2% per annum on any overdue installments of principal or premium in respect of which such Event of Default shall have occurred, and all reasonable expenses of the Bondholders in connection with such Event of Default.

12.6. Company May Act for Issuer. With regard to any alleged Default referred to in this Section 12, the Issuer hereby grants (to the extent permitted by law) the Company full authority for the account of the Issuer to perform any covenant, condition or agreement the nonperformance of which is alleged to constitute a Default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution.

12.7. Remedies of the Issuer.

(a) The right of the Issuer to declare amounts in respect of the Loan to be immediately due and payable pursuant to Section 12.2 hereof or to exercise any other remedy with respect to the Loan shall be exercisable only at such time and to such extent as comparable remedial

action shall have been taken pursuant to this Section 12 by a Bondholder or the Bondholders with respect to the Bonds and the exercise of any such right shall be subject to termination or waiver to the extent the Bondholders elect to terminate any proceedings or waive any Event of Default pursuant to Section 12.4 or 12.5 hereof; provided, however, that the exercise by any Bondholder of the right granted by the proviso of Section 12.2 hereof shall not be subject to termination or waiver other than by said Bondholder.

(b) Notwithstanding paragraph (a) of this Section 12.7, the Issuer may take any action at law or in equity to enforce the obligations of the Company pursuant to Sections 2.3, 8.6 and 8.7 of this Agreement.

#### SECTION 13. DEFINITIONS.

As used herein, the terms hereinafter set forth shall have the following meanings:

(a) "Act" shall mean Title 48, Chapter 3 of the Code of Laws of South Carolina, 1976, as amended.

(b) "Bond" or "Bonds" shall mean the Pollution Control Revenue Bonds (Mobay Chemical Corporation Project, Phase I) of the Issuer issued pursuant to this Agreement.

(c) "Company" shall mean Mobay Chemical Corporation, a New Jersey corporation, and its successors and assigns.

(d) "Company's Plant" shall mean the facilities owned by the Company and located in Berkeley County, South Carolina, as they may at any time exist.

(e) "Cost," when used with respect to the Project, or "Cost of the Project" shall mean the actual cost of the construction of any part of the Project which may be constructed, including architect's and engineers' fees; the purchase price of any land necessary therefor; the purchase price of any part of the Project that may be acquired by purchase; all expenses in connection with the authorization, sale and issuance of the Bonds; and the interest on the Bonds for a reasonable time prior to construction, during construction, and for not exceeding one year after completion of the construction.

(f) "Default" shall mean an event the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default under this Agreement.

(g) "Event of Default" shall mean any event specified as such in Section 12.1 of this Agreement which has continued for the period of time, if any, therein designated.

(h) "Holder" or "Bondholder", with respect to the Bonds, shall mean the registered owner thereof.

(i) "Issuer" shall mean Berkeley County, South Carolina.

(j) "Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, the filing of any financing statement under the Uniform Commercial Code of any state or other jurisdiction and the subordination of any claim or right owned by the Company or any Subsidiary to any claim or right owned by any other Person).

(k) "Person" shall mean an individual, corporation, partnership, trust, estate or unincorporated organization, and a government or agency or political subdivision thereof.

(l) "Project" shall mean Phase I of the pollution control facilities acquired, constructed and installed and to be acquired, constructed and installed at the Company's Plant which are described in Exhibit J hereto.

(m) "Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

(n) "Securities" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

(o) "Subsidiary" shall mean any corporation organized under the laws of any State of the United States of America, Canada, or any Province of Canada, which conducts the major portion of its business in the United States of America or Canada, and all of the outstanding voting stock



of every class of which, except directors' qualifying shares, shall, at the time as of which any determination is being made, be owned by the Company either directly or through Subsidiaries, and shall also include any DISC. "DISC" shall mean a Subsidiary which is a domestic international sales corporation as defined in §992(a)(1) of the United States Internal Revenue Code.

(p) "Voting Stock" shall mean Securities of any class or classes of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors, or Persons performing similar functions.

#### SECTION 14. AMENDMENT.

14.1. Amendment of this Agreement. The provisions of this Agreement shall constitute a contract by the Issuer, the Company and the holders of the Bonds. Amendments, changes and modifications (herein called "amendment" or "amendments") of this Agreement or of the rights and obligations of the Issuer, the Company or of the holders of the Bonds shall be made only as provided in this Section 14.

Notice of any proposed amendment shall be given to each Bondholder at its address as it appears on the registration books. Any such notice shall include a copy of the proposed amendment.

The written consent or approval of the Issuer and of the holders of not less than 75% in aggregate principal amount of the Bonds then outstanding shall be required to any proposed amendment of this Agreement; provided, however, that nothing in this Agreement shall permit, or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond, or (b) a reduction in the principal amount of, or premium, if any, on any Bond or the rate of interest thereon, or (c) an extension of time for, or a reduction in amount of, any prepayment required that may be applicable to any Bonds or any other change in the provisions of Section 7 hereof, or (d) any change in the covenant and agreement of the Company to pay to the Issuer amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due, or (e) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (f) a reduction in the aggregate principal

amount of Bonds required to consent to or approve such amendment, without the written consent of the holders of all of the Bonds then outstanding.

14.2. Effect of Amendment. If the requisite percentage of the Bondholders shall have consented to or approved any amendment of this Agreement as herein provided, no subsequent holder of the Bonds shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin the Issuer from taking any action pursuant to the provisions thereof. Upon the consent to or approval of any amendment of this Agreement by the Bondholders and the Issuer as in this Section 14 permitted and provided, this Agreement shall be and be deemed to be modified and amended in accordance therewith, provided, however, that any amendment to this Agreement which affects any rights or obligations of the Company shall not become effective until the Company shall have consented in writing thereto.

#### SECTION 15. DEFEASANCE.

If, when the Bonds shall have become due and payable in accordance with their terms or otherwise as provided in this Agreement or shall have been duly called for prepayment and provision shall be made for the payment in full of all Bonds outstanding (including interest accrued thereon and premium, if any, applicable thereto) and shall also be made for paying all other sums payable hereunder, then the Bondholders shall surrender the Bonds to the Bond Registrar, and the Issuer shall, at the expense of the Company, execute and deliver to the Company such instruments in writing as shall be requisite to evidence satisfaction in full of the Loan. Upon payment in full of all Bonds outstanding (including interest accrued thereon and premium, if any, applicable thereto) and satisfaction in full of the Loan and payment of all other sums payable hereunder, all the covenants and obligations of the Company hereunder, except as provided in Sections 7.5, 8.5(b) (insofar as it relates to the income, profits, receipts or proceeds derived by the Issuer from the Project or this Agreement), 8.6, 16.2 and 16.4, shall terminate and be of no further force and effect.

## SECTION 16. MISCELLANEOUS.

### 16.1. Notices.

(a) All communications under this Agreement or under the Bonds shall be in writing and shall be delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

(1) if to you, in the case of all communications (except for payments with respect to the Bonds), at 151 Farmington Avenue, Hartford, Connecticut 06156, Attention: Bond Investment Department or at such other address as you may have furnished the Issuer and the Company in writing;

(2) if to the Issuer, at \_\_\_\_\_, Attention: \_\_\_\_\_, or at such other address as the Issuer may have furnished in writing to you and the Company;

(3) if to the Company, at Penn Lincoln Parkway West, Pittsburgh, Pennsylvania 15205, Attention: Treasurer, or at such other address as the Company may have furnished in writing to you and the Issuer; and

(4) if to holders of the Bonds other than you, to their respective addresses as they shall appear on the registration books with respect to the Bonds.

(b) Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed.

16.2. Expenses. Whether or not the Bonds are sold, the Company will pay all expenses relating to this Agreement including but not limited to:

(a) the cost of preparing any Bonds required to be prepared under Section 1.2 hereof, reproducing this Agreement and other documents referred to herein;

(b) the reasonable fees and disbursements of Messrs. White & Case, as bond counsel and as your special counsel;



(c) your reasonable out-of-pocket expenses incurred in connection with the transactions contemplated hereby;

(d) the cost of delivering to your home office, insured to your satisfaction, the Bonds purchased by you at the closing; and

(e) all recording and filing fees and stamp taxes in connection with the recordation or filing of any financing statements and any of the documents referred to herein, and all expenses relating to any amendments, supplements, waivers or consents requested by the Company pursuant to the provisions hereof or pursuant to any of the documents referred to herein.

The obligations of the Company under this Section 16.2 shall survive the payment or prepayment of the Bonds and the termination of this Agreement.

16.3. Home Office Payment. The Issuer and the Company agree that, so long as you shall be the registered holder of the Bonds and notwithstanding anything to the contrary contained in the Bonds, or this Agreement, the Issuer and the Company shall, unless and until you shall request otherwise, pay or cause to be paid all sums (except the final payment), including principal, interest and premium, becoming due on the Bonds without surrender or presentation of any of the Bonds to the Issuer or the Company, by crediting, on the date due, before 12:00 noon, New York time, by federal funds bank wire transfer, your account No. 000-42-948 in

Morgan Guaranty Trust Company of New York  
23 Wall Street  
New York, New York 10015  
Attention: Money Transfer Department,

and providing sufficient information with such wire transfer to identify the source and application of such funds.

All required notices in respect of any payments on or in respect of the Bonds shall be sent to you at your address referred to in Section 16.1(a)(1) hereof but to the attention of: Treasury Services B.

Prior to any sale or other disposition by you of the Bonds you will make a notation on the Bonds of the amount of principal theretofore paid thereon.

If the Company shall enter into an agreement with any other Bondholder containing a home office payment provision, the Company shall promptly deliver a copy of such provision to the Issuer.

16.4. Issue Taxes. Except as may be otherwise provided in paragraph (d) of Section 10 hereof, the Company will pay all taxes imposed on you, the Company or the Issuer in connection with the issuance and sale of the Bonds to you and in connection with any modification of the Bonds which is made with the consent of the Company, and will save you harmless without limitation as to time against any and all liabilities with respect to all such taxes. The obligations of the Company under this Section 16.4 shall survive the payment or prepayment of the Bonds and the termination of this Agreement.

16.5. Survival. All warranties, representations and covenants made by the Issuer or the Company in any certificate or other instrument delivered by it or on its behalf in connection with the offering, issue or sale of the Bonds, whether or not referred to in this Agreement, shall be considered to have been relied upon by you and shall survive the delivery to you of the Bonds regardless of any investigation made by you or on your behalf.

16.6. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of all holders, from time to time, of the Bonds, and shall be enforceable by any such holder, whether or not an express assignment to such holder of rights under this Agreement has been made by you or your successor or assign.

16.7. Headings. The headings of the Sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

16.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

16.9. Reproduction of Documents. The Issuer, the Company and you hereby agree that this Agreement, the Ordinance and all documents relating thereto, including, without limitation, (a) supplements, consents, waivers and modifications which may hereafter be executed, (b) documents received by any holder at any closing of any purchase of Bonds (except the Bonds themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any holder, may be reproduced by any holder by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and any holder may destroy any original document so reproduced. To the extent permitted by law, the Issuer, the Company and you agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

16.10. Execution; Counterparts. The execution hereof by you shall constitute a contract between us for the uses and purposes hereinabove set forth, and this Agreement may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one Agreement.

Very truly yours,

BERKELEY COUNTY, SOUTH CAROLINA

By \_\_\_\_\_  
Title:

MOBAY CHEMICAL CORPORATION

By \_\_\_\_\_  
Title:

THE AETNA CASUALTY AND  
SURETY COMPANY

By \_\_\_\_\_  
Title:



## (FORM OF BOND)

No. \_\_\_\_\_

\$ \_\_\_\_\_

## BERKELEY COUNTY, SOUTH CAROLINA

Pollution Control Revenue Bond  
(Mobay Chemical Corporation Project, Phase I)

Berkeley County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), for value received, hereby promises to pay, solely from the source as hereinafter provided, to \_\_\_\_\_, or registered assigns or its legal representative, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) on June 15, 2003 with interest on the unpaid principal amount hereof from the date hereof until maturity at the rate of six and one-half percent (6-1/2%) per annum (computed on the basis of a 360-day year of 12 consecutive 30-day months), such interest to be payable semi-annually June 15 and December 15 in each year, commencing December 15, 1978, and at maturity, and to pay interest on overdue premium, if any, and principal (to the extent legally enforceable) at the rate of seven and one-half percent (7-1/2%) per annum. The principal hereof shall be payable to the registered owner hereof on the maturity date hereof, except to the extent prepayment of principal has been made prior to such date. All sums (except the final payment), including principal, interest and premium on this Bond shall be payable by check or draft mailed to the registered owner hereof at its address as it appears in the registration books of the County or if a home office payment provision (as provided in the hereinafter described Bond Purchase and Loan Agreement) shall then be in effect, as provided in such home office payment provision. Final payment of principal on this Bond shall be made upon presentation of the Bond. Both principal and interest are payable in lawful money of the United States of America.

THE PRINCIPAL OF, AND THE INTEREST AND PREMIUM, IF ANY, ON THIS BOND, SHALL BE PAYABLE SOLELY OUT OF THE REVENUES TO BE DERIVED BY THE COUNTY FROM THE HEREINAFTER DESCRIBED BOND PURCHASE AND LOAN AGREEMENT. THIS BOND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN

THE MEANING OF ANY CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION OF THE STATE OF SOUTH CAROLINA AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY, OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

This Bond is one of the \$ \_\_\_\_\_ Berkeley County, South Carolina, Pollution Control Revenue Bonds (Mobay Chemical Corporation Project, Phase I), authorized and issued under Title 48, Chapter 3 of the Code of Laws of South Carolina, 1976, as amended for the purpose of financing the costs of the acquisition of certain pollution control facilities (the "Project") for the plant of Mobay Chemical Corporation, a New Jersey corporation (the "Company") located in Berkeley County, South Carolina. The Bonds are issued pursuant to an Ordinance (the "Ordinance"), duly adopted by the County Council of the County on \_\_\_\_\_, 1978, and under the terms of a Bond Purchase and Loan Agreement, dated as of June 15, 1978 (the "Purchase and Loan Agreement") among the County, the Company and The Aetna Casualty and Surety Company ("Aetna") which provides for the loan of the proceeds from the sale of the Bonds by the County to the Company (the "Loan") and pursuant to which the Company covenants to make payments of amounts sufficient to pay the principal of, and the interest and premium, if any, on the Bonds. Pursuant to the Purchase and Loan Agreement, the County has assigned to Aetna its rights to the amounts payable by the Company on account of the Loan under the Purchase and Loan Agreement, as security for the payment of the Bonds. Reference is hereby made to the Ordinance, the Purchase and Loan Agreement and to all amendments and supplements thereto for a description of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the County, the Company and the holders of the Bonds and the terms upon which the Bonds are issued and secured.

The Bonds may not be prepaid by the County except as provided herein:

- (a) Upon mandatory prepayment pursuant to Section 7.2 of the Purchase and Loan Agreement.

(b) At the option of the Issuer exercised at the direction of the Company, in whole at any time, or in part from time to time after June 15, 1988 in multiples of \$10,000, upon payment of the principal amount of Bonds to be prepaid, interest accrued to the prepayment date and a prepayment premium, upon the terms and conditions set forth in Section 7.3 of the Purchase and Loan Agreement.

(c) In whole, upon mandatory prepayment upon the happening of certain events affecting the exemption from Federal income taxation of interest on the Bonds in the manner, to the extent, and at prepayment prices set forth in paragraph (d) of Section 7.5 of the Purchase and Loan Agreement, or in the event the Company shall elect to cause the Bonds to be prepaid in whole in the manner, to the extent and at the prepayment prices set forth in paragraph (h) of Section 7.5 of the Purchase and Loan Agreement.

If the Bonds or portions of principal thereof are called for prepayment, the Company shall cause a notice thereof identifying the Bonds or portions of principal thereof to be prepaid to be sent in the name of the County by first class mail, postage prepaid, to the registered owner of each Bond to be prepaid at its address as it appears on the registration books not less than 30 nor more than 60 days prior to the prepayment date. Provided funds for their prepayment are delivered to the Bondholders at their respective addresses so appearing, the Bonds or portions of principal thereof so called for prepayment shall cease to bear interest on the prepayment date. Prior to any sale or transfer of this Bond the holder shall note on the Table of Prepayments attached to the Bond the date and amount of payment or any prepayment of principal theretofore paid and not yet noted thereon. Upon request of the Company or the County, this Bond shall be available for inspection during regular business hours by the Company or the County at the principal business offices of the holder hereof or such other place as such holder shall have designated in writing to the County and the Company.

This Bond is transferable on the registration book kept by the Company only upon presentation for such transfer



with a written instrument of transfer in form satisfactory to the Company and duly executed by the Bondholder or its authorized representative, and no transfer hereof shall be effectual unless shown in such book and noted hereon with a record of payments. The County and the Company may treat the person in whose name this Bond is registered as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

The Bond Registrar shall not be required to make a transfer of this Bond during the fifteen days immediately preceding any date for the payment of interest or the payment or prepayment of principal.

All acts, conditions and things required to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed.

IN WITNESS WHEREOF, Berkeley County, South Carolina, has caused this Bond to be executed with the manual signature of the Chairman of its County Council, its seal to be affixed hereto and attested by the Clerk of its County Council, and this Bond to be dated \_\_\_\_\_.

BERKELEY COUNTY, SOUTH  
CAROLINA

(SEAL)

ATTEST:

By \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Clerk

Certification of Registration

<u>Name of Registered Holder Subsequent to The Aetna Casualty and Surety Company</u>	<u>Date of Regis- tration of Transfer</u>	<u>Date to Which Interest Paid</u>	<u>Signature of Company Officer</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

## TABLE OF PREPAYMENTS

Prior to any transfer of this Bond all partial prepayments of principal of the within Bond shall be appropriately endorsed by the holder hereof on the table below.

<u>Date</u>	<u>Amount Paid or Prepaid</u>	<u>Remaining Unpaid Balance</u>	<u>Signature</u>
-------------	-----------------------------------	-------------------------------------	------------------

## EXHIBIT B

I. THE COMPANY'S SUBSIDIARIES, EACH OF WHICH HAS  
ONLY A SINGLE CLASS OF STOCK OUTSTANDING ARE AS FOLLOWS:

<u>Name of Subsidiary</u>	<u>Jurisdiction of Incorporation</u>	<u>Percentage of Voting Stock Owned by Company</u>
Chemagro Limited	Canada	93-1/3%
Mobay Export Corporation	New Jersey	100%
Mobay Chemical Company (Canada) Ltd.	Canada	100%



provisions of (a) the Certificate of Incorporation or By-Laws of the Company, (b) any applicable law, statute, ordinance, rule or regulation of the United States of America or the State of New York, (c) insofar as is known to such counsel after having made due inquiry with respect thereto, any agreement or other instrument to which the Company is a party or by which it is bound, or of any license, judgment, decree or order applicable to the Company, or (d) insofar as is known to such counsel, without having made any independent investigation with respect thereto, any applicable law, statute, ordinance, rule or regulation of a jurisdiction other than the United States of America or the State of New York;

(4) all consents, approvals or authorizations, if any, of any governmental authority of the United States of America or the State of New York required on the part of the Company in connection with the execution and delivery of the Bond Purchase and Loan Agreement have been duly obtained, and the Company has complied with any applicable provisions of law of the United States of America or the State of New York requiring any designation, declaration, filing, registration and/or qualification with any governmental authority of the United States of America or the State of New York in connection with such execution and delivery;

(5) by virtue of Section 3(a)(2) of the Securities Act of 1933, as amended, the offer, issuance, sale and delivery of the Bonds do not, and, under present law and assuming the continuing exemption from Federal income taxation of interest on the Bonds, any resale of the Bonds would not, require registration of the Bonds or the obligation of the Company under the Bond Purchase and Loan Agreement under such Act or qualification of an indenture under the Trust Indenture Act of 1939, as amended; and

(6) none of the transactions contemplated by the Bond Purchase and Loan Agreement or the sale or issue of the Bonds (including,

EXHIBIT D  
to  
Bond Purchase and  
Loan Agreement

DESCRIPTION OF CLOSING OPINION  
OF NEW YORK COUNSEL FOR THE COMPANY

The closing opinion of Messrs. Cravath, Swaine & Moore, New York counsel for the Company, which is called for by Section 6.1 of the Bond Purchase and Loan Agreement, shall be dated the Closing Date and addressed to Aetna, shall be satisfactory in form and substance to Aetna and its special counsel, and shall be to the effect that:

(1) the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey and has all requisite corporate power and authority to carry on its business as now being conducted by it and own the Property now owned by it;

(2) the Bond Purchase and Loan Agreement has been duly authorized by all necessary corporate action on the part of the Company (no action by the stockholders of the Company being required by law, by the Certificate of Incorporation or By-Laws of the Company or, insofar as is known to such counsel after having made due inquiry with respect thereto, otherwise); the Bond Purchase and Loan Agreement has been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by Aetna and the Issuer, is the legal, valid, binding and enforceable obligation of the Company, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally;

(3) the execution and delivery of the Bond Purchase and Loan Agreement by the Company and compliance by the Company with the provisions thereof are legal and will not conflict with, nor result in any violation or breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of any Lien or encumbrance upon any of the Properties of the Company pursuant to the

without limitation, the use of the proceeds from the sale of the Bonds) will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations G, T or X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II.

Such opinion shall also cover such other matters incident to the transactions contemplated hereby as Aetna or its special counsel may reasonably request. In giving such opinion, Messrs. Cravath, Swaine & Moore may rely, as to matters involving the law of the State of South Carolina, upon the opinion of Messrs. Sinkler Gibbs & Simons, P.A. and, as to the exemption from Federal income taxation of interest on the Bonds, on the opinion of bond counsel.



EXHIBIT D-1  
to  
Bond Purchase and  
Loan Agreement

DESCRIPTION OF CLOSING OPINION  
OF SOUTH CAROLINA COUNSEL FOR THE COMPANY

The closing opinion of Messrs. Sinkler Gibbs & Simons, P.A., South Carolina counsel for the Company, which is called for by Section 6.1 of the Bond Purchase and Loan Agreement, shall be dated the Closing Date and addressed to Aetna, shall be satisfactory in form and substance to Aetna and its special counsel, and shall [cover the matters referred to in paragraphs 1, 2 and 3 of Exhibit E] and shall be to the further effect that:

(1) the Bond Purchase and Loan Agreement has been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by Aetna and the Issuer, is the legal, valid, binding and enforceable obligation of the Company, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally;

(2) the execution and delivery of the Bond Purchase and Loan Agreement by the Company and compliance by the Company with the provisions thereof are legal and will not conflict with, nor result in any violation or breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of any Lien or encumbrance upon any of the Properties of the Company pursuant to any license, judgment, decree, order, law, statute, ordinance or governmental rule or regulation of the State of South Carolina applicable to the Company;

(3) all consents, approvals or authorizations, if any, of any governmental authority of the State of South Carolina required on the part of the Company in connection with the execution and delivery of the Bond Purchase and Loan Agreement have been duly obtained, and the Company has complied with any applicable provisions of law of the State of South Carolina requiring any designation, declaration, filing,

registration and/or qualification with any governmental authority of the State of South Carolina in connection with such execution and delivery;

(4) Uniform Commercial Code financing statements have been duly filed with respect to the Issuer's rights assigned pursuant to the Bond Purchase and Loan Agreement, in the following offices in the State of South Carolina:

being all filings appropriate or required by the law of the State of South Carolina in order fully to perfect, preserve and protect the Lien of the Bond Purchase and Loan Agreement with respect to such rights, and all taxes and filing fees required to be paid by the law of the State of South Carolina in respect of such financing statements have been paid, and no re-filing is required by the law of the State of South Carolina to preserve and protect the Lien of the Bond Purchase and Loan Agreement, except for Uniform Commercial Code continuation statements which are not presently required to be filed; and

(5) the Bonds and the income therefrom will be exempted from taxation in the State of South Carolina.

Such opinion shall also cover such other matters incident to the transactions contemplated hereby as Aetna or its special counsel may reasonably request.

EXHIBIT D-2  
to  
Bond Purchase and  
Loan Agreement

DESCRIPTION OF CLOSING OPINION  
OF THE COMPANY'S GENERAL COUNSEL

The closing opinion of Ray W. Brown, Esq., General Counsel of the Company, which is called for by Section 6.1 of the Bond Purchase and Loan Agreement, shall be dated the Closing Date and addressed to Aetna, shall be satisfactory in form and substance to Aetna and its special counsel, and shall be to the effect that:

(1) the Company is duly authorized to conduct its business as now being conducted by it and has duly qualified and is in good standing as a foreign corporation in each jurisdiction (including the State of South Carolina) where the character of its Properties or the nature of its activities makes such qualification necessary;

(2) there are no proceedings pending, or to the knowledge of such counsel threatened, against or, to the knowledge of such counsel, affecting the Company or any of its Subsidiaries in any court or before any governmental authority or arbitration board or tribunal, which might materially adversely affect the transactions contemplated by the Bond Purchase and Loan Agreement or the validity or enforceability of the Bonds, the Bond Purchase and Loan Agreement or any agreement or instrument to which the Company is a party used or contemplated for use in the consummation of the transactions contemplated by the Bond Purchase and Loan Agreement, or which might result in a change in the treatment for Federal and South Carolina income tax purposes of interest on the Bonds and the revenues derived from the Bond Purchase and Loan Agreement; there are no proceedings pending, or to the knowledge of such counsel threatened, against or affecting the Company or any of its Subsidiaries in any court or before any governmental authority or arbitration board or tribunal which might materially adversely affect the financial condition of the Company and its Subsidiaries, taken as a whole;



(3) the Bond Purchase and Loan Agreement has been duly authorized by all necessary corporate action on the part of the Company (no action by the stockholders of the Company being required by law, by the Certificate of Incorporation or By-laws of the Company or otherwise); and

(4) the execution and delivery by the Company of the Bond Purchase and Loan Agreement and compliance by the Company with the provisions thereof are legal and will not conflict with, nor result in any violation or breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of any Lien or encumbrance upon any of the Properties of the Company pursuant to the provisions of (a) the Certificate of Incorporation or By-laws of the Company, or (b) insofar as is known to such counsel after having made due inquiry with respect thereto, any agreement or other instrument to which the Company is a party or by which it is bound, or of any license, judgment, decree or order applicable to the Company.

EXHIBIT E  
to  
Bond Purchase and  
Loan Agreement

DESCRIPTION OF CLOSING OPINION  
OF COUNSEL TO THE ISSUER

The closing opinion of R. Markely Dennis, Esq., counsel for the Issuer, which is called for by Section 6.1 of the Bond Purchase and Loan Agreement, shall be dated the Closing Date and addressed to Aetna, shall be satisfactory in form and substance to Aetna, and shall be to the effect that:

(1) the Issuer is a body corporate and politic and a political subdivision of the State of South Carolina, and has all requisite power and authority under the Act (i) to issue and sell the Bonds, (ii) to use the proceeds thereof to finance the Costs of the Project and (iii) to enter into the Bond Purchase and Loan Agreement;

(2) the Bond Purchase and Loan Agreement has been duly authorized by all necessary action on the part of the Issuer, has been duly executed and delivered by the Issuer, and (assuming due authorization, execution and delivery by the other parties thereto), constitutes the legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally;

(3) the Bonds have been duly authorized, executed, issued and delivered in accordance with the Act and constitute valid and binding special obligations of the Issuer, payable as to principal, premium, if any, and interest solely from the revenues and receipts derived under the Bond Purchase and Loan Agreement, including the amounts payable on account of the Loan, and are entitled to the benefits and security of the Bond Purchase and Loan Agreement and the Act;

(4) the sale of the Bonds and the execution and delivery of the Bond Purchase and Loan Agreement, and compliance by the Issuer with the provisions of each thereof are legal and will not conflict with, nor result in any violation or breach of any of the provisions of, or constitute a default under, or result in the creation of any Lien or encumbrance (other than Liens or encumbrances created by the provisions of the Bond Purchase and Loan Agreement) upon any Property of the Issuer under the provisions of, any instrument or agreement to which the Issuer is a party or by which it is bound, or of any judgment, decree, order, law, statute, ordinance or governmental rule or regulation applicable to the Issuer;

(5) all of the Issuer's right, title and interest in and to the payments to be made by the Company in satisfaction of the Loan and all of the Issuer's rights as against the Company under the Agreement (other than its rights pursuant to Sections 2.3, 8.6 and 8.7 thereof), have been duly and validly assigned and pledged under the Bond Purchase and Loan Agreement, and the Bond Purchase and Loan Agreement creates, as security for the Bonds, a valid first security interest in all right, title and interest of the Issuer in and to the payments to be made by the Company in satisfaction of the Loan and all of the Issuer's rights as against the Company under the Bond Purchase and Loan Agreement (other than its rights pursuant to Sections 2.3, 8.6 and 8.7 thereof), including, without limitation, all payments, revenues and receipts now or in the future receivable by the Issuer thereunder (other than pursuant to Sections 2.3, 8.6 and 8.7 thereof);

(6) there are no proceedings pending, or to the knowledge of such counsel threatened, against or affecting the Issuer in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility



of materially adversely affecting the transactions contemplated by the Bond Purchase and Loan Agreement or the validity or enforceability of the Bonds, the Bond Purchase and Loan Agreement or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated by the Bond Purchase and Loan Agreement, or the exemption from federal income taxation or from taxation in the State of South Carolina of the income from the Bonds; and

(7) all consents, judgments, approvals or authorizations and orders of, or filing, registration, or qualification with, any governmental or regulatory authority required on the part of the Issuer in connection with the execution and delivery of the Bond Purchase and Loan Agreement or the offer, issue, sale or delivery of the Bonds have been performed or obtained, and are in full force and effect and all conditions precedent to the delivery of the Bonds have been fulfilled.

Such opinion shall also cover such other matters incident to the transactions contemplated hereby as Aetna or its special counsel may reasonably request.

EXHIBIT F  
to  
Bond Purchase and  
Loan Agreement

DESCRIPTION OF CLOSING OPINION  
OF PURCHASER'S SPECIAL COUNSEL

The closing opinion of Messrs. White & Case, special counsel for Aetna, which is called for by Section 6.1 of the Bond Purchase and Loan Agreement, shall be dated the Closing Date and addressed to Aetna, shall be satisfactory in form and substance to Aetna, shall cover the matters referred to in paragraphs 1, 2, 3 (as to Certificate of Incorporation and By-Laws only), 4 and 5 of Exhibit D and shall be to the effect that the Bonds constitute exempted securities under the securities laws of the States of New York and South Carolina which do not require registration of the Bonds thereunder.

Such opinion may state that counsel is not passing upon any filing or recording requirements with respect to the Bond Purchase and Loan Agreement.

Such opinion shall also state that, based on due investigation and inquiry, the closing opinion of counsel for the Company delivered pursuant to Section 6.1 of the Bond Purchase and Loan Agreement is satisfactory in scope and form to special counsel and that in their opinion Aetna is justified in relying thereon, and shall cover such other matters relating to the sale of the Bonds as Aetna may reasonably request.

EXHIBIT G  
to  
Bond Purchase and  
Loan Agreement

DESCRIPTION OF CLOSING OPINION  
OF BOND COUNSEL

The closing opinion of Messrs. White & Case, bond counsel, which is called for by Section 6.1 of the Bond Purchase and Loan Agreement, shall be dated the Closing Date and addressed to Aetna, to the Company and to the Issuer and shall cover the matters referred to in paragraphs 1, 2 and 3 of Exhibit E and shall be to the further effect that:

Under statutes, regulations and rulings and court decisions existing on the date of such opinion, interest on the Bonds is exempt from all present Federal income taxes, except that Section 103(b)(7) of the Internal Revenue Code of 1954, as amended (the "Code"), provides that interest on any Bond shall not be exempt for any period during which it is held by a person who is a "substantial user" of the Project or a "related person" within the meaning of such section, and no opinion is expressed with respect to the taxability of interest on a Bond under such circumstances.

Messrs. White & Case may state that they have relied with respect to information concerning the Project solely upon information furnished by the Company, particularly upon a letter dated May \_\_, 1978 and the representations and covenants of the Company contained in the Bond Purchase and Loan Agreement with respect to certain facts which are solely within the Company's knowledge, and which form a basis for the conclusion that the Project is a pollution control facility within the meaning of the Code.

Such opinion may state that counsel is not passing upon any filing or recording requirements with respect to the Bond Purchase and Loan Agreement.



## FORM OF LEGALITY CERTIFICATE

Section 81(2)(b), New York Insurance Law

(000's omitted)

Indicate basis used:

☒ Consolidated  
☐ Company only

Fiscal Years Ended  
 19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_

(Month and Day)  
 Total

1. Net Income Available for Dividends..
2. Add: Fed. and State Income Taxes  
 of Parent (and of 90% or more  
 owned subsidiaries if computed  
 on consolidated (basis).....  
 Extraordinary Non-Recurring  
 Items of Expense(a).....
3. Sub-Total (1 plus 2).....
4. Deduct: Extraordinary Non-  
 Recurring Items of Income(a).....
5. Adjusted Net Income (3 minus 4).....  
 Add Fixed Charges:  
 Interest on Funded and Unfunded  
 Debt.....  
 Amortization of Debt Discount.....  
 Rental for Leased Properties(b)...  
 Pfd. Dividends of Subsidiaries  
 Payable to Others(c).....
6. Total Fixed Charges.....
7. Net Earnings Avail. for Fixed  
 Charges (5 plus 6).....
8. Fixed Charges Times Earned (7  
 divided by 6).....

(a) Include only those appearing in regular financial statements; state of nature of items and amounts.

(b) Include all payments (whether or not stated to be "rentals") required to be made by lessee, such as taxes, insurance, premiums, etc.

(c) Not applicable to Company only basis.

## INFORMATION CERTIFICATE

## PART I -- GENERAL INFORMATION

1. Name of security issuer:
2. Issuer's principal type of business:
3. Date prepared:
4. This certificate was prepared by:

Name and Title

Signature

## PART II -- FINANCIAL INFORMATION†

1. Issuer ☐ is ☐ is not current as to all principal and interest payments on its outstanding debt. If not, or there is knowledge of an imminent default of any of such debt service payments, an explanatory statement accompanies this certificate.
2. Fixed Charges (5 most recent fiscal years).

	A	B	C†	D	E
	Fiscal Year Ending	Net Earnings* Available for Fixed Charges	Fixed Charges	Column B Divided by Column C	Contingent Interest
a.	_____	\$ _____	\$ _____	_____	\$ _____
b.	_____	_____	_____	X	_____
c.	_____	_____	_____	X	_____
d.	_____	_____	_____	X	_____
e.	_____	_____	_____	X	_____
F. Total a-e	_____	_____	\$ _____	X	_____

\* Net income before Federal, State and local income taxes, fixed charges and extraordinary non-recurring items of income or expenses.

† Include actual interest incurred on funded and unfunded debt. Contingent interest should be excluded from Column C, but included in Column E. In the case of banks, omit interest on deposits.

3. Working Capital (excess of current assets over current liabilities).

A	B	C	D
Most Recent Fiscal Year	Working* Capital	Long* Term Debt	Ratio of Column B to Column C
_____	\$ _____	\$ _____	_____

Date:

\* In the case of finance companies insert liquid assets (as defined in the National Association of Insurance Commissioners Valuation Procedures and Instructions for Bonds and Stocks) in Column B, and total liabilities in Column C.

4. Capitalization.

	A		B*	
	As of Close of Latest Fiscal Year (Insert Date)	% of Total	Pro-Forma as of	% of
Secured Debt.....	\$		\$	
Unsecured Debt.....				
Senior Subordinated Debt.....				
Junior Subordinated Debt (including Capital Notes).....				
Total Debt.....	\$		\$	
Preferred Stock (net outstanding).....	\$		\$	
Common Stock (net outstanding).....	\$		\$	
Earned and Capital Surplus.....	\$		\$	
Total Capitalization.....	\$	100%	\$	100%

\* Pro-Forma to reflect issuance or retirement of securities subsequent to date entered in Column A. If entries are made in Column B please supply the following information:  
 Pro-Forma Fixed Charges..... \$ \_\_\_\_\_

5. Adjusted Earnings.

	Five Most Recent Fiscal Years				
	Ending	Ending	Ending	Ending	Ending
Adjusted Earnings (Net income before depreciation, depletion and extraordinary non-recurring items of income or expense).....	\$	\$	\$	\$	\$
Current maturities of long term debt, per balance sheet.....	\$	\$	\$	\$	\$

6. Lease Payments.

Lease payments for last fiscal year..... \$  
 for fiscal year ending

† All information to be based upon the most recent audited financial statements.



# Mobay



**Mobay**  
Chemical Corporation

Penn Lincoln Parkway West  
Pittsburgh, PA 15205  
Telephone: 412/923-2700

Letter #78-645

May 18, 1978

Mr. William A. McInnis  
P. O. Box 11333  
Columbia, South Carolina 29211

RE: Berkeley County, South Carolina, Pollution  
Control Revenue Bonds, (Mobay Chemical  
Corporation Project)

Dear Mr. McInnis:

At the request of Mr. Thomas Hutcheson of Sinkler Gibbs & Simons, please find enclosed herewith the Consolidated Financial Statements for the years ended December 31, 1977 and 1976 and Auditor's Opinion of Mobay Chemical Corporation and subsidiaries.

As you may be aware, Mobay is an indirectly wholly-owned subsidiary of Bayer A.G. Leverkusen, West Germany. For that reason, our financial information is not made available publicly. In view of this, I'm sure that you will make every effort possible to protect the confidentiality of these statements within the existing legal limitations.

Thank you very much for your assistance.

Very truly yours,

MOBAY CHEMICAL CORPORATION

W. Michael Weaber  
Manager - Treasury Operations

WMW:ha

Enclosure

cc: T. A. Hutcheson, Esq.  
J. A. Mullins, Esq.  
S. J. Schecter, Esq.

MOBAY CHEMICAL CORPORATION AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS FOR THE  
YEARS ENDED DECEMBER 31, 1977 AND 1976  
AND  
AUDITORS' OPINION

\*\*\*\*\*

HASKINS & SELLS

**HASKINS & SELLS**

CERTIFIED PUBLIC ACCOUNTANTS

TWO GATEWAY CENTER  
PITTSBURGH, PENNSYLVANIA 15222

AUDITORS' OPINION

The Stockholder and Board of  
Directors of Mobay Chemical Corporation:

We have examined the consolidated balance sheets of Mobay Chemical Corporation and subsidiaries as of December 31, 1977 and 1976 and the related statements of income and retained earnings and of changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, such financial statements present fairly the financial position of Mobay Chemical Corporation and subsidiaries at December 31, 1977 and 1976 and the results of their operations and the changes in their financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

*Haskins & Sells*

February 17, 1978



MOBAY CHEMICAL CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS, DECEMBER 31, 1977 AND 1976  
(IN THOUSANDS OF DOLLARS)

-- A S S E T S --	1977	1976	L I A B I L I T I E S   A N D -- S T O C K H O L D E R ' S   E Q U I T Y --	1977	1976
CURRENT ASSETS:			CURRENT LIABILITIES:		
Cash.....	\$ 2,042	\$ 1,260	Notes payable - banks (Note 5).....	\$ 9,148	\$ 23,200
Receivables:			Trade acceptances payable - banks		
Trade (less allowance for doubtful			(Note 5).....	36,540	17,610
accounts: 1977, \$2,838;			Current portion of long-term debt.....	14,054	7,652
1976, \$2,701).....	96,270	84,397	Accounts payable:		
Affiliates.....	16,037	12,585	Trade.....	21,940	16,237
Other.....	3,066	2,587	Affiliates.....	10,572	4,708
Inventories (Notes 1 and 4).....	170,935	155,363	Income taxes.....	2,943	1,903
Other.....	4,050	4,153	Other.....	16,752	18,203
Total current assets.....	292,400	260,345	Total current liabilities.....	111,949	89,513
PROPERTY, PLANT, AND EQUIPMENT (Note 1):			LONG-TERM DEBT (Notes 1 and 6).....	294,513	308,203
Land.....	11,509	9,826	DEFERRED INCOME TAXES (Note 1).....	23,435	20,791
Buildings and leasehold improvements.....	83,785	84,030	STOCKHOLDER'S EQUITY (Notes 1, 6 and 7):		
Machinery and equipment.....	446,354	429,432	Common stock, \$10 par value - authorized,		
Construction in progress.....	26,820	9,983	1,500,000 shares; outstanding,		
Total.....	568,468	533,271	1,197,253 shares.....	11,973	11,973
Less accumulated depreciation.....	185,982	152,213	Additional paid-in capital.....	133,032	133,032
Property, plant, and equipment -			Retained earnings.....	106,770	84,658
net.....	382,486	381,058	Total stockholder's equity.....	251,775	229,663
OTHER ASSETS:					
Excess cost of businesses acquired					
(Note 1).....	6,170	6,561			
Other.....	616	206			
Total other assets.....	6,786	6,767			
TOTAL.....	\$681,672	\$648,170	TOTAL.....	\$681,672	\$648,170

See Notes to Financial Statements.

MOBAY CHEMICAL CORPORATION AND SUBSIDIARIES

STATEMENTS OF CONSOLIDATED INCOME AND RETAINED EARNINGS  
FOR THE YEARS ENDED DECEMBER 31, 1977 AND 1976  
(IN THOUSANDS OF DOLLARS)

	1977	1976
GROSS SALES.....	\$659,225	\$575,923
LESS - Freight, discounts, and allowances....	37,138	31,060
NET SALES.....	622,087	544,863
COST OF GOODS SOLD.....	475,741	421,427
GROSS PROFIT.....	146,346	123,436
OPERATING EXPENSES:		
Selling, administrative, and engineering...	65,330	58,686
Research.....	19,412	15,702
Total.....	84,742	74,388
INCOME FROM OPERATIONS.....	61,604	49,048
OTHER EXPENSE - Net:		
Interest.....	26,910	26,875
Other.....	1,142	116
INCOME BEFORE INCOME TAXES.....	33,552	22,057
PROVISION FOR INCOME TAXES (Notes 1 and 9)...	10,422	1,971
NET INCOME.....	23,130	20,086
RETAINED EARNINGS, JANUARY 1.....	84,658	64,572
CASH DIVIDENDS (\$.85 per share).....	(1,018)	
RETAINED EARNINGS, DECEMBER 31 (Note 6).....	<u>\$106,770</u>	<u>\$ 84,658</u>

See Notes to Financial Statements.

MOBAY CHEMICAL CORPORATION AND SUBSIDIARIES

STATEMENTS OF CHANGES IN CONSOLIDATED FINANCIAL POSITION  
FOR THE YEARS ENDED DECEMBER 31, 1977 AND 1976  
(IN THOUSANDS OF DOLLARS)

	1977	1976
FUNDS PROVIDED:		
Operations:		
Net income.....	\$ 23,130	\$ 20,086
Charges (credit) not affecting working capital:		
Depreciation.....	35,695	28,511
Deferred income taxes.....	2,644	(2,221)
Other.....	603	325
Total provided from operations.....	62,072	46,701
Issuance of long-term debt.....	246	81,290
Capital contributions (Note 7).....		20,000
Disposition of property, plant, and equipment.....	1,014	611
Total.....	63,332	148,602
FUNDS APPLIED:		
Additions to property, plant, and equipment.....	38,137	31,238
Reductions of long-term debt.....	14,148	7,652
Cash dividends.....	1,018	
Other - net.....	410	(181)
Total.....	53,713	38,709
INCREASE IN WORKING CAPITAL.....	9,619	109,893
WORKING CAPITAL, JANUARY 1.....	170,832	60,939
WORKING CAPITAL, DECEMBER 31.....	\$180,451	\$170,832
CHANGES IN ELEMENTS OF WORKING CAPITAL:		
Increases (Decreases) in current assets:		
Cash.....	\$ 782	\$ (3,195)
Receivables.....	15,804	28,569
Inventories.....	15,572	24,230
Other.....	(103)	3,218
Total.....	32,055	52,822
Decreases (Increases) in current liabilities:		
Notes and trade acceptances payable.....	(4,878)	62,780
Current portion of long-term debt.....	(6,402)	(4,336)
Accounts payable.....	(11,567)	3,772
Income taxes.....	(1,040)	(908)
Other.....	1,451	(4,237)
Total.....	(22,436)	57,071
INCREASE IN WORKING CAPITAL.....	\$ 9,619	\$109,893

See Notes to Financial Statements.



## MOBAY CHEMICAL CORPORATION AND SUBSIDIARIES

### NOTES TO FINANCIAL STATEMENTS

#### 1. SUMMARY OF ACCOUNTING POLICIES

##### Consolidation

The Company's consolidated financial statements include the accounts of all subsidiaries, all of which are wholly owned. The Company is a wholly owned subsidiary of Rhinechem Corporation (Rhinechem). Rhinechem is a wholly owned subsidiary of Bayer International Finance N.V. (wholly owned by Bayer AG).

##### Inventory Valuation

Inventories are stated at the lower of cost or market. Cost is determined on the average cost method or standard cost method (which approximates the average cost method).

##### Property, Plant, and Equipment and Depreciation

Property, plant, and equipment are carried at cost and depreciation is provided using the straight-line method over the estimated useful lives of the properties. Maintenance and repairs are expensed; major renewals and betterments are capitalized. Gains or losses on the disposition of property are taken into income.

##### Excess Cost of Businesses Acquired

Such cost principally relates to businesses acquired prior to November 1, 1970 and is not being amortized because in the opinion of management there has been no loss in value of such intangibles.

##### Amortization of Debt Discounts

The balance of the unamortized debt discount on the notes payable to insurance companies (see Note 6) is being amortized as additional interest expense over the appropriate periods related to the terms of the respective notes.

##### Pension Plans

The Company's non-contributory salary and hourly pension plans cover most employees not covered by union plans. Pension expense includes amortization of prior service costs over 30 years. Pension expense is funded as accrued.

### Income Taxes

The Company is included in the consolidated U.S. income tax return of Rhinechem. Current and deferred U.S. income taxes are allocated to the Company on the basis of a separate return computation.

Investment tax credits are generally recorded as reductions in income tax expense during the year the related property is put into service.

No U.S. income taxes are provided on that portion of the earnings of the Company's Domestic International Sales Corporation (DISC) which are not currently taxable, since the DISC qualification is expected to be maintained.

Deferred income taxes arise from timing differences in recording income and expense items for financial reporting and income tax purposes, primarily from the use of accelerated depreciation methods for income tax purposes.

### 2. BUSINESS SEGMENT

Effective in 1977, the Financial Accounting Standards Board Statement No. 14, Financial Reporting for Segments of a Business Enterprise, established standards of reporting financial information about the Company's operations within a single industry, and its foreign operations and export sales.

The Company operates in the chemical industry, with operations involving the manufacture, purchase and marketing of chemicals for industrial and agricultural uses.

The geographic areas of operations are as follows (in thousands):

	Assets December 31, 1977	Net Sales	Income From Operations
United States.....	\$678,913	\$616,866	\$61,700
Foreign.....	4,200	7,219	70
Eliminations.....	( 1,441)	( 1,998)	( 166)
Total.....	\$681,672	\$622,087	\$61,604

Net sales eliminations represent transfers at prices which approximate market among geographic areas.

United States net sales include \$65,271,000 of export sales.

(Continued) - 2.

### 3. RELATED PARTY TRANSACTIONS

The Company purchases various products from Bayer AG and affiliates at competitive prices and terms. Such purchases were \$81,436,000 in 1977 and \$96,487,000 in 1976.

The Company sells various products to Bayer AG and affiliates at competitive prices and terms. Such net sales were \$44,108,000 in 1977 and \$40,790,000 in 1976.

Interest expense of \$4,575,000 in 1977 and \$5,207,000 in 1976 related to the notes payable to an affiliate.

### 4. INVENTORIES

Inventories at December 31 consisted of the following (in thousands):

	<u>1977</u>	<u>1976</u>
Finished goods.....	\$ 94,762	\$ 83,662
Work in process.....	21,172	18,398
Raw materials and other.....	55,001	53,303
Total.....	<u>\$170,935</u>	<u>\$155,363</u>

### 5. SHORT-TERM BORROWINGS

The Company has various credit lines which aggregated \$186,500,000 at December 31, 1977. The weighted average interest rate on the outstanding notes issued under such lines at December 31, 1977 and 1976 was 7.87% and 6.35%, respectively.

### 6. LONG-TERM DEBT

Long-term debt at December 31 consisted of the following (in thousands):

	<u>1977</u>	<u>1976</u>
Notes Payable:		
Insurance companies (a).....	\$225,549	\$232,112
Bank (b).....	21,000	21,000
Affiliate (c).....	56,000	56,000
Other.....	6,018	6,743
Total.....	308,567	315,855
Less current portion.....	<u>14,054</u>	<u>7,652</u>
Long-term debt.....	<u>\$294,513</u>	<u>\$308,203</u>



- (a) Net of unamortized discount of \$851,000; effective interest rates of 7.6% to 10.5%; due in annual installments to 1995, ranging from \$6,775,000 to \$18,975,000; \$146,400,000 guaranteed by Bayer AG.
- (b) With respect to \$10,000,000 of the notes, issued under a revolving credit agreement; floating interest rate ( 8.375% at December 31, 1977) of 1/2% above prime commercial rate to September 30, 1976 and 5/8% thereafter; due in 1979; subordinated to the notes payable to insurance companies.

With respect to \$11,000,000 of the notes, weighted average floating interest rate of 5.788% at December 31, 1977; due in various installments to 1980.

- (c) Weighted average floating interest rate ( 9.223% at December 31, 1977) of 119% of the prime commercial rate; due in equal semi-annual installments from 1978 to 1983; subordinated to the notes payable to insurance companies and notes payable to bank; guaranteed by Bayer AG.

The aggregate annual amounts of long-term debt maturities as of December 31, 1977 were as follows (in thousands):

1978.....	\$ 14,054
1979.....	29,729
1980.....	28,230
1981.....	18,852
1982.....	24,853
After 1982.....	<u>192,849</u>
Total.....	<u>\$308,567</u>

The various agreements related to the long-term debt contain restrictions and limitations as to additional debt, cash dividends, working capital level, etc. Under the most restrictive of the agreements, at December 31, 1977 \$18,860,000 of retained earnings was available for cash dividends and other restricted payments.

#### 7. STOCKHOLDER'S EQUITY

During 1976, additional paid-in capital increased by \$20,000,000, representing a cash capital contribution from Rhinechem.

#### 8. PENSION PLANS

Pension expense, including contributions to union pension plans, was \$5,654,000 in 1977 and \$4,370,000 in 1976. Pension plan assets at market valuations approximated the actuarially computed value of vested benefits at January 1, 1977, the date of the most recent actuarial valuation.

## 9. INCOME TAXES

The provision for income taxes consisted of the following (in thousands):

	<u>1977</u>	<u>1976</u>
U.S.:		
Currently payable.....	\$ 4,330	\$ 525
Deferred.....	5,186	485
State and other.....	906	961
Total.....	<u>\$10,422</u>	<u>\$1,971</u>

The total provisions for income taxes in 1977 and 1976 were less than the amounts computed by applying the United States statutory income tax rate to income before income taxes as follows (in thousands):

	<u>1977</u>	<u>1976</u>
Computed provision for income taxes.....	\$16,105	\$10,587
Decreases in income taxes resulted from:		
Investment tax credits applied to:		
Currently payable.....	(4,330)	(525)
Deferred.....	(1,170)	(7,975)
Other - net.....	(183)	(116)
Total.....	<u>\$10,422</u>	<u>\$ 1,971</u>

Investment tax credit carryforwards for book purposes at December 31, 1977 amounted to \$2,000,000, which expire principally in 1984.

Undistributed earnings of the Company's DISC subsidiary for which no income taxes have been provided approximated \$8,253,000 at December 31, 1977.

## 10. LEASES

The Company conducts a portion of its operations using leased properties which include warehouses, offices, and equipment. These leases, which expire at various dates through 1991, are accounted for as operating leases. Previously capitalized leases are not material.

Rental expense was \$6,178,000 in 1977 and \$5,557,000 in 1976. Minimum rental commitments under noncancellable leases existing at December 31, 1977 were as follows (in thousands):

	<u>Real Estate</u>	<u>Equipment</u>	<u>Total</u>
1978.....	\$1,541	\$1,707	\$ 3,248
1979.....	1,385	1,310	2,695
1980.....	1,159	1,178	2,337
1981.....	727	1,040	1,767
1982.....	520	839	1,359
After 1982.....	2,144	1,989	4,133
Total.....	<u>\$7,476</u>	<u>\$8,063</u>	<u>\$15,539</u>

#### 11. COMMITMENTS AND CONTINGENCIES

At December 31, 1977, outstanding purchase commitments for capital assets amounted to approximately \$12,064,000.

The Company is involved in various legal actions incident to the ordinary course of business. In the opinion of management, the eventual disposition of these matters will not have a material effect on the financial position or results of operations.



The State of South Carolina

EXHIBIT VIII  
5/23/78



Office of the Attorney General

KAREN LeCRAFT HENDERSON  
ASSISTANT ATTORNEY GENERAL

WADE HAMPTON OFFICE BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S. C. 29211  
TELEPHONE 803-758-3970

DANIEL R. McLEOD  
ATTORNEY GENERAL

May 22, 1978

Hon. William T. Putnam  
State Auditor  
Wade Hampton State Office Building  
Columbia, South Carolina

Re: \$1,000,000 Lexington County, South Carolina,  
Industrial Revenue Note, Series 1978 (Summit  
Container Corporation Project)

Dear Mr. Putnam:

Regarding the above referenced bonds, we have reviewed the Petition and other documents submitted to the State Budget and Control Board for its approval pursuant to Sections 4-29-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, and the same appear, in our opinion, to be in order.

With kind regards,

A handwritten signature in cursive script that reads "Karen LeCraft Henderson".

Karen LeCraft Henderson  
Senior Assistant Attorney General

KLH:jvh



United Virginia  
Bank

May 26, 1978

Mr. William A. McInnis  
Special Assistant to the  
State Auditor  
P. O. Box 11333  
Columbia, South Carolina 29211

Re: Summit Container Corporation

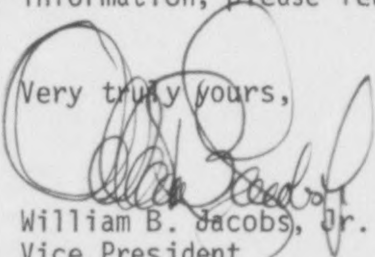
Dear Mr. McInnis:

At the request of Summit Container Corporation we are writing concerning our intention to purchase the \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) (the "Note").

This bank has a long standing relationship with Summit Container Corporation, and has made such investigations of the financial and business affairs of Summit Container Corporation as we have deemed necessary to our decision to purchase the Note. We seek to acquire the Note for investment for our own account and beneficial interest, and have no present intention of reselling, transferring or otherwise distributing the Note to others.

If we can provide any further information, please feel free to call.

Very truly yours,

  
William B. Jacobs, Jr.  
Vice President

WBJJr:cbs

cc: Mr. Thomas A. Hutcheson, Esquire  
Mr. John S. Graham, Esquire

SINKLER GIBBS & SIMONS  
PROFESSIONAL ASSOCIATION  
ATTORNEYS & COUNSELLORS AT LAW  
2 PRIOLEAU STREET  
CHARLESTON, S. C. 29402

POST OFFICE BOX 340

TELEPHONE 722-3366  
AREA CODE 803

May 16, 1978

Karen LeCraft Henderson  
Assistant Attorney General  
Hampton Office Building  
Box 11549  
Columbia, South Carolina 29211

RECEIVED  
S. C. ATTORNEY GENERAL

DATE 5-17-78

Re: \$1,000,000 Lexington County, South Carolina,  
Industrial Revenue Note, Series 1978 (Summit  
Container Corporation Project)

Dear Karen:

Enclosed are copies of the Lease Agreement, the Guar-  
anty Agreement (Exhibit C to the Lease Agreement), the  
Security Agreement and the Resolution authorizing the Peti-  
tion of Lexington County relating to the above referenced  
note issue. Tuck Rawl is forwarding the original Petition  
as of this date.

If you require any further information, please advise.

Sincerely,

TAH:jpw  
Enclosures  
cc: William A. McInnis



ORIGINAL  
5/23/78

RESOLUTION

STATE OF SOUTH CAROLINA BUDGET AND CONTROL BOARD

WHEREAS, heretofore the County Council of Lexington County (the County Council) did, pursuant to Title 4, Chapter 29, Code of Laws of South Carolina, 1976 (the Act), petition the State Budget and Control Board of South Carolina (the State Board) seeking the approval of the State Board to an undertaking by the County Council pursuant to the Act, and

WHEREAS, the proposed undertaking consists of the acquisition by the County Council of certain industrial machinery and equipment (the machinery and equipment constituting the said facilities being hereinafter referred to as the Project) which will be leased to Summit Container Corporation, a Virginia corporation (the Lessee); and

WHEREAS, the Project is to be leased to the Lessee at a rental sufficient to provide for the payment of the Note of Lexington County (the County) hereafter referred to, and costs and expenses resulting from the issuance thereof; and

WHEREAS, in order to finance the Project the County Council proposes to provide for the issuance of a \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) (the Note) payable from the rentals to be paid by the Lessee. The

County's Note will be secured by a Security Agreement from the County to United Virginia Bank, Richmond, Virginia, the purchaser of the Note, which will constitute a security interest in the Project; and will be unconditionally guaranteed by the Lessee pursuant to a Guaranty Agreement between the Lessee and United Virginia Bank; and

WHEREAS, the form of the Lease Agreement between the County and the Lessee, the Guaranty Agreement between United Virginia Bank and the Lessee and of the Note and the Security Agreement have been considered by this Board:

NOW, THEREFORE, BE IT RESOLVED BY THE STATE BUDGET AND CONTROL BOARD IN MEETING DULY ASSEMBLED:

1. It has been found and determined by the State Board

(a) That the statement of facts set forth in the recitals of this Resolution are in all respects true and correct.

(b) That the County Council has filed a proper petition to the State Board establishing a reasonable estimate of the cost of the Project, a general summary of the terms and conditions of the Lease, the Guaranty Agreement and the Note and Security Agreement spoken of hereinabove and has established that the Lessee will pay as additional rentals, in lieu of taxes, the sums prescribed by the Act.

(c) That the Project will provide additional employment by the Lessee of approximately thirty (30) persons and will be of benefit to the County and adjoining areas.

(d) That the Project is intended to promote the purposes of the Act and is reasonably anticipated to effect such results.

2. On the basis of the foregoing findings the proposed undertaking of the County Council to acquire the Project, to lease the Project to the Lessee and to finance the cost of constructing the Project through the issuance of a \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) payable from the revenues to be derived from the leasing of the Project and additionally secured by the said Security Agreement and Guaranty Agreement, all pursuant to the Act (including changes in any details of the said financing as finally consummated which do not materially affect the said undertaking), be and the same is hereby approved.

3. Notice of the action taken of the State Board in giving approval to the undertaking of the County above described in paragraph 2, supra, shall be published in THE STATE, a newspaper having general circulation in the County.

4. That notice to be published shall be in form substantially as set forth as EXHIBIT "A" of this Resolution.



EXHIBIT "A"

NOTICE PURSUANT TO TITLE 4, CHAPTER 29, CODE OF  
LAWS OF SOUTH CAROLINA, 1976

Notice is hereby given that following the filing of a Petition by the County Council of Lexington County (the County Council) to the State Budget and Control Board of South Carolina (the State Board), approval has been given by the State Board to the following undertaking (including changes in any details of the said financing as finally consummated which do not materially affect the said undertaking), viz:

The acquisition by the County Council of certain industrial machinery and equipment (said machinery and equipment being hereinafter referred to as the Project). To finance the Project, the County Council will issue a \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) (the Note) pursuant to Title 4, Chapter 29, Code of Laws of South Carolina, 1976. The County Council will lease the Project to Summit Container Corporation, a Virginia corporation (the Lessee) under a Lease Agreement and the Note of the County will be payable solely from the rentals to be paid to the County by the Lessee, which has irrevocably

convenanted and agreed to pay when due, all sums required for the principal and interest thereon; the Lessee will unconditionally guarantee the payment of the principal of, prepayment penalty, if any, and interest on the Note.

In addition the Lessee has agreed to pay as additional rentals to the County, the School District, and all other political units wherein the Project is located, in lieu of taxes, such amounts as would result from taxes levied on the Project by the County, the said School District, and the said other political units wherein the Project is situate, if the Project were owned by the Lessee, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the Lessee if it were the owner of the Project.

The Lease by which the County will lease the Project to the Lessee will provide that the Lessee shall purchase the Project for One Dollar (\$1.00) upon the payment in full of the Note.

When completed, it is estimated that the Project will provide employment for approximately thirty (30) persons.

Notice is further given that any interested party may at any time within twenty (20) days after the date of

publication of this Notice, but not afterwards, challenge the validity of the action of the State Board in approving the undertaking of the County Board by action de novo instituted in the Court of Common Pleas for Lexington County.

THE STATE BUDGET AND CONTROL BOARD

By: William T. Putnam

PUBLICATION DATE:

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, WILLIAM T. PUTNAM, Auditor of the State of South Carolina, and Secretary of the State Budget and Control Board, DO HEREBY CERTIFY:

That the said State Budget and Control Board is composed of the following:

His Excellency, James B. Edwards, Governor of South Carolina and Chairman of the Board;

The Honorable Grady Leslie Patterson, Jr., State Treasurer;

The Honorable Earle E. Morris, Jr., Comptroller General of South Carolina;

The Honorable Rembert C. Dennis, Chairman of the Senate Finance Committee; and

The Honorable Tom G. Mangum, Chairman of the House Ways and Means Committee.

That due notice of meeting of said Board, called to be held at the office of the \_\_\_\_\_, in the \_\_\_\_\_ Building, at Columbia, South Carolina, at \_\_\_\_\_ .M., on \_\_\_\_\_, 1978, was given to all members in writing, and at least four (4) days prior to said meeting; that all of the members of said Board were present at said meeting with the exception of:

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That at said meeting a Resolution, of which the attached is a true, correct and verbatim copy, was introduced by \_\_\_\_\_, who moved its adoption; said motion was seconded by \_\_\_\_\_, and upon vote being taken and recorded it appeared that the following votes were cast:

FOR MOTION

AGAINST MOTION

That the Chairman thereupon delivered the Resolution unanimously adopted, and the original thereof has been duly entered in the permanent records of minutes of said Board, in my custody as its Secretary.

\_\_\_\_\_  
Secretary

\_\_\_\_\_, 1978

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

\_\_\_\_\_  
TO THE STATE BUDGET AND CONTROL )  
BOARD OF SOUTH CAROLINA )

P E T I T I O N

The Petition of the County Council of Lexington County  
(the County Council) respectfully shows:

1. The County Council is the governing body of Lexington County as established by Law, and, as such, is the County Board referred to in Title 4, Chapter 29, Code of Laws of South Carolina, 1976 (the Act).

2. The Act authorizes and empowers the County Council, if it shall comply with the provisions set forth in the Act, to acquire land, buildings, equipment, machinery and other improvements deemed necessary, suitable and useful by any industrial enterprise; to lease the same; and to finance the acquisition, construction and equipping of the same through the issuance of bonds or notes payable from and secured by a pledge of the revenues to be derived from the leasing of such land, buildings, equipment and machinery and other improvements.

3. The County Council agreed with Summit Container Corporation, a Virginia Corporation (the Lessee) that the



County Council will undertake to finance the acquisition and installation of equipment and machinery for the production of corrugated paper at the Lessee's plant in Lexington County, through the issuance of an Industrial Revenue Note pursuant to the Act. In this connection, the County Council has agreed to issue a One Million Dollar (\$1,000,000) Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee), pursuant to the Act in order to finance the acquisition and installation of the aforesaid facilities (said facilities being hereinafter referred to as the Project).

4. The County Council is advised by the Lessee that the cost of the Project will be approximately One Million Dollars (\$1,000,000) and that, therefore, in order to finance the acquisition and installation of the Project, including the costs and charges incident to the issuance and sale of the note hereinafter described, it will be necessary that the County Council issue a One Million Dollar (\$1,000,000) Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) (the Note).

5. When completed the Project will permit the Lessee to employ approximately thirty (30) additional persons.

6. For the reasons above set forth and hereinafter disclosed the County Council has found:

(a) The Project will subserve the purposes of the Act.

(b) By reason of undertaking the Project no pecuniary liability will result to the County nor will there be any charge against its general credit or taxing power.

(c) The proposed Lease between the County and the Lessee will unconditionally obligate the Lessee to pay rent in the amount adequate to provide for the principal and interest payments on the Note.

(d) The Note will be dated and will mature and bear interest in amounts and at rates set forth in Article II of the draft of the Note Ordinance enclosed herewith.

(e) The terms of the Lease will require the Lessee to carry proper insurance and to pay all costs of maintaining the Project in good repair.

7. Pursuant to the Act, the County Council sets forth the following information:

(a) The Project to be financed consists of the acquisition and installation of machinery and equipment for the production of corrugated paper.

(b) The Project will permit additional permanent employment for approximately thirty (30) persons. It is, therefore, believed that the Project will have a beneficial

effect upon the economy of the County and areas adjacent thereto.

(c) The cost of the entire Project will amount to approximately \$1,000,000.

8. The proposed Lease, a draft copy of which is presented herewith, will provide, among other things, the following:

(a) To finance the cost of the acquisition and installation of the Project, the County will issue a \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee). The Note will be secured by a pledge of the rents to be paid by the Lessee and will be further secured by a Security Agreement, as authorized by the Act.

(b) The proceeds derived from the sale of the Note, will be paid over to a depository bank and used to pay the costs incident to the acquisition and installation of the Project, and the issuance of the Note.

(c) The Lease will contain a specific provision by which the Lessee will unconditionally agree to make payments to Lexington County, to any School District in Lexington County, and to all other political units in which the Project is situated, in lieu of taxes, in such amounts as would result from taxes levied on the Project by Lexington County,



by any such School District, and by said political units if the Project were owned by the Lessee, but with appropriate reductions similar to the tax reductions, if any, which would be afforded the Lessee were it the owner of the Project.

(d) The Lease contains no provision imposing any pecuniary liability upon the County or which would create a charge upon its general credit or taxing power.

(e) The Lease imposes upon the Lessee the obligation to pay, in addition to the moneys required for the payment of the principal and interest of the Note, all other costs and expenses resulting from the execution and delivery of the Lease and the issuance of the Note.

9. The payment of the Note will be unconditionally guaranteed by Summit Container Corporation, pursuant to a Guaranty Agreement between Summit Container Corporation and United Virginia Bank, the purchaser of the Note.

10. The proposed Security Agreement is in conventional form and constitutes a first security interest in the Project. Included in the granting clause of the Security Agreement will be:

(a) All personal property and interests therein, acquired or to be acquired, for the Project.

(b) The right, title and interest of the County in the lease.

(c) All rentals and revenues derived by the County under the Lease, except those payments to be made in lieu of taxes or by way of indemnification.

The Note Ordinance makes provision for the issuance of the One Million Dollar (\$1,000,000) Note referred to above. It provides for the payment and prepayment of the Note.

11. The proposed Lease, Security Agreement, Note Ordinance and Guaranty Agreement (draft copies of which are enclosed herewith) will be in the form heretofore used in the issuance of Industrial Revenue Notes pursuant to the Act. While changes will be made in the enclosed forms, it is not expected that there will be any changes which will substantially affect the undertaking as now outlined therein.

Upon the basis of the foregoing, the County Council respectfully prays:

That the State Budget and Control Board accept the filing of the Petition presented herewith and that it do, thereafter and as soon as practicable, make its independent investigation of the Project and the terms and provisions of the Lease, the Security Agreement, the Note Ordinance and the Guaranty Agreement as it deems advisable, that the proposed Project will promote the purposes of the Act and that it is reasonably anticipated to affect such result, and on the basis of such finding, that it does approve the Project,

including changes in any details of the said financing as finally consummated which do not materially affect the said undertaking, and give published notice of its approval in the manner set forth in the Act.

May 5, 1978

Respectfully submitted,

COUNTY COUNCIL OF LEXINGTON COUNTY

(SEAL)

By Mont H. Westbury  
Chairman

Attest:

Dorothy K. Wenzel  
Clerk



## A RESOLUTION

APPROVING THE FINANCING OF THE ACQUISITION AND INSTALLATION OF CERTAIN INDUSTRIAL MACHINERY AND EQUIPMENT IN LEXINGTON COUNTY (TO BE LEASED TO SUMMIT CONTAINER CORPORATION) THROUGH THE ISSUANCE OF A ONE MILLION DOLLAR (\$1,000,000) LEXINGTON COUNTY, SOUTH CAROLINA, INDUSTRIAL REVENUE NOTE, SERIES 1978 (SUMMIT CONTAINER CORPORATION - LESSEE); AUTHORIZING A PETITION TO THE STATE BUDGET AND CONTROL BOARD OF SOUTH CAROLINA FOR ITS APPROVAL OF SUCH UNDERTAKING PURSUANT TO TITLE 4, CHAPTER 29, CODE OF LAWS OF SOUTH CAROLINA, 1976, AND OTHER MATTERS RELATING THERETO.

BE IT RESOLVED BY THE COUNTY COUNCIL OF LEXINGTON COUNTY  
IN MEETING DULY ASSEMBLED:

### ARTICLE I

#### FINDINGS OF FACT

##### SECTION 1.01

As an incident to the adoption of this Resolution, the County Council of Lexington County (which is the governing body of the County) (the County Council), has made the following findings:

1. Summit Container Corporation, a Virginia Corporation (the Lessee), has proposed that the County Council assist in financing the acquisition and installation of machinery and equipment for the production of corrugated paper at the existing plant of the Lessee, located in Lexington County, such machinery and equipment to be leased to the Lessee, at an estimated cost of \$1,000,000 through the issuance of an Industrial Revenue Note pursuant to the authorization of Title 4, Chapter 29, Code of Laws of South Carolina, 1976

(the Act). The Lessee has advised the County Council that the acquisition and installation of such machinery and equipment would be aided by the assistance which the County might render through the sale of a \$1,000,000 Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) (the Note) as aforesaid and to authorize a petition to the State Budget and Control Board (the State Board), setting forth the facts required by the Act.

2. The County Council has determined that the Project will subserve the purposes of the Act and neither the Project nor the Note will give rise to any pecuniary liability of Lexington County or a charge against its general credit or taxing power.

3. The amount necessary to finance the Project is One Million Dollars (\$1,000,000).

4. The Lessee has submitted to the County Council a draft of the proposed Lease, under which the Lessee will agree to pay as rent the amount necessary to provide the annual payments of principal and interest on the said Note.

5. The proposed Lease obligates the Lessee unconditionally to pay the amount necessary to provide the annual payments of principal and interest, and prepayment penalty, if any, to become due on the Note and to pay other costs in connection therewith and contains an appropriate

provision requiring the Lessee to pay, in lieu of taxes, such amounts as would otherwise be paid if the Lessee owned the Project.

6. Pursuant to a Guaranty Agreement, Summit Container Corporation will unconditionally guaranty the payment of principal of, prepayment penalty, if any, and interest on the Note.

7. In view of the well established credit of the Summit Container Corporation and the successful arrangements to effect a sale of the Note without the establishment of reserve funds for the payment of the principal and interest, no such reserve funds will be established.

8. The Note will be issued as a tax exempt Note pursuant to the provisions of Section 103(b)(6)(A) of the Internal Revenue Code of 1954, as amended.

9. Summit Container Corporation has arranged for the sale of the Note to United Virginia Bank, Richmond, Virginia.

## ARTICLE II

### SUBMISSION OF PETITION

#### SECTION 2.01

The Petition in form substantially as attached hereto as Exhibit A shall be presented to the State Board to seek the approval required by the Act; said Petition shall be duly executed by the Chairman and the Clerk of the County Council.



EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

\_\_\_\_\_  
TO THE STATE BUDGET AND CONTROL )

BOARD OF SOUTH CAROLINA )

P E T I T I O N

The Petition of the County Council of Lexington County  
(the County Council) respectfully shows:

1. The County Council is the governing body of Lexington County as established by Law, and, as such, is the County Board referred to in Title 4, Chapter 29, Code of Laws of South Carolina, 1976 (the Act).

2. The Act authorizes and empowers the County Council, if it shall comply with the provisions set forth in the Act, to acquire land, buildings, equipment, machinery and other improvements deemed necessary, suitable and useful by any industrial enterprise; to lease the same; and to finance the acquisition, construction and equipping of the same through the issuance of bonds or notes payable from and secured by a pledge of the revenues to be derived from the leasing of such land, buildings, equipment and machinery and other improvements.

3. The County Council agreed with Summit Container Corporation, a Virginia Corporation (the Lessee) that the

County Council will undertake to finance the acquisition and installation of equipment and machinery for the production of corrugated paper at the Lessee's plant in Lexington County, through the issuance of an Industrial Revenue Note pursuant to the Act. In this connection, the County Council has agreed to issue a One Million Dollar (\$1,000,000) Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee), pursuant to the Act in order to finance the acquisition and installation of the aforesaid facilities (said facilities being hereinafter referred to as the Project).

4. The County Council is advised by the Lessee that the cost of the Project will be approximately One Million Dollars (\$1,000,000) and that, therefore, in order to finance the acquisition and installation of the Project, including the costs and charges incident to the issuance and sale of the note hereinafter described, it will be necessary that the County Council issue a One Million Dollar (\$1,000,000) Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee) (the Note).

5. When completed the Project will permit the Lessee to employ approximately thirty (30) additional persons.

6. For the reasons above set forth and hereinafter disclosed the County Council has found:

(a) The Project will subserve the purposes of the Act.

(b) By reason of undertaking the Project no pecuniary liability will result to the County nor will there be any charge against its general credit or taxing power.

(c) The proposed Lease between the County and the Lessee will unconditionally obligate the Lessee to pay rent in the amount adequate to provide for the principal and interest payments on the Note.

(d) The Note will be dated and will mature and bear interest in amounts and at rates set forth in Article II of the draft of the Note Ordinance enclosed herewith.

(e) The terms of the Lease will require the Lessee to carry proper insurance and to pay all costs of maintaining the Project in good repair.

7. Pursuant to the Act, the County Council sets forth the following information:

(a) The Project to be financed consists of the acquisition and installation of machinery and equipment for the production of corrugated paper.

(b) The Project will permit additional permanent employment for approximately thirty (30) persons. It is, therefore, believed that the Project will have a beneficial



effect upon the economy of the County and areas adjacent thereto.

(c) The cost of the entire Project will amount to approximately \$1,000,000.

8. The proposed Lease, a draft copy of which is presented herewith, will provide, among other things, the following:

(a) To finance the cost of the acquisition and installation of the Project, the County will issue a \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation - Lessee). The Note will be secured by a pledge of the rents to be paid by the Lessee and will be further secured by a Security Agreement, as authorized by the Act.

(b) The proceeds derived from the sale of the Note, will be paid over to a depository bank and used to pay the costs incident to the acquisition and installation of the Project, and the issuance of the Note.

(c) The Lease will contain a specific provision by which the Lessee will unconditionally agree to make payments to Lexington County, to any School District in Lexington County, and to all other political units in which the Project is situated, in lieu of taxes, in such amounts as would result from taxes levied on the Project by Lexington County,

by any such School District, and by said political units if the Project were owned by the Lessee, but with appropriate reductions similar to the tax reductions, if any, which would be afforded the Lessee were it the owner of the Project.

(d) The Lease contains no provision imposing any pecuniary liability upon the County or which would create a charge upon its general credit or taxing power.

(e) The Lease imposes upon the Lessee the obligation to pay, in addition to the moneys required for the payment of the principal and interest of the Note, all other costs and expenses resulting from the execution and delivery of the Lease and the issuance of the Note.

9. The payment of the Note will be unconditionally guaranteed by Summit Container Corporation, pursuant to a Guaranty Agreement between Summit Container Corporation and United Virginia Bank, the purchaser of the Note.

10. The proposed Security Agreement is in conventional form and constitutes a first security interest in the Project. Included in the granting clause of the Security Agreement will be:

(a) All personal property and interests therein, acquired or to be acquired, for the Project.

(b) The right, title and interest of the County in the lease.

(c) All rentals and revenues derived by the County under the Lease, except those payments to be made in lieu of taxes or by way of indemnification.

The Note Ordinance makes provision for the issuance of the One Million Dollar (\$1,000,000) Note referred to above. It provides for the payment and prepayment of the Note.

11. The proposed Lease, Security Agreement, Note Ordinance and Guaranty Agreement (draft copies of which are enclosed herewith) will be in the form heretofore used in the issuance of Industrial Revenue Notes pursuant to the Act. While changes will be made in the enclosed forms, it is not expected that there will be any changes which will substantially affect the undertaking as now outlined therein.

Upon the basis of the foregoing, the County Council respectfully prays:

That the State Budget and Control Board accept the filing of the Petition presented herewith and that it do, thereafter and as soon as practicable, make its independent investigation of the Project and the terms and provisions of the Lease, the Security Agreement, the Note Ordinance and the Guaranty Agreement as it deems advisable, that the proposed Project will promote the purposes of the Act and that it is reasonably anticipated to affect such result, and on the basis of such finding, that it does approve the Project,



including changes in any details of the said financing as finally consummated which do not materially affect the said undertaking, and give published notice of its approval in the manner set forth in the Act.

May 15, 1978

Respectfully submitted,

COUNTY COUNCIL OF LEXINGTON COUNTY

(SEAL)

By Marc H. W. [Signature]  
Chairman

Attest:

Dorothy R. [Signature]  
Clerk

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned Clerk of the County Council of Lexington County do hereby certify that the foregoing is a true, correct and verbatim copy of a Resolution duly adopted by the County Council of Lexington County having been read at a duly called meeting of said County Council on May 10, 1978.

Witness my hand and seal of the County Council of Lexington County this 15th day of May, 1978.

Dorothy R. Wingard  
Clerk, County Council of Lexington  
County

(SEAL)

LEXINGTON COUNTY, SOUTH CAROLINA

AND

SUMMIT CONTAINER CORPORATION

LEASE AGREEMENT

Dated as of June 1, 1978



THIS LEASE AGREEMENT dated as of June 1, 1978, between Lexington County, a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through the County Council of Lexington County (the County Board) as the governing body of Lexington County, party of the first part, and Summit Container Corporation, a corporation organized and existing under the laws of the State of Virginia, duly qualified to do business in South Carolina, party of the second part.

W I T N E S S E T H:

In consideration of the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided, that in the performance of the agreements of the party of the first part herein contained, any obligation it may thereby incur for the payment of money shall not create a pecuniary liability or charge upon its general credit or taxing powers but shall be payable solely out of the proceeds derived from this Agreement, the issuance of the Note referred to in Section 2.1 hereof and the insurance proceeds, proceeds from property released in accordance with Section 6.2 hereof, and condemnation awards as herein provided):

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

SECTION 1.1. Certain terms used in this Lease Agreement are defined herein. When used herein, such terms shall have the meanings given to them by the language employed in this Article I defining such terms, unless the context clearly indicates otherwise.

SECTION 1.2. The following terms are defined terms under this Lease Agreement:

"ACT" means Title 4, Chapter 29, Code of Laws of South Carolina, 1976.

"AGREEMENT" or "LEASE AGREEMENT" means the within Lease Agreement between the County and the Lessee.

"AUTHORIZED LESSEE REPRESENTATIVE" means the person at the time designated to act in behalf of the Lessee by written certificate furnished to the County and the Bank containing the specimen signature of such person and signed on behalf of the Lessee by the president or any vice president of the Lessee.

"BANK" means United Virginia Bank, the purchaser of the Note, and its successors and assigns.

"CHAIRMAN" means the chief executive officer of the County Board. The term shall also include the Vice Chairman of the County Board whenever, by reason of absence, illness, or other reason, the person who is the Chairman is unable to act.

"COMPLETION DATE" means the date of completion of the acquisition and installation of the Leased Equipment as that date shall be certified as provided in Section 4.5 hereof.

"CONSTRUCTION FUND" means the Construction Fund created in accordance with the provisions of Section 4.3 hereof.

"CONSTRUCTION PERIOD" means the period between the beginning of construction or the date on which the Note is delivered to the Bank (whichever is earlier) and the Completion Date.

"COUNTY" means Lexington County, South Carolina, a body politic and corporate, and its successors and assigns.

"COUNTY BOARD" means the Lexington County Council of Lexington County and any successor body.

"GUARANTY AGREEMENT" means the agreement between the Lessee and the Bank, dated as of June 1, 1978, by which the Lessee unconditionally guarantees the full and prompt payment of the principal, premium, if any, and interest on the Note. The Guaranty Agreement is attached hereto as Exhibit "C".

"INDEPENDENT COUNSEL" means an attorney duly admitted to practice law before the highest court of any state and not an employee of either the County or the Lessee.

"INDEPENDENT ENGINEER" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of South Carolina and who or which is not a full-time employee of either the County or the Lessee.



"LEASE TERM" means the duration of the leasehold estate in this Agreement as specified in Section 5.1 hereof.

"LEASED EQUIPMENT" means those items of machinery, equipment and related property required herein to be acquired and installed in the Plant with proceeds from the sale of the Note or the proceeds of any payment by the Lessee pursuant to Section 4.6 hereof and any item of machinery, equipment and related property acquired and installed therefor and renewals and replacements thereof pursuant to the provisions of Sections 4.1(b), 6.1, 6.2(a), 7.1 and 7.2 hereof and is further defined as all property owned by the County and hereby leased to the Lessee. Leased Equipment is more particularly described in Exhibit "A" attached hereto which, by this reference thereto, is incorporated herein.

"LESSEE" means (i) party of the second part hereto and its successors and assigns and (ii) any surviving, resulting or transferee corporation as provided in Section 8.3 hereof.

"LICENSED ENGINEER" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of South Carolina.

"NET PROCEEDS", when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees and any other collection expenses) incurred in the collection of such gross proceeds.

"NOTE" means the \$1,000,000 Lexington County, South Carolina, Industrial Revenue Note, Series 1978 (Summit Container Corporation Project). The Note shall be substantially in the form of the attached Exhibit "B".

"NOTE ORDINANCE" means the Ordinance adopted by the County Board providing for the terms and provisions of the Note, and any ordinance supplemental thereof and any amendment thereto.

"PENALTY RATE" shall be interest at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum.

"PERMITTED ENCUMBRANCES" means, as of any particular time, (i) liens for ad valorem taxes not then delinquent, and (ii) this Agreement and the Security Agreement.

"PLANT" means the container manufacturing plant of the Lessee in the County.

"SECURITY AGREEMENT" means the Security Agreement between the County and the Bank, of even date herewith, pursuant to which the County's interest in this Agreement and the lease rentals, revenues and receipts received by the County hereunder (except payments pursuant to Sections 5.5, 6.3, 8.4 or 10.4 of this Agreement) are pledged and a security interest in the Leased Equipment is given as security for the payment of principal, premium, if any, and interest on the Note.

SECTION 1.3. The words "hereof", "herein", "hereunder" and other words of similar import refer to this Lease Agreement as a whole.

SECTION 1.4. References to Articles, Sections, and other subdivisions of this Lease Agreement are to the designated Articles, Sections, and other subdivisions of this Lease Agreement as originally executed.

SECTION 1.5. The headings of this Lease Agreement are for convenience only and shall not define or limit the provisions hereof.



ARTICLE II

REPRESENTATIONS

SECTION 2.1.    Representations by the County.    The County makes the following representations as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina, and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Leased Equipment constitutes and will constitute a "project" within the meaning of the Act. By proper action by the County Board and the State Budget and Control Board of South Carolina, the County has been duly authorized to deliver this Agreement.

(b) The County does hereby authorize the Lessee to acquire and install the Leased Equipment in the Plant and to acquire and install all other things deemed necessary in connection with the Leased Equipment; and the County proposes to lease the Leased Equipment to the Lessee and to sell the Leased Equipment to the Lessee at the expiration or earlier termination of the Lease Term, all for the purposes of promoting the industrial development, developing trade, and utilizing and employing the manpower, agricultural

products and natural resources of the State of South Carolina.

(c) Heretofore, the County Board and the Lessee did agree that the County would finance the cost of acquiring the Leased Equipment through the issuance of an industrial revenue note pursuant to the Act. The Lessee estimates that such cost will amount to \$\_\_\_\_\_, and Lessee has agreed that it will bear all expenses in excess of the amount of the proceeds derived from the sale of the Note. On that basis the County now proposes to issue the Note in the form of a Note in the aggregate principal amount of \$1,000,000, dated as of its date of delivery, which will mature and bear interest, and which will be subject to prepayment on the occasions and at such premium as provided in the Note Ordinance in order to finance the cost of acquiring, constructing and equipping the Leased Equipment.

SECTION 2.2. Representations by the Lessee. The Lessee makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Lessee is a corporation duly incorporated under the laws of the Commonwealth of Virginia, is in good standing under its Charter and the laws of Virginia and of South Carolina, and has power to enter into this Agreement and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Lessee is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee under the terms of any instrument or agreement.

(c) Relying upon the agreement of the County to finance the cost of acquiring and installing the Leased Equipment as aforesaid, the Lessee has proceeded with the acquisition and installation of the Leased Equipment.

(d) This Lease Agreement, under which the County acquires the Leased Equipment, leases and hereafter conveys the Leased Equipment to the Lessee, is the method employed by the Lessee in financing the acquisition of the Leased Equipment and in effecting the payment of the Note.

(e) In order to provide a further inducement to the purchase of the Note, the Lessee has entered into the Guaranty Agreement with the Bank.



(f) All proceeds derived from the sale of the Note will be used to acquire the Leased Equipment, which consists entirely of property of a character subject to the allowance for depreciation as prescribed in Section 103 (b)(6)(A) of the Internal Revenue Code of 1954, as amended, and no part of the Note proceeds will be used to finance inventory or for working capital.

### ARTICLE III

#### DEMISING CLAUSES

SECTION 3.1. Demise of the Leased Equipment. The County demises and leases to the Lessee, and the Lessee leases from the County, the Leased Equipment at the rental set forth in Section 5.3 hereof, and in accordance with the provisions of this Agreement.

SECTION 3.2. Warranty of Title. The County warrants that it has acquired a good and marketable fee simple title to the Leased Equipment, free from all encumbrances other than Permitted Encumbrances, and the County will furnish, at the time of the delivery of the Note, a written opinion of Independent Counsel acceptable to the Bank and to the Authorized Lessee Representative that it has good and marketable fee simple title to the Leased Equipment, subject to Permitted Encumbrances.

#### ARTICLE IV

##### ACQUISITION AND INSTALLATION OF THE LEASED EQUIPMENT; ISSUANCE OF THE NOTE; CONSTRUCTION FUND

SECTION 4.1. Agreement to Acquire and Install the Leased Equipment. The Lessee agrees that it will exercise the authorizations given to it by the County as set forth in Section 2.1(b) and will cause to be acquired and installed in the Plant for use of the Lessee the Leased Equipment, to consist of the machinery, equipment and related property described in the general list thereof in Exhibit "A" attached hereto, and incorporated herein by reference thereto, and such other items of machinery and equipment and any transportation facility and equipment used as an integral part of the Plant, which in Lessee's judgment may be necessary for operation of the Leased Equipment.

The Lessee agrees to complete the acquisition and installation of the Leased Equipment as promptly as practicable after receipt of the proceeds derived from the sale of the Note.

SECTION 4.2. Agreement to Issue Note; Application of Note Proceeds. In order to provide funds for payment of the costs of the Leased Equipment, the County agreed that it will by August 1, 197\_, execute and delivery the Note and cause it to be delivered to the Bank and it will thereupon



deposit in the Construction Fund the proceeds received from said sale.

SECTION 4.3. Establishment of Construction Fund; Disbursements from the Construction Fund. Not later than the occasion of the delivery of the Note, the County will establish the Construction Fund, with the Bank. Withdrawals from the Construction Fund shall be made only upon the signature of the Authorized Lessee Representative. The moneys in the Construction Fund will be used for the following purposes (but, subject to the provisions of Section 4.9 hereof, for no other purposes):

(a) The fees for recording any documents that either the Bank, the Lessee or Independent Counsel may deem desirable to file for record in order to perfect or protect the title of the County to the Leased Equipment or to perfect or protect the Lien and security interest of the Security Agreement on the Leased Equipment; and the fees and expenses in connection with any actions or proceedings that either the Bank, the Lessee or the Independent Counsel may deem desirable to bring in order to perfect or protect the title of the County to the Leased Equipment or to perfect the lien and security interest of the Security Agreement on the Leased Equipment.

(b) Repayment of any loans obtained by the Lessee for interim financing pending issuance of the Note; payment to the Lessee and the County, as the case may be, of such amounts, if any, as shall be necessary to reimburse the Lessee and the County in full for advances and payments made by them or either of them prior to or after the delivery of the Note for expenditures in connection with (i) the acquisition by the County of title to the Leased Equipment, including the cost of the Leased Equipment and the preparation of plans and specifications for the Leased Equipment (including any preliminary study or planning of the Leased Equipment or any aspect thereof) and (ii) the acquisition and installation of the Leased Equipment, and all acquisition and installation expenses required to provide utility services or other facilities, and all personal properties deemed necessary in connection with the Leased Equipment (including architectural, engineering and supervisory services with respect to any of the foregoing).

(c) Payment of the cost of legal, financing and accounting fees and expenses and printing and engraving costs, if any, incurred in connection with the authorization, sale and issuance of the Note, the preparation of this Agreement, the Security Agreement and all other documents in connection therewith and in connection with the acquisition of title to the Leased Equipment.

(d) Payment for all costs incident to the acquisition and installation of the Leased Equipment, payment for the cost of the acquisition and installation of utility services or other facilities, and all real and personal property deemed necessary in connection with the Leased Equipment and payment for the miscellaneous expenses incidental to any of the foregoing items including the premium on any surety bond.

(e) Payment of the fees, or out-of-pocket expenses, if any, for architectural, engineering and supervisory services with respect to the Leased Equipment.

(f) To such extent as they shall not be paid by a contractor for construction with respect to any part of the Leased Equipment, payment of the premium on all insurance required to be taken out and maintained during the Construction Period under this Agreement, or reimbursement thereof if paid by the Lessee.

(g) Payment of the taxes, assessments and other charges, if any, referred to in Section 6.3 hereof that may become payable during the Construction Period, or reimbursement thereof if paid by the Lessee.

(h) Payment of expenses incurred with approval of the Lessee in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the Leased Equipment.



(i) Payment of any other costs and expenses relating to the Leased Equipment, including payment of the fees and expenses of the Bank acting as custodian of the Construction Fund.

(j) All moneys remaining in the Construction Fund after completion of the acquisition and installation of the Leased Equipment and payment in full of the costs thereof, and after payment of all other items provided for in the preceding subsections (a) to (i), inclusive, of this Section, shall be used to prepay the Note as provided in the Note Ordinance, except for amounts retained in the Construction Fund with the approval of the Authorized Lessee Representative for payment of Leased Equipment costs not then due and payable; any balance remaining of such retained funds after full payment of all such Leased Equipment costs to be applied to be used to prepay the Note as provided in the Note Ordinance.

It is further agreed that:

(1) On the occasion of each payment from the Construction Fund in accordance with the preceding provisions of this Section, the Authorized Lessee Representative shall file a written certificate with the Bank and establishing: (i) that none of the items for which the payment is being made has formed the basis for any payment theretofore made from the Construction

Fund and (ii) that each item for which the payment is being made is or was necessary in connection with the Leased Equipment, is in conformance with the plans and specifications therefor, and is authorized by this Agreement to be paid.

(2) In the case of any contract providing for retention by the Lessee of a portion of the contract price, there shall be paid from the Construction Fund only the net amount remaining after deduction of any such portion.

SECTION 4.4. Bank May Rely on Order of Authorized Representative. The Bank may honor withdrawals upon the signature of the Authorized Lessee Representative and shall have no further liability with respect to payments made in accordance with such order.

SECTION 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Bank and to the County Board by a certificate prepared by the Lessee and signed by the Authorized Lessee Representative stating that, except for amounts retained in the Construction Fund for Leased Equipment costs not then due and payable as provided in Section 4.3(j), (i) the Leased Equipment has been acquired and installed in accordance with the specifications therefor and all labor, services, materials and supplies used in such acquisition and installation have been paid for, (ii) all other facilities necessary in connection with

the Leased Equipment have been constructed, acquired and installed in accordance with the specifications therefor and all costs and expenses incurred in connection therewith have been paid, the Leased Equipment so installed is suitable, and all costs and expenses incurred in the acquisition and installation of the Leased Equipment have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. It shall be the duty of the Lessee to cause the certificate contemplated by this Section 4.5 to be furnished as soon as the Leased Equipment shall have been acquired and installed.

SECTION 4.6. Lessee Required to Pay Leased Equipment Costs in Event Construction Fund Insufficient. In the event the moneys in the Construction Fund available for payment of the costs of the Leased Equipment should not be sufficient to pay the costs thereof in full, the Lessee agrees to complete the acquisition and installation of the Leased Equipment free of all liens and encumbrances (other than Permitted Encumbrances) and to pay all that portion of the costs of the Leased Equipment as may be in excess of the moneys available therefor in the Construction Fund. The County does not make any warranty, either express or implied, that the moneys which will be paid into the Construction Fund and which, under the provisions of this Agreement,



will be available for payment of the costs of the Leased Equipment, will be sufficient to pay all the costs which will be incurred in that connection. The Lessee agrees that if after exhaustion of the moneys in the Construction Fund the Lessee should pay any portion of the said costs of the Leased Equipment pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the County or from the Bank, nor shall it be entitled to any diminution of the rents payable under Section 5.3 hereof. The obligation of the Lessee to complete the acquisition and installation of the Leased Equipment shall survive any termination of this Agreement, subject to the force majeure provisions of the concluding paragraph of Section 10.1.

SECTION 4.7. Authorized Lessee Representative and Successors. The Lessee will designate, in the manner prescribed in Section 1.2, the Authorized Lessee Representative. In the event that any person so designated hereunder and his alternate or alternates, if any, should become unavailable or unable to take any action or make any certificate provided for or required in this Agreement, a successor shall be appointed in the same manner.

SECTION 4.8. Enforcement of Remedies Against Contractors and Subcontractors and Their Sureties. The Lessee covenants that it will take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their

contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by Lessee in connection with the performance of its obligations under this Section 4.8 to be considered part of the Leased Equipment costs referred to in Section 4.3(i), and the County agrees that the Lessee may, from time to time, in its own name, or in the name of the County, take such action as may be necessary or advisable, as determined by Lessee, to insure the acquisition and installation of the Leased Equipment in accordance with the terms of such contracts, to insure the peaceable and quiet enjoyment of the Leased Equipment for the Lease Term, and to insure the performance by the County of all covenants and obligations of the County under this Agreement, with all costs and expenses incurred by the Lessee in connection therewith to be considered as part of the Leased Equipment costs referred to in Section 4.3(i). Any amounts recovered by way of damage, refunds, adjustments or otherwise in connection with the foregoing prior to the Completion Date, less legal expenses incurred in order to collect the same, shall be paid into the Construction Fund and after the Completion Date shall be used to prepay the Note in accordance with the Note Ordinance.

SECTION 4.9. Investment of Construction Fund Moneys Permitted - Limitation on Investments. Any moneys held as a part of the Construction Fund shall at the written request

of the Authorized Lessee Representative be invested or reinvested by the Bank in (i) obligations of the United States and agencies thereof or unconditionally guaranteed as to principal and interest by the United States or any such agencies; (ii) general obligations of the State of South Carolina or any of its political units; (iii) Savings and Loan Associations to the extent that the same are secured by the Federal Savings and Loan Insurance Corporation; (iv) certificates of deposit where such certificates of deposit are collaterally secured by securities of the type described in (i) and (ii) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest.

The Lessee further covenants and agrees:

(a) That it will not direct the investment of any moneys held as a part of the Construction Fund in a manner which shall be contrary to any policy or rules or regulations of the Internal Revenue Service with respect to "arbitrage bonds" within the meaning of Section 103(c)(2) of the Internal Revenue Code of 1954, as amended, and the applicable regulations issued thereunder and as in effect on the occasion of the delivery of the Note (the Regulations); and

(b) It will furnish to the County accurate information to enable the appropriate County officers and Bond Counsel to make all necessary certifications required by the Regulations.



ARTICLE V

EFFECTIVE DATE OF THE AGREEMENT; DURATION OF LEASE TERM;  
RENTAL PROVISIONS; PAYMENTS IN LIEU OF TAXES AND  
UNCONDITIONAL OBLIGATIONS OF LESSEE

SECTION 5.1. Effective Date of this Agreement;  
Duration of Lease Term. This Agreement shall become effective upon its delivery, and the leasehold estate created in this Agreement shall then begin, and, subject to the provisions of this agreement (including particularly Articles X and XI and Section 12.2 hereof), shall expire \_\_\_\_\_ 1, 19\_\_.

SECTION 5.2. Delivery and Acceptance of Possession.  
The County agrees to deliver to the Lessee sole and exclusive possession of the Leased Equipment upon execution and delivery of this Agreement and Lessee thereupon and thereafter shall have sole and exclusive possession of the Leased Equipment during the Lease Term (subject to the right of the County and the Bank to enter the Plant for inspection purposes and to the other provisions of Section 8.2 hereof).

SECTION 5.3. Rents and Other Amounts Payable. On or before \_\_\_\_\_ 1, 197\_, and on or before each \_\_\_\_\_ 1, \_\_\_\_\_ 1, \_\_\_\_\_ 1 and \_\_\_\_\_ 1 thereafter until the principal of and interest on the Note shall have been fully paid, the Lessee shall pay to the Bank as rent for the Leased Equipment, a sum equal to the amount payable on such date as principal and interest upon the Note in any coin or currency of the United States of America

which is, at the time, legal tender for the payment of public or private debts.

In any event each rental payment under this Section shall be sufficient to pay the total amount of interest and principal (whether at maturity or by prepayment as provided in the Note Ordinance) payable on each such quarterly payment date, and if at any payment date the rental payment is insufficient to make required payments of principal (whether at maturity or by prepayment as provided in the Note Ordinance) and interest on such date the Lessee will forthwith pay any such deficiency; provided that any amount at any time held for application to the payments as they become due on the Note in accordance with the provisions hereof shall be credited against the next rental payment to the extent such amount is in excess of the amount required for payments of the Note theretofore due; and provided further, that if the amount held by the Bank for application as aforesaid should be sufficient to pay at the times required the principal of and interest on the Note then remaining unpaid, the Lessee shall not be obligated to make any further rental payments under the foregoing provisions of this Section.

In the event the Lessee should fail to make any of the payments required in this Section 5.3 the item or installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest

thereon at the Penalty Rate until fully paid. The provisions of this Section shall be subject to the provisions of Section 9.6 hereof.

SECTION 5.4. Place of Rental Payments. The rent provided for in Section 5.3 hereof shall be paid directly to the Bank for the account of the County and will be applied against the Note.

SECTION 5.5. Payments in Lieu of Taxes. It is recognized that under the provisions of the Act when any project is leased by a county pursuant to the Act the lessee thereof shall be required to make payments to the county, the school district or school districts, and other political units wherein the project shall be located in lieu of taxes, in such amounts as would result from taxes levied on the project by such county, school district or school districts, and other political unit or units, if the project were owned by the lessee, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the lessee if it were the owner of the project. For the sole purpose of enabling the Lessee to comply with the aforesaid obligation, it is agreed that the County in cooperation with the Lessee (i) shall cause the Project to be valued as if privately owned as aforesaid for purposes of the said taxes by the State Tax Commission of South Carolina or such other appropriate officer or officers as may from time to time be charged with responsibility for making such valuations; (ii) shall cause to be appropriately applied to the valuation or



valuations so determined the respective rate or rates of such taxes, that would be applicable to the Leased Equipment if so privately owned; (iii) shall cause the respective appropriate officer or officers charged with the duty of levying and collecting taxes to submit to the Lessee, when the respective levies are made upon property privately owned as aforesaid, a statement specifying the amount and due date or dates of such taxes which the County, school district and other political units having taxing powers would receive if such property were so privately owned; and the Lessee shall file any accounts or tax returns required with the appropriate officer or officers. The Lessee shall pay to the aforesaid taxing authorities when due all such payments in lieu of taxes with respect to the Leased Equipment required by the Act to be paid to the aforesaid taxing authorities, subject in each case to the Lessee's right to obtain exemptions (and discounts), if any, therefrom which would be afforded to a private owner of the Leased Equipment and to seek to obtain a refund of any such payments made, and subject further to the Lessee's right to contest or appeal in good faith any such payment in the manner provided by law. The Lessee's obligation to make such additional payments shall continue only so long as and to the extent the Lessee is required by law to pay the aforesaid amounts in lieu of taxes. Once having paid the amounts required by

this Section 5.5 to be paid by it in lieu of taxes, the Lessee shall not be required to pay any such taxes for which a payment in lieu thereof has been made to the State or to any city, county, town, school district or other political unit, any other statute to the contrary notwithstanding. In the event the Lessee shall fail to make any of the payments required by this Section 5.5, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid and the Lessee agrees to pay the same with interest thereon at the Penalty Rate until paid.

SECTION 5.6. Obligations of Lessee Hereunder Unconditional. Subject to the provisions of Section 9.6 hereof, the obligations of the Lessee to make the payments required in Sections 5.3 and 5.5 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and until such time as the principal of, prepayment penalty, if any, and interest on the Note shall have been duly paid or provisions for the payment thereof shall have been made in accordance therewith, the Lessee (i) will not suspend or discontinue any payments provided for in Section 5.3 hereof, (ii) will perform and observe all of its other agreements contained in this Agreement, and (iii) except as provided in Section 11.1 hereof will not terminate the Lease Term for any cause including, without limiting the generality of the foregoing, failure of the Lessee to complete the acquisition and installation of

the Leased Equipment, any acts or circumstances that may constitute failure of consideration, eviction, destruction of or damage to the Leased Equipment, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of South Carolina or any political subdivision of either thereof or any failure of the County to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement. Nothing contained in this Section shall be construed to release the County from the performance of any of the agreements on its part herein contained, and in the event the County should fail to perform any such agreement on its part, the Lessee may institute such action against the County as the Lessee may deem necessary to compel performance so long as such action does not abrogate the Lessee's obligations contained in the first sentence of this Section 5.6. The Lessee may, however, at its own cost and expense and in its own name or in the name of the County, prosecute or defend any action or proceeding or take any other action involving third persons which the Lessee deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the County hereby agrees to cooperate fully with the Lessee and to take all action necessary to effect the substitution of the Lessee for the County in any such action or proceeding if the Lessee shall so request.



ARTICLE VI

MAINTENANCE, TAXES AND INSURANCE

SECTION 6.1. Maintenance and Modifications of Leased Equipment by Lessee. The Lessee agrees that during the Lease Term it will at its own expense (i) keep the Leased Equipment in as reasonably safe condition as its operations shall permit and (ii) keep the Leased Equipment in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof. The Lessee may, also at its own expense, make from time to time any additions, modifications or improvements to the Leased Equipment it may deem desirable for its business purposes that do not adversely affect the use of the Leased Equipment for the purpose for which it is intended. Subject to the provisions of Section 9.7 hereof, such additions, modifications and improvements so made by the Lessee shall become a part of the Leased Equipment. The Lessee will not permit any mechanics' or other liens to be established or remain against the Leased Equipment for labor or materials furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it; provided, that if the Lessee shall first notify the Bank of its intention so to do, the Lessee may in good faith contest any mechanics' or other liens filed or established against the Leased Equipment, and the items so contested to remain undischarged and unsatisfied

during the period of such contest and any appeal therefrom unless the Bank shall notify the Lessee that, in the opinion of an Independent Counsel acceptable to Lessee's Authorized Representative, by nonpayment of any such items, the security interest of the Bank as to any part of the Leased Equipment will be materially endangered or the Leased Equipment or any part thereof will be subject to loss or forfeiture, in which event the Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items. The County will cooperate fully with the Lessee in any such contest.

SECTION 6.2. Removal of Leased Equipment. The County shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary Leased Equipment. If no event of default under this Agreement shall have happened and be continuing, in any instance where the Lessee in its discretion determines that any items of Leased Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Lessee may remove such items of Leased Equipment from the Plant and (on behalf of the County) sell, trade in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the County or the Bank therefor, provided that the Lessee shall either:

- (a) Substitute (either by direct payment of the cost thereof or by advancing to the County the funds

necessary therefor) and install anywhere in the Plant other machinery, equipment or related property having equal or greater utility (but not necessarily having the same function) in the operation of the Plant for the purpose for which it is intended, all of which substituted machinery, equipment or related property shall be free of all liens and encumbrances (other than Permitted Encumbrances) and shall become a part of the Leased Equipment; or

(b) Not make any such substitution and installation, provided (i) that in the case of the sale of any such Leased Equipment to anyone other than itself or in the case of the scrapping thereof, the Lessee shall pay to the Bank, to be applied as prepayments on the Note, the proceeds from such sale or the scrap value thereof, as the case may be, (ii) that in the case of the trade-in of such Leased Equipment for other machinery, equipment or related property not to be installed in the Plant, the Lessee shall pay to the Bank, to be applied as prepayments on the Note, the amount of the credit received by it in such trade-in and (iii) that in the case of the sale of any such Leased Equipment to the Lessee or in the case of any other disposition thereof, the Lessee shall pay to the Bank, to be applied as prepayments on the Note, an amount equal to the original cost thereof less depreci-



ation at rates calculated in accordance with generally accepted accounting practices.

The removal of any portion of the Leased Equipment pursuant to the provisions of this Section shall not entitle the Lessee to any abatement or diminution of the rents payable under Section 5.3 hereof.

The Lessee shall promptly report to the Bank each such removal, substitution, sale and other disposition and shall pay to the Bank such amounts as are required by the provisions of the preceding subsection (b) of this Section to be paid to the Bank promptly after the sale, trade-in or other disposition requiring such payment; provided, that no such report and payment need be made until the amount to be so paid on account of all such sales, trade-ins or other dispositions not previously reported aggregates at least \$\_\_\_\_\_. The Lessee shall not remove, or permit the removal of, any of the Leased Equipment except in accordance with the provisions of this Section.

SECTION 6.3. Taxes, Other Governmental Charges and Utility Charges. The County and the Lessee acknowledge (i) that pursuant to Section 13 of the Act, no part of the Leased Equipment owned by the County will be subject to taxation in South Carolina, (ii) that under present law the income and profits (if any) of the County from the Leased Equipment are not subject to either Federal or South Carolina taxation, (iii) and that under present law there is no

tax imposed upon leasehold estates in South Carolina, and (iv) that these factors, among others, have induced the Lessee to enter into this Agreement.

However, the Lessee will pay, as the same become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Equipment (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the lease rentals, revenues or receipts of the County from the Leased Equipment which, if not paid, will become a lien on the Leased Equipment prior to or on a parity with the lien of the Security Agreement or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and the pledge or a ssignment thereof to be created and made in the Security Agreement, and including all ad valorem taxes lawfully assessed upon the leasehold estate hereby granted and conveyed to the Lessee in the Leased Equipment), all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Equipment and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by lien on the Leased Equipment; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as they become due.

If the Lessee shall first notify the Bank of its intention so to do, the Lessee may, at its expense and in its own name and behalf or in the name and behalf of the County, 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 the Bank shall notify the Lessee that, in the opinion of Independent Counsel, by non-payment of any such items the lien or security interest of the Security Agreement will be materially endangered or the Leased Equipment or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly. The County will cooperate fully with the Lessee in any such contest. In the event that the Lessee shall fail to pay any of the foregoing items required by this Section to be paid by the Lessee, the County or the Bank may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the County or the Bank shall become an additional obligation of the Lessee to the one making the advancement, which amounts, together with interest thereon at the Penalty Rate from the date thereof until paid, the Lessee agrees to pay.

SECTION 6.4. Insurance Required. (a) The Lessee shall continuously maintain insurance against such risks as are customarily insured against by businesses of like size



and character, paying as the same become due all premiums in respect thereto, including without limitation:

(1) Insurance to the extent of the full replacement cost of the Leased Equipment against loss or damage by fire and lightning, with extended coverage endorsements covering damage by windstorm, explosion, aircraft, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally covered by such endorsements (limited only as may be provided in the standard form of such endorsements at the time in use in South Carolina). The determination of replacement cost shall be made by a recognized appraiser or insurer selected by the Lessee and acceptable to the Bank;

(2) Insurance in the amount of the full replacement cost of the Leased Equipment (or such lesser amount as may be required for payment of the Note) as may be available from the United States of America or a governmental agency against loss or damage from the risks and hazards of war, but only in time of war or public emergency and only if such insurance is generally carried by owners of similar facilities in South Carolina. The determination of replacement cost shall be made by a recognized appraiser or insurer selected by the Lessee and acceptable to the Bank;

(3) Use and occupancy or business interruption insurance to the extent necessary to insure payments on the Note in the event of damage to or destruction of the Leased Equipment for a period of one year next succeeding such damage or destruction;

(4) Insurance to the extent of \$500,000 per person and \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and to the extent of \$100,000 per occurrence against liability for damage to property, including loss of use thereof, arising out of the ownership, maintenance or use of the Leased Equipment; and

(5) Unless the Lessee qualifies as a self-insurer under the laws of the State of South Carolina, workers' compensation insurance with respect to the Leased Equipment.

(b) The insurance required by this Section 6.4, except the said war risk insurance, shall be maintained in full force and effect at all times during the Lease Term of this Agreement, except that such insurance required by Section 6.4(a)(1) need not be placed in force and effect until the completion of the acquisition and installation of the Leased Equipment, provided that builder's risk insurance is in effect at least to the extent contemplated by Section 6.4(a)(1) and provided further that in no event shall the insurance required by Section 6.4(a)(1) be placed into force and effect later than the expiration of the builder's risk insurance carried pursuant to the provisions of any contracts entered into with contractors, with the end in view of having full insurance coverage at all times.

(c) Copies or certificates of the insurance required by this Section, each bearing notations evidencing payment

of the premiums or other evidence of payment satisfactory to the Bank, shall be delivered by Lessee to the Bank. And, in the case of expiring policies throughout the term, copies or certificates of any new or renewal policies, each bearing notations evidencing payment of the premiums or other evidence of payment satisfactory to the Bank, shall be delivered by Lessee to the Bank.

(d) Policies of insurance provided for in Section 6.4(a)(1) and any builder's risk insurance referred to in Section 6.4(b) shall name the County and the Lessee as insureds as their respective interests may appear, provided, however, that the Bank shall also be named as a party insured pursuant to a standard mortgagee clause as its interests may appear, and provided further that while any amount remains unpaid on the Note, all such insurance proceeds shall be payable as provided in Section 7.1 hereof.

(e) All insurance required by this Section 6.4 shall be effected with responsible insurance companies selected by the Lessee. Lessee shall cause appropriate provisions to be inserted in each insurance policy making each policy non-cancellable without at least ten (10) days prior written notice to the County, Lessee and Bank. Also, it is agreed that no claim shall be made and no suit or action at law or in equity shall be brought by the County or by anyone claiming by, through or under the County, against Lessee for any damage to the Leased Equipment covered by the insurance



provided for by this Section 6.4, however caused, but nothing in this sub-section (e) shall diminish Lessee's obligation to repair or rebuild as provided in Section 7.1. The Lessee shall have the sole right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith, provided that so long as any amount remains outstanding and unpaid on the Note, no settlement of any claim shall be effected without the written consent of the Bank.

SECTION 6.5. Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4(a)(1) hereof shall be received by the Lessee and shall then be paid and applied as provided in Section 7.1 hereof and the Net Proceeds of Insurance carried pursuant to the provisions of Section 6.4(a)(4) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.6. Advances by the County or the Bank. In the event the Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Leased Equipment in as reasonably safe condition as its operations will permit, or shall fail to keep the Leased Equipment in good repair and good operating condition, the County or the Bank may (but shall be under no obligation to) take out the required policies of insurance and pay the

premiums on the same or make the required repairs, renewals and replacements; and all amounts so advanced therefor by the County or the Bank shall become an additional obligation of the Lessee to the one making the advancement, which amounts, together with interest thereon at the Penalty Rate from the date thereof, the Lessee agrees to pay.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. Damage and Destruction. (a) If prior to full payment of the Note the Leased Equipment is damaged by fire or other casualty to such extent that the claim for loss under the insurance policies required to be carried pursuant to Section 6.4(a) hereof resulting from such destruction or damage is not greater than \$\_\_\_\_\_ the Lessee (i) will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition thereof as existed prior to the event causing such damage or destruction with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not adversely affect the use of the Leased Equipment for the purpose for which it is intended, and (ii) shall apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from such claims for losses. All Net Proceeds of insurance resulting from such claims for losses not in excess of \$\_\_\_\_\_ shall be paid to the Lessee, subject to provisions of Section 7.1(e) hereof.

(b) If prior to full payment of the Note the Leased Equipment is destroyed or is damaged (in whole or in part) by fire or other casualty to such extent that the claim for loss under the insurance policies required to be carried



pursuant to Section 6.4(a) hereof resulting from such destruction or damage is in excess of \$\_\_\_\_\_, the Lessee shall promptly give written notice thereof to the Bank. All Net Proceeds of insurance received by the Lessee resulting from such claims for losses in excess of \$\_\_\_\_\_ shall be paid to and held by the Bank in a separate trust account, whereupon (i) the Lessee will proceed promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition thereof as existed prior to the event causing such damage or destruction with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee, and (ii) the Bank will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration, either on completion thereof or as the work progresses.

(c) In the event said Net Proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Lessee will nonetheless complete said work and will pay that portion of the costs thereof in excess of the amount of said Net Proceeds.

(d) The Lessee shall not, by reason of the payment of such excess costs (whether by direct payment thereof or advances to the County or Bank therefor), be entitled to any reimbursement from the County, or the Bank, or any abatement or diminution of the rents payable under Section 5.3 hereof.

(e) Any balance of such Net Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be paid to the Bank to be applied as prepayments on the Note. If the Note has been fully paid all Net Proceeds will be paid to the Lessee.

SECTION 7.2. Condemnation. In the event that title to, or the temporary use of, the Leased Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Lessee shall be obligated to continue to make the rental payments specified in Section 5.3 hereof. The County, the Lessee and the Bank shall cause the Net Proceeds received by them or any of them from any award made in such eminent domain proceedings, to be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the Lessee:

(a) To the restoration by the Lessee of the Leased Equipment to substantially the same condition thereof as existed prior to the exercise of the said power of eminent domain.

(b) To the acquisition, by construction or otherwise, in the name of the County of machinery, equipment or other properties suitable for the Lessee's operations at the Plant (which improvements shall be deemed

a part of the Leased Equipment and available for use of the Lessee without the payment of any rent other than as herein provided to the same extent as if such other improvements were specifically described herein and demised hererby); provided, that such improvements shall be acquired by the County subject to no liens or encumbrances, other than Permitted Encumbrances.

(c) To prepayment of the Note, provided that the Lessee shall furnish to the County and the Bank a certificate of an Independent Engineer acceptable to the County and the Bank stating (i) that the property forming a part of the Leased Equipment that was taken by such condemnation proceedings is not essential to the Lessee's use of the Leased Equipment, or (ii) that the Leased Equipment has been restored to a condition substantially equivalent to its condition prior to the taking by such condemnation proceedings or (iii) that improvements have been acquired which are suitable for the Lessee's operations at the Plant as contemplated by the foregoing subsection (b) of this Section.

The Lessee shall direct the County and the Bank in writing as to which of the ways specified in this Section the Lessee elects to have the condemnation award applied.

Any balance of the Net Proceeds of the award in such eminent domain proceedings shall be used to prepay the Note. If the Note has been fully paid all Net Proceeds shall be paid to the Lessee.



The County shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Leased Equipment or any part thereof and shall, to the extent it may lawfully do so, permit the Lessee to litigate in any such proceeding in the name and behalf of the County. In no event shall the County voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Leased Equipment or any part thereof without the written consent of the Lessee.

## ARTICLE VIII

### SPECIAL COVENANTS

SECTION 8.1. No Warranty of Condition or Suitability by the County. The County makes no warranty, either express or implied, as to the condition of the Leased Equipment or that it will be suitable for the Lessee's purposes or needs.

SECTION 8.2. County's and Bank's Right of Access to the Leased Equipment. The Lessee agrees that the County, the Bank and the duly authorized agents of each of them shall have the right at all reasonable times to enter the Plant and to examine and inspect the Leased Equipment. The Lessee further agrees that the County, the Bank and their or either of their duly authorized agents shall have such rights of access to the Plant as may be reasonably necessary for the proper maintenance of the Leased Equipment in the event of failure by the Lessee to perform its obligations under Section 6.1 hereof.

SECTION 8.3. Lessee to Maintain its Corporate Existence; Conditions under Which Exceptions Permitted. The Lessee agrees that during the Lease Term it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets 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 Lessee may, without vio-

lating the agreement contained in this Section, consolidate with or merge into a domestic corporation (i.e., a corporation organized under the laws of one of the states of the United States of America), or permit one or more domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to a domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided that the surviving, resulting or transferee corporation, as the case may be, expressly assumes in writing all of the obligations of the Lessee herein and qualifies to do business in South Carolina.

SECTION 8.4. Qualification in South Carolina. The Lessee warrants that it is and throughout the Lease Term it will continue to be duly qualified to do business in South Carolina.

SECTION 8.5. Indemnification Covenants. (a) Lessee shall and agrees to indemnify and save the County and the Bank harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Leased Equipment during the Lease Term and against and from all claims arising during the Lease Term from (i) any condition of the Leased Equipment, (ii) any breach or default on the part of Lessee in the performance of any of its obligations under this Agreement, (iii) any act or negligence of Lessee or of any of its agents, contractors, servants, employees or



licensees, or (iv) any act or negligence of any assignee or sublessee of Lessee, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of Lessee. Lessee shall indemnify and save the County and the Bank harmless from any and all costs and expenses incurred in or in connection with any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from the County, or the Bank, Lessee shall defend them or either of them in any such action or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the County shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the issuance of the Note, by reason of the execution of the Security Agreement, by reason of the performance of any act required of it by this Agreement, or by reason of the performance of any act requested of it by the Lessee, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County should incur any such pecuniary liability, then in such event the Lessee shall indemnify and hold harmless the County against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred

in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the County, the Lessee shall defend the County in any such action or proceeding.

SECTION 8.3. Financial Records and Statements. The Lessee shall maintain proper books of record and account, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all its business and affairs. The Lessee shall have an annual audit made by independent certified public accountants of recognized standing and, within 90 days after the end of each of its fiscal years, shall furnish the Bank copies of the consolidated balance sheet of the Lessee and its consolidated subsidiaries, if any, as of the end of such fiscal year, consolidated statements of income and retained earnings of the Lessee and its consolidated subsidiaries, if any, for such fiscal year and consolidated statements of changes in financial position of the Lessee and its consolidated subsidiaries, if any, for such fiscal year, all in reasonable detail and certified by such accountants.

ARTICLE IX

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING;  
REDEMPTION; RENT PREPAYMENT AND ABATEMENT

SECTION 9.1. Assignment and Subleasing. This Agreement may be assigned, and the Leased Equipment may be subleased as a whole or in part, by the Lessee without the necessity of obtaining the consent of either the County or the Bank, subject, however, to each of the following conditions:

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

(b) The assignee or sublessee shall assume the obligations of the Lessee hereunder to the extent of the interest assigned or subleased.

(c) The Lessee shall, within thirty days after the delivery thereof, furnish or cause to be furnished to the County and to the Bank a true and complete copy of each such assignment or sublease, as the case may be.



SECTION 9.2. Mortgage of Leased Equipment by County.

The County shall grant a lien on the Leased Equipment by the Security Agreement, and assign its interest in and pledge any moneys receivable under this Agreement pursuant to the Security Agreement, to the Bank as security for payment of the Notes, but each such conveyance, assignment or pledge shall be subject and subordinate to this Agreement.

SECTION 9.3. Restrictions on Sale of Leased Equipment by County. The County agrees that, except as set forth in Section 9.2 here of or other provisions of this Agreement or the Security Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Leased Equipment during the Lease Term.

SECTION 9.4. Prepayment of Note. The County, at the prior written request at any time of the Lessee and if the same are then subject to prepayment, shall forthwith take all steps that may be necessary under the applicable prepayment provisions of the Note to effect prepayment of all or part of the Note, as may be specified by the Lessee on the earliest prepayment date on which such prepayment may be made under such applicable provisions.

SECTION 9.5. Prepayment of Rents. There is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted, at any time it may choose, to prepay all or any part of the rents payable under Section 5.3 hereof, and the County agrees that the Bank may accept such pre-

payment of rents when the same are tendered by the Lessee. All rents so prepaid shall be credited on the rental payments specified in Section 5.3 hereof, in the inverse order of their due dates.

SECTION 9.6. Lesseei Entitled to Certain Rent Abatements If Note Paid Prior to Maturity. If at any time the aggregate rental payments held by the Bank shall be sufficient to retire the Note in accordance with the provisions of the Note, and to pay all fees and charges of the Bank due or to become due through the date on which the Note is retired, under circumstances not resulting in termination of the Lease Term, and if the Lessee is not at the time otherwise in default hereunder, the Lessee shall be entitled to use the Leased Equipment from the date on which such aggregate moneys are in the hands of the Bank to and including \_\_\_\_\_ 1, 199\_ with no obligation to make the rental payments specified in Section 5.3 hereof during that interval (but otherwise on the terms and conditions hereof).

SECTION 9.7. Installation of Lessee's Own Machinery and Equipment. The Lessee may from time to time, in its sole discretion and at its own expense, install machinery, equipment and other personal property in the Plant and which may be attached or affixed to the Plant. All such machinery, equipment and other personal property shall remain the sole property of the Lessee and the Lessee may remove the same from the Plant at any time, in its sole discretion and

at its own expense; provided, that any damage to the Project resulting from any such removal shall be repaired by the Lessee at the expense of the Lessee. The Lessee may create any mortgage, encumbrance, lien or charge on any such machinery, equipment and other personal property provided that the same will not diminish or impair the security intended to be given by or under the Security Agreement. Neither the County nor the Bank shall have any interest in or landlord's lien on any such machinery, equipment or personal property so installed pursuant to this Section 9.7 and all such machinery, equipment and personal property shall be and remain identified as the property of the Lessee by appropriate tags or other markings.

SECTION 9.8. Reference to Note Ineffective After Note Paid. Upon payment in full of the Note and all fees and charges of the Bank, all references in this Agreement to the Note and the Security Agreement shall be ineffective and the Bank shall thereafter have no rights hereunder, saving and excepting those provided in Section 12.2 and those that shall have theretofore vested.



ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

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

(a) Failure by the Lessee to pay the rents required to be paid under Section 5.3 of this Agreement at the times specified therein.

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement (other than as referred to in subsection (a) of this Section) in this Agreement on the part of the Lessee to be observed or performed, for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the County or the Bank, unless the County and the Bank shall agree in writing to an extension of such time prior to its expiration; provided in the case of a default specified in this subsection (b) of Section 10.1, if such default be such that it can be corrected, but it cannot be corrected within the said 30-day period, it shall not constitute an event of default if corrective action is instituted by the Lessee within said 30-day period and diligently pursued until the default is corrected.

(c) The dissolution or liquidation of the Lessee or the filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair the ability of the Lessee to carry on its operations at the Plant, or the commission by the Lessee of any act of bankruptcy, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under any similar act in any domestic or foreign jurisdiction, which may now be in effect or hereafter enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Lessee resulting either from a merger or consolidation of the Lessee into or with another corporation or a dissolution or liquidation of the Lessee following a transfer of all or substantially all of its assets as an entirety, provided, that the conditions permitting such actions contained in Section 8.3 hereof shall have been met.

The foregoing provisions of subsection (b) of this Section are subject to the following limitations: If by reason of force majeure the Lessee is unable in whole or in part to carry out the agreements of the Lessee on its part herein contained (other than the obligations on the part of the Lessee contained in Article V and Section 6.3, 6.4, and 8.4 hereof to which this paragraph shall have no application), the Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of South Carolina or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Lessee, it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Lessee, and the Lessee shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the



demands of the opposing party or parties when such course is in the judgment of the Lessee unfavorable to the Lessee.

SECTION 10.2. Remedies on Default. Whenever any event of default referred to in Section 10.1 shall have happened and be subsisting, the County may take any one or more of the following remedial steps:

(a) The County or the Bank may, at its option, declare all installments of rent payable under Section 5.3 hereof for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable, which amounts the Lessee hereby agrees to pay.

(b) The County, with the prior written consent of the Bank, may take possession of the Leased Equipment without terminating this Agreement, and sublease the Leased Equipment for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by such sublessee in such subleasing and the rents and other amounts payable by the Lessee hereunder.

(c) The County, with the prior written consent of the Bank, may terminate the Lease Term, exclude the Lessee from possession of the Leased Equipment and use its best efforts to lease the Leased Equipment to another for the account of the Lessee, holding the Lessee liable for all rent and other amounts payable by the Lessee hereunder.

(d) In the event any amount shall at the time be outstanding and unpaid on the Note, the County may have access to and inspect, examine and make copies of the books and records and any and all accounts, similar data and income tax and other tax returns of the Lessee.

(e) The County may take whatever action at law or in equity may appear necessary or desirable to collect the rent and other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Agreement.

Any amounts collected pursuant to action taken under this Section shall be paid to the Bank and applied to payments on the Note as they come due or, if the Note has been fully paid, to the Lessee.

No action taken pursuant to this Section (including re-possession of the Leased Equipment or termination of the Lease Term) shall relieve the Lessee from the Lessee's obligations pursuant to Section 5.3, Section 10.2(a) and Section 12.2 hereof, all of which shall survive any such action, and the County may take whatever action at law or in equity as may appear necessary and desirable to collect the rent and other amounts then due and thereafter to become due and/or to enforce the performance and observance of any obligation, agreement or covenant of the Lessee hereunder,

including the Lessee's obligation to purchase the Leased Equipment under Section 12.2 hereof.

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

SECTION 10.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Agreement and the County or the Bank should employ attorneys or incur other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of the



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

SECTION 10.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI

OPTIONS IN FAVOR OF LESSEE

SECTION 11.1. Options to Terminate. The Lessee shall have, and is hereby granted, the following options to terminate the Lease Term and its obligations as Lessee hereunder:

(a) At any time prior to full payment of the Note, the Lessee may terminate this Agreement by paying to the Bank an amount which will be sufficient to pay and retire the Note in accordance with its provisions (including, without limiting the generality of the foregoing, principal, prepayment penalty, if any, interest to prepayment date and fees and expenses, if any, of the Bank).

(b) At any time after full payment of the Note and of any and all sums then due to the County under this Agreement, the Lessee may terminate the Lease Term by giving the County notice in writing of such termination and such termination shall forthwith become effective.

SECTION 11.2. Conveyance on Exercise of Option to Purchase. At the closing of the purchase pursuant to the exercise of any option to purchase granted herein, the County will upon receipt of the purchase price deliver to the Lessee the following:

(a) If necessary, a release from the Bank of the property with respect to which the option was exercised from all security instruments.

(b) Documents conveying to the Lessee a good and marketable title to the property being purchased, as such property then exists, subject to the following:

(i) those liens and encumbrances (if any) to which title to said property was subject when conveyed to the County; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; and (iii) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement.

SECTION 11.3. Relative Position of Options and Security Agreement. The options granted to the Lessee in this Section 11.1 shall be and remain prior and superior to the Security Agreement and may be exercised whether or not the Lessee is in default hereunder, provided that such default will not result in nonfullfillment of any condition to the exercise of any such option.



ARTICLE XII

ADDITIONAL OBLIGATION OF LESSEE AND COUNTY

SECTION 12.1. Obligation to Purchase Leased Equipment.

The Lessee hereby agrees to purchase, and the County hereby agrees to sell, the Leased Equipment for one dollar, and any and all sums then due to the County under this Agreement, at the expiration or sooner termination of the Lease Term following the payment of the Note. At the closing of the foregoing purchase, the County will deliver to the Lessee the documents referred to in Section 11.2 hereof. The right to purchase granted in this Section shall be and remain prior and superior to the Security Agreement and may be exercised whether or not the Lessee is in default hereunder provided that no such default will result in nonfulfillment of any condition to this right.

SECTION 12.2. Lessee's Obligation to Purchase Leased Equipment Under Certain Circumstances. Should, subject to the proviso in the next succeeding paragraph of this Section 12.2, interest on the Note be determined by:

(i) the National Office of the Internal Revenue Service of the United States Treasury Department, or

(ii) the District Director of Internal Revenue for the District in which the Lessee files its income tax return as provided in Section 6091 of the Internal Revenue Code of 1954, amended (the Code), or

(iii) any court of competent jurisdiction (such determination by (i), (ii), or (iii) being hereafter referred to in this Section 12.2 as the "official determination") to be subject to Federal Income Tax as a result of the failure of the Note to qualify or maintain its qualification as an exempt small issue under 103(b)(6)(A) of the Code, or for any other reason (except as a result of being held by a substantial user of the Leased Equipment or a related person, as described in Section 103(b)(7) of the Code) the Lessee agrees to purchase, in full discharge of all liability hereunder, the Leased Equipment within thirty days after such official determination at a purchase price equal to the principal amount of the Note then outstanding, plus accrued interest to the prepayment date and a prepayment penalty computed in the manner prescribed in Section 12.4, plus any expenses of prepayment. The obligation of the Lessee under this Section 12.2 shall survive any termination of the Lease Term.

Provided, that the Lessee may in good faith to the extent permitted by law, contest, at Lessee's expense, any such official determination, in which event, at Lessee's option the performance of its obligation to purchase pursuant to the foregoing provisions of this Section 12.2 as a result of such official determination may be postponed for

two years from the date of Lessee's receipt of written notice regarding such official determination, but in no event shall the performance of Lessee's obligation to purchase be postponed beyond the expiration of such two year period, even though any such litigation or contest shall not then be completed or terminated. If such official determination is reversed or withdrawn by competent authority within such two year period, Lessee shall be relieved of such obligation to purchase.

At the closing of any such purchase of the Leased Equipment pursuant to this Section, the County shall deliver to the Lessee the documents referred to in Section 11.2. The purchase price shall be applied to the prepayment of the Note on the earliest possible date whether or not such date is an interest payment date, and to the payment of any prepayment penalty required by Section 12.4 on account of previously paid installments of principal of the Note.

SECTION 12.3. Obligation of Lessee Further Defined. The parties recognize that the Note is being issued as a tax free obligation under Section 103(b)(6)(A) of the Code, and that circumstances (not now contemplated or anticipated) may hereafter result in a determination as provided in Section 12.2 (which may be disputed) that interest on the Note is subject to Federal Income Tax. It is the intention of the parties hereto that, subject to the proviso in the second paragraph of Section 12.2, the Lessee, in the event of such



a determination, shall provide the person who is the holder of the Note on the occasion as of which interest on the Note becomes (or is determined as provided in Section 12.2 to be) taxable, by reason of any circumstance described in Section 12.2, with the relief prescribed in Section 12.2 and Section 12.4 hereof, without regard to the final outcome of any dispute extending more than two years beyond the date of official determination, and such determination as prescribed in Section 12.2 shall be conclusive even though it might be thereafter determined by Court order, ruling or otherwise that interest on the Note was, in fact, not subject to Federal Income Taxes.

SECTION 12.4. Computation of Prepayment Penalty. In the event the Lessee is required to purchase the Leased Equipment by virtue of the provisions of Section 12.2 hereof, the prepayment penalty payable shall be computed on the principal amount of the Note outstanding on the date as of which interest on the Note becomes taxable (or is determined in accordance with Section 12.2 hereof, to be taxable) such date being hereafter referred to in this Section 12.4 as the "Taxable Date". The prepayment penalty shall be a sum equal to six months' interest for each six months period or fraction of such six months' period between the Taxable Date and the date of prepayment or the earlier payment date of any installment of principal which shall have been paid (whether at maturity or by prepayment) subsequent to the

Taxable Date and prior to the prepayment date. On the occasion of the purchase of the Leased Equipment pursuant to the requirements of Section 12.2, the purchase price paid by Lessee shall include the aggregate of all penalties above prescribed so that each person who may be, or may have been the holder of the Note on the occasion when any installment thereof was paid (whether at maturity or by prepayment) prior to the redemption date but subsequent to the Taxable Date, shall receive a prepayment penalty on each such principal installment computed according to the provisions of this Section 12.4.

ARTICLE XIII

MISCELLANEOUS

SECTION 13.1. Quiet Enjoyment. The County agrees so long as the Lessee shall fully and punctually pay all of the rents and other amounts provided to be paid hereunder by the Lessee, and shall fully and punctually perform all of its other covenants and agreements hereunder, that the Lessee shall peaceably and quietly have, hold and enjoy the Leased Equipment during the Lease Term.

SECTION 13.2. Surrender of Leased Equipment. Except as otherwise expressly provided in this Agreement, at the expiration or sooner termination of the Lease Term, the Lessee agrees to surrender possession of the Leased Equipment peaceably and promptly to the County in as good condition as at the commencement of the Lease Term, loss by fire or other casualty covered by insurance and ordinary wear, tear and obsolescence only excepted.

SECTION 13.3. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by a telegram when telegraphic notice is permitted by express provisions of this Agreement, addressed as follows: if to the County, to the County Council of Lexington County, Lexington County Courthouse, Lexington, South Carolina \_\_\_\_; if to the



Lessee, at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_, Attention \_\_\_\_\_; if to the Bank, at  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_, Attention: \_\_\_\_\_. The  
County, the Lessee and the Bank may, by notice given to all  
parties to this Agreement and the Security Agreement, design-  
nate any further or different addresses to which subsequent  
notices, certificates or other communications shall be sent.

SECTION 13.4. Recording and Filing. (a) This Agree-  
ment as originally executed shall be recorded prior to the  
recordation of the Security Agreement. It shall be recorded  
and indexed as a miscellaneous conveyance and as a security  
agreement in the office of the Register for Mesne Conveyance  
for Lexington County, South Carolina, or in such other  
office as may at the time be provided by law as the proper  
place for the recordation thereof. The security interest of  
the County created herein as to the personal property,  
equipment and fixtures and the assignment of such security  
interest to the Bank shall be perfected by the filing of  
financing statements which fully comply with the South  
Carolina Uniform Commercial Code--Secured Transactions in  
the office of the Secretary of State of South Carolina, in  
the City of Columbia, South Carolina and in the office of  
the Register for Mesne Conveyance for Lexington County. The  
parties further agree that all necessary continuation state-

ments shall be filed within the time prescribed by the South Carolina Uniform Commercial Code--Secured Transactions in order to continue the security interest created by this Agreement, to the end that the rights of the Bank in the Leased Equipment (and in the assignment to the Bank of the rents payable under this Lease Agreement) shall be fully preserved as against creditors of, or purchasers for value from, the County or the Lessee. To this end the County agrees that it shall cooperate with the other parties in the preparation and filing of such continuation statements; provided, that the County shall not be responsible for the preparation or timely filing of any such continuation statements.

(b) This Agreement and the Security Agreement may be recorded prior to the delivery of the Note. If subsequent to such recording the Note shall not be delivered on or before August 1, 1978, or such later date as the Lessee may agree upon in writing, then this Agreement and the Security Agreement shall be of no force and effect and in such event the County and the Lessee do hereby mutually release and discharge each other from any and all claims of any character which either may have against the other by reason of or arising from a failure to deliver the Note. And the County shall transfer and reconvey to the Lessee or its designee all properties conveyed to the County by the deed and for the same consideration paid to the County by the

Lessee. Both parties shall execute such further instruments as may be necessary to fully implement the provisions of this subsection (b) of Section 13.4.

SECTION 13.5. Other Instruments. (a) The Lessee covenants to deliver to the County and the Bank within sixty days after the close of each fiscal year of the Lessee, a description of the Leased Equipment as of the close of such fiscal year, and not adequately described in the granting clauses of the Security Agreement as then supplemented, and in the demising clauses of this Agreement as then amended. Such description shall be sufficiently detailed so as to enable counsel to render the opinion referred to in clause (4) of the next succeeding sentence. Within 30 days after delivery of such description, the Lessee covenants that it will:

(1) Prepare a supplement to the Security Agreement and an amendment to this Agreement, each containing a description of the Leased Equipment not adequately described in the granting clauses of the Security Agreement, as then supplemented, and in the demising clauses of this Agreement, as then amended;

(2) Deliver the supplement to the Security Agreement to the Bank and the County and the supplement to this Agreement to the County, for execution;

(3) Deliver the fully executed supplement to the Security Agreement and the fully executed supplement to



this Agreement to the Bank for recording and filing or re-recording or re-filing in all places required by the opinion of Counsel referred to in sub-section (a)(4) of this Section 13.5; and

(4) Deliver to the Bank a written opinion of counsel (who may be counsel for the County or the Lessee) addressed to the Bank that the description of the property described under paragraphs I, II, III and IV of the Security Agreement contained in the granting clauses of the Security Agreement, as supplemented, and the description of the Leased Equipment contained in the demising clauses of this Agreement, as supplemented, are adequate for all purposes thereof and hereof; that the Security Agreement, as supplemented, constitutes a valid first mortgage lien on, and security interest in, the interest of the County in the Leased Equipment, subject only to Permitted Encumbrances other than the Security Agreement; that the Security Agreement, as supplemented, this Agreement, as supplemented, and all financing statements, continuation statements, notices and other instruments required by applicable law have been recorded or filed or re-recorded or re-filed in such manner and in such places required by law in order to fully preserve and protect the rights of the Bank in the Leased Equipment and in the rents payable under this Agreement as

against creditors of, or purchasers for value from, the County or the Lessee.

(b) The Lessee, the County and the Bank shall execute and deliver all instruments and shall furnish all information and evidence deemed necessary or advisable by such counsel in order to enable him to render the opinion referred to in subsection (a)(4) of this Section 13.5. The Bank shall file and record and re-record or cause to be filed and recorded and re-recorded all instruments required to be filed and recorded and re-recorded pursuant to the opinion of such counsel and shall continue or cause to be continued the liens of such instruments for so long as the Note shall be outstanding, except as otherwise in this Agreement required.

SECTION 13.6. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County, the Lessee and their respective successors and assigns, subject, however, to the limitation contained in Sections 8.3, 9.1, 9.2 and 9.3 hereof.

SECTION 13.7. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 13.8. Amounts Held by the Bank. It is agreed by the parties hereto that any amounts held by the Bank upon

expiration or sooner termination of the Lease Term, as provided in this Agreement, after payment in full of the Note and the fees, charges and expenses of the County and of the Bank in accordance with the Security Agreement and the provisions of this Agreement shall belong to and be paid to the Lessee by the Bank as overpayment of rents.

SECTION 13.9. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without in each instance the prior written consent of the Bank.

SECTION 13.10. Net Lease. This Agreement shall be deemed and construed to be a "net lease", and the Lessee shall pay absolutely net during the Lease Term the rent and all other payments required hereunder, free of any deductions, without abatement, diminutions or set-off other than those herein expressly provided.

SECTION 13.11. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 13.12. Law Governing Construction of Agreement. This Agreement is prepared and entered into with the intention that the law of the State of South Carolina shall govern its construction.

IN WITNESS WHEREOF, Lexington County, South Carolina, has executed this Lease Agreement by causing its name to be hereunto subscribed by the Chairman of the County Council



of Lexington County and the official seal of said County to be impressed hereon and attested by the Clerk of said County Council of Lexington County; and Summit Container Corporation has executed this Lease Agreement by causing its corporate name to be hereunto subscribed by its \_\_\_\_\_ and its corporate seal to be impressed hereon and attested by its \_\_\_\_\_, all being done as of the day and year first above written.

LEXINGTON COUNTY, SOUTH CAROLINA

(SEAL)

By \_\_\_\_\_  
Chairman, County Council of  
Lexington County

Attest:

\_\_\_\_\_  
Clerk, County Council of  
Lexington County

Signed, Sealed and Delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

SUMMIT CONTAINER CORPORATION

(SEAL)

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

Its \_\_\_\_\_

Signed, Sealed and Delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

PERSONALLY appeared before me  
\_\_\_\_\_ who being duly sworn says that he  
saw the seal of Lexington County affixed to the foregoing  
Lease Agreement, and that he also saw \_\_\_\_\_  
\_\_\_\_\_, as Chairman, and \_\_\_\_\_,  
as Clerk of the County Council of Lexington County, sign and  
attest the same, and that he with \_\_\_\_\_  
witnessed the execution and delivery thereof as the act and  
deed of the said Lexington County.

\_\_\_\_\_

SWORN to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 1978.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me \_\_\_\_\_  
who being duly sworn says that he saw the corporate seal of  
Summit Container Corporation affixed to the foregoing Lease  
Agreement, and that he also saw \_\_\_\_\_,  
as \_\_\_\_\_ and \_\_\_\_\_, as  
\_\_\_\_\_ of Summit Container Corporation sign  
and attest the same, and that he with \_\_\_\_\_  
\_\_\_\_\_ witnessed the execution and delivery thereof  
as the act and deed of the said Summit Container Corpor-  
ation, a corporation organized under the laws of the State  
of Virginia.

\_\_\_\_\_

SWORN to before me this

\_\_\_\_ day of \_\_\_\_\_, 1978.

\_\_\_\_\_(L.S.)  
Notary Public for \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

EXHIBIT "A"

DESCRIPTION OF LEASED EQUIPMENT  
ATTACHED TO LEASE AGREEMENT BETWEEN LEXINGTON COUNTY,  
SOUTH CAROLINA, AND SUMMIT CONTAINER CORPORATION  
DATED AS OF JUNE 1, 1978.

EXHIBIT "B"

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
LEXINGTON COUNTY  
INDUSTRIAL REVENUE NOTE, SERIES 1978,  
(SUMMIT CONTAINER CORPORATION - LESSEE)

NO. R-1

\$ 1,000,000

KNOW ALL MEN BY THESE PRESENTS that Lexington County, a body politic and corporate, and a political subdivision of the State of South Carolina (hereinafter called the "County"), for value received promises to pay, but only from the source and as hereinafter provided, to the order of United Virginia Bank, at its principal office in the City of Richmond, Commonwealth of Virginia the sum of One Million Dollars (\$1,000,000) in ten equal, consecutive, quarterly installments of \$25,000 each payable on October 1, 1983 and on each January 1, April 1, July 1 and October 1 thereafter, until payment in full of this Note, together with interest from the date hereof at the rate of seven and one-half per centum (7-1/2%) per annum computable and payable quarterly on the principal balance from time to time outstanding on each October 1, January 1, April 1, and July 1 hereafter, commencing October 1, 1978. Principal of, prepayment penalty, if any, and interest on this Note are payable in any coin or currency of the United States of America which is at the time legal tender for the payment of public or private debts.



This Note is issued for the purpose of acquiring industrial machinery and equipment and leasing the same to Summit Container Corporation, a corporation organized under the laws of the State of Virginia (hereinafter referred to as the "Lessee") (the equipment and machinery comprising such facilities being hereinafter called the "Leased Equipment") and paying necessary expenses incidental thereto so as to thereby promote industry and develop trade in South Carolina. This Note is secured by a Security Agreement (hereinafter called the "Security Agreement"), dated as of June 1, 1978, duly executed and delivered by the County to United Virginia Bank, as Secured Party (hereinafter called the "Bank"). The Leased Equipment has been leased to the Lessee under and pursuant to a Lease Agreement between the County and the Lessee dated as of June 1, 1978 (herein referred to as the "Lease Agreement"). Under the Lease Agreement, the Lessee must pay to the County such rentals as will be fully sufficient to pay the principal of, prepayment penalty, if any, and interest on the Note as the same become due and, under the Lease Agreement it is the obligation of the Lessee to pay the cost of maintaining the Leased Equipment in good repair and to keep it properly insured. Payment of the principal, interest and prepayment penalty, if any, on this Note has been unconditionally guaranteed by Summit Container Corporation pursuant to a Guaranty Agreement dated as of June 1, 1978 (the "Guaranty Agreement") between Summit

Container Corporation and the Bank. Copies of the Security Agreement, the Lease Agreement and the Guaranty Agreement are recorded in the office of the Register of Mesne Conveyance for Lexington County, South Carolina, and reference is made to the Security Agreement, the Lease Agreement and the Guaranty Agreement for a description of the security, the provisions, among others, with respect to the nature and extent of the security, the charging and collection of rentals for the Leased Equipment, the rights and remedies of the holder of this Note, the rights, duties and obligations of the County, the Lessee, and the Bank, and the terms upon which this Note is issued and secured.

This Note is subject to prepayment on any date, whether or not any interest payment date, in whole or in part (but if in part, in multiples of \$5,000 and in the inverse order of the principal maturities of the Note) at a price of principal plus interest to the date of prepayment. This Note is also subject to prepayment in the event of mandatory purchase of the Leased Equipment by the Lessee pursuant to Section 12.2 of the Lease Agreement. If prepaid as a result of such mandatory purchase, this Note shall be subject to prepayment by the County at any time, whether or not an interest payment date, in whole and not in part, at the principal amount thereof plus accrued interest to the prepayment date and a prepayment penalty of six months interest on the principal amount of the Note at the time outstanding

multiplied by the number of six month periods, or fraction thereof, between the date as of which interest on the Note is (or is determined as provided in Section 12.2 of the Lease Agreement to be) taxable and the prepayment date. If it shall occur that any principal installment on the Note shall have been paid subsequent to the date as of which interest on the Note became, or was so determined to have become, taxable but prior to the prepayment of the Note from the purchase price derived from the mandatory purchase of the Project by the Lessee pursuant to Section 12.2 of the Lease Agreement, then in such event the holder hereof shall be entitled to receive from the purchase price to be paid by the Lessee pursuant to Section 12.2 of the Lease Agreement a prepayment penalty computed on such principal amounts to the date of their payment whether at maturity or by prepayment.

In the event Lexington County shall default in the payment of the principal or interest when the same becomes due hereunder, the holder of this Note may, at its option, declare the entire unpaid balance hereunder immediately due and payable.

This Note is issued pursuant to the authorization of and for the purposes prescribed by Title 4, Chapter 29, Code of Laws of South Carolina, 1976, and pursuant to ordinances duly adopted by the County Council of Lexington County and with the approval of the State Budget and Control Board of South Carolina. This Note, both principal and interest, is



a limited obligation of the County and is payable solely out of the lease rentals, revenues and receipts (excluding amounts paid by the Lessee pursuant to Sections 5.5, 6.3, 8.4 or 10.4 of the Lease Agreement) derived from the leasing or sale of the Leased Equipment, which has been financed through the issuance of the Note and leased to the Lessee.

This Note and the principal, interest, and prepayment penalty, if any, payable hereunder are not and shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.

Pursuant to the Lease Agreement, rental payments sufficient for the prompt payment when due of the principal of, premium, if any, and interest on the Note are to be paid to the Bank for the account of the County and have been pledged for that purpose, and in addition the Leased Equipment has been subjected to the lien of the Security Agreement to secure payment of such principal, interest and premium.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Security Agreement and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law; and that the issuance of

this Note, together with all other obligations of the County, does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, Lexington County, South Carolina, has caused this Note to be executed by the Chairman of the County Council of Lexington County, by his manual signature, and its corporate seal to be impressed hereon, and attested by the Clerk of the County Council of Lexington County, by her manual signature, all as of the \_\_\_\_ day of June, 1978.

LEXINGTON COUNTY, SOUTH CAROLINA

(SEAL)

BY \_\_\_\_\_  
Chairman, County Council of  
Lexington County

Attest:

\_\_\_\_\_  
Clerk, County Council of  
Lexington County

Exhibit "C"

GUARANTY AGREEMENT

between

SUMMIT CONTAINER CORPORATION

and

UNITED VIRGINIA BANK

Dated as of June 1, 1978



## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (the "Agreement") made and entered into as of the 1st day of June, 1978, by and between SUMMIT CONTAINER CORPORATION, a corporation duly organized and existing under the laws of the State of Virginia and duly qualified to do business in the State of South Carolina, being sometimes hereinafter referred to as the "Guarantor", and UNITED VIRGINIA BANK, Richmond, Virginia, a banking association duly organized and existing under the laws of the Commonwealth of Virginia, its successors and assigns, hereinafter referred to as the "Bank");

### W I T N E S S E T H:

WHEREAS, Lexington County, a public body corporate and politic duly organized and existing under the laws of the State of South Carolina (the "County"), intends to issue its Lexington County, South Carolina Industrial Revenue Note, Series 1978 (Summit Container Corporation Project) in an aggregate principal amount of \$1,000,000 (the "Note"); and

WHEREAS, the proceeds derived from the issuance of the Note are to be applied to the acquisition, and installation of industrial machinery and equipment in Lexington County, South Carolina (the "Leased Equipment") for the use and benefit of the Guarantor; and

WHEREAS, the Note is to be secured by (i) a first security interest in the Leased Equipment granted to the

Bank as Secured Party (the "Security Agreement") and (ii) the assignment to the Bank of the Lease of the Leased Equipment by County to Guarantor (the "Lease"); and

WHEREAS, the Guarantor is desirous that the County issue the Note and apply the proceeds as aforesaid and is willing to enter into this Guaranty Agreement in order to induce the Bank to purchase the Note and thereby achieve interest cost savings and other savings to the Guarantor, and as an inducement to the purchase of the Note by all who shall at any time become holders of the Note; and

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to purchase the Note and thereby achieve interest cost savings and other savings to the Guarantor and as an inducement to the purchase of the Note by all who shall at any time become holders of the Note, the Guarantor does hereby subject to the terms hereof, covenant and agree with the Bank as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 1.1. The Guarantor does hereby represent and warrant that:

(a) It is a corporation duly organized, existing and in good standing under the laws of the Commonwealth of Virginia and is duly qualified to do business in the State of South Carolina; it is not in default under its Articles of Incorporation; it has corporate power under its Articles of Incorporation and under the laws of Virginia and South Carolina to enter into and perform all agreements on its part herein contained; it has been authorized to enter into this Guaranty Agreement by all necessary and proper corporate action; and the execution and delivery by it of this Guaranty Agreement and the agreements herein contained do not contravene or constitute a default under any agreement, indenture, commitment, provision of its Articles of Incorporation or By-Laws, or other requirement of law to which it is a party or by which it is or may be bound; and

(b) This Guaranty Agreement is made in furtherance of the purposes for which the Guarantor was incorporated and is necessary to promote and further the business of the Guarantor, and the assumption by the Guarantor of its obligations hereunder will result in direct financial benefits to the Guarantor.



## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.1. The Guarantor hereby unconditionally guarantees to the Bank and any other holder(s) at any time and from time to time of the Note (a) the full and prompt payment of the principal of and any prepayment penalty on the Note when and as the same shall become due, whether at the stated maturity thereof, or any accelerated maturity under the terms of the Note and Security Agreement and (b) the full and prompt payment of any interest on the Note when and as the same shall have become finally due in accordance with the provisions thereof and of the Security Agreement, and agrees to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the Bank in realizing upon any of the payments hereby guaranteed or in enforcing this Guaranty Agreement. All payments by the Guarantor shall be paid in lawful money of the United States of America. Unless the Note shall have become due by acceleration or call for redemption, each and every default in payment of the principal of, prepayment penalty (if any) or interest on the Note shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

SECTION 2.2. The obligations of the Guarantor under this Guaranty Agreement shall be absolute and unconditional and shall remain in full force and effect until the entire

principal of, prepayment penalty (if any) and interest on the Note shall have been paid or provided for in accordance with the Note and Security Agreement and, until such payment or provision for payment shall not be affected, modified or impaired upon the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Guarantor:

(a) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the County under the Note and Security Agreement;

(b) the failure to give notice to the Guarantor of the occurrence of a default under the terms and provisions of this Guaranty Agreement or the Security Agreement, except as specifically provided in this Guaranty Agreement or the Security Agreement;

(c) the assignment or mortgaging or the purported assignment or mortgaging of all or any part of the interest of the County in the Leased Equipment;

(d) the waiver of the payment, performance or observance by the County or the Guarantor of any of the obligations, covenants or agreements of either of them contained in the Note and Security Agreement or this Guaranty Agreement;

(e) the extension of the time for payment of the principal of or interest or premium on the Note or any part thereof owing or payable on the Note or under this Guaranty

Agreement or of the time for performance of any other obligations, covenants or agreements under or arising out of the Security Agreement or this Guaranty Agreement or the extension or the renewal of either thereof;

(f) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Security Agreement;

(g) the taking or the omission of any of the actions referred to in the Security Agreement and any actions under this Guaranty Agreement;

(h) any failure, omission, delay or lack of diligence on the part of the County or the Bank to enforce, assert, or exercise any right, power or remedy conferred on the County or the Bank in this Guaranty Agreement or the Security Agreement, or any other act or acts on the part of the County or the Bank;

SECTION 2.5. The Guarantor hereby expressly waives notice in writing, or otherwise, from the Bank of its acceptance and reliance on this Guaranty Agreement. The Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Bank in enforcing or attempting to enforce this Guaranty hereunder, whether the same shall be enforced by suit or otherwise.

SECTION 2.6. The Guarantor agrees that it will maintain its corporate existence, will not dissolve or otherwise



dispose of all or substantially all of its assets 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 Guarantor may, without violating the agreement contained in this Section, consolidate with or merge into a domestic corporation (i.e., a corporation organized under the laws of one of the states of the United States of America), or permit one or more domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to a domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided that the surviving, resulting or transferee corporation, as the case may be, expressly assumes in writing all of the obligations of the obligations of the Guarantor herein and qualifies to do business in South Carolina.

SECTION 2.7. This Guaranty Agreement is entered into by the Guarantor with the Bank for the benefit of the Bank, its successors and assigns, all of whom shall be entitled, in accordance with Section 2.4 hereof, to enforce performance and observance of this Guaranty Agreement and of the guarantees and other provisions herein contained to the same extent as if they were parties signatory hereto.

SECTION 2.8. The terms of this Guaranty Agreement may be enforced as to any one or more breaches either separately or cumulatively.

### ARTICLE III

#### NOTICE AND SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

SECTION 3.1. For such time as any of the Note shall be outstanding, the Guarantor shall maintain in the State of South Carolina an agent to accept and acknowledge on its behalf, service of any and all process in any suit, action or other legal proceeding brought in any such court, and agrees and consents that in any such suit, action or other legal proceeding service of process upon such agent shall be taken and held to be valid personal service upon the Guarantor and that any such service of process shall be of the same force and validity as if service were made upon it according to the laws governing the validity and the requirements of such service in such state and waives all claim of error by reason of any such service. The Guarantor may from time to time change such agent for acceptance of service provided that prior to any such change the Guarantor shall notify Bank of the name and address of such new agent and the effective date of such change of agent. The Guarantor agrees that in the event Guarantor shall fail to maintain an agent for service of process within the State of South Carolina during the term of the Note, the Secretary of State of South Carolina shall act as such agent for the Guarantor for the service of process in any such suit or legal proceeding. The Bank agrees that in the event service of process is made on the agent designated by the Guarantor

or upon the Secretary of State pursuant to this Guaranty Agreement, a copy of such process will be mailed by registered mail, postage prepaid, return receipt requested to the Guarantor at its address shown in the Lease Agreement, provided, however, that failure by the Bank to forward a copy of any such process to the Guarantor as herein provided shall not relieve the Guarantor of the performance of any of its obligations in the manner and at the times provided for herein and in the Lease Agreement.

#### ARTICLE IV

##### MISCELLANEOUS

SECTION 4.1. No amendment, change, modification, alteration or termination of the Note and Security Agreement shall be made which would in any way increase the Guarantor's obligations under this Guaranty Agreement without obtaining the prior written consent of the Guarantor.

SECTION 4.2. The obligations of the Guarantor hereunder shall arise absolutely and unconditionally when the Note shall have been issued, sold and delivered by the County.

SECTION 4.3. No remedy herein conferred upon or reserved to the Bank hereunder 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 Guaranty Agreement or



now or hereafter existing at law or in equity or by statute. No delay or omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Guaranty Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Guaranty Agreement.

SECTION 4.4. This Guaranty Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 4.5. The invalidity or unenforceability of any one or more phrases, sentences, clauses, or sections in this Guaranty Agreement contained, shall not affect the validity or enforceability of the remaining portions of this Guaranty Agreement, or any part thereof.

SECTION 4.6. This Guaranty Agreement may be amended by a written agreement signed by the parties hereto, provided that in no event shall any amendment be made without the consent of the Guarantor.

IN WITNESS WHEREOF, the Guarantor, pursuant to proper resolution duly passed, has caused this Guaranty Agreement to be executed in its name and behalf and its corporate seal to be affixed hereto and attested by its duly authorized officers as of the date first above written.

SUMMIT CONTAINER CORPORATION

(SEAL)

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Accepted this \_\_\_\_\_ day of  
June, 1978, by United Virginia Bank.

By \_\_\_\_\_

(Corporate Seal)

Attest:

\_\_\_\_\_



THE STATE OF SOUTH CAROLINA     )  
  )     SECURITY AGREEMENT  
COUNTY OF LEXINGTON             )

TO ALL WHOM THESE PRESENTS MAY CONCERN:

LEXINGTON COUNTY, a political subdivision of the State of South Carolina and a body politic and corporate, SENDS GREETINGS:

WHEREAS, LEXINGTON COUNTY (the "County") is authorized and empowered by Chapter 29, Title 4, Code of Laws of South Carolina, 1976, (the "Act"), to acquire, own, lease, dispose of, and grant security interest in the properties hereinafter described to promote the industrial development of South Carolina by inducing industrial facilities to locate and remain in South Carolina and thus utilize and employ manpower and other resources of South Carolina; and

WHEREAS, the County is further authorized by the Act to issue revenue bonds or notes payable solely from the lease rentals and revenues from any such project and secured by a pledge of such lease rentals, revenues and receipts and by a security interest in the machinery and equipment so acquired; and

WHEREAS, the County has made the necessary arrangements with Summit Container Corporation, (the Lessee), a corporation organized under the laws of the Commonwealth of Virginia, for the acquisition of equipment and machinery

(the Leased Equipment) which will be of the character and accomplish the purpose prescribed by the Act and the County has further entered into a Lease Agreement with the Lessee dated as of June 1, 1978 (the Lease Agreement) specifying the terms and conditions of the acquisition of the Leased Equipment and the leasing of the same to the Lessee; and

WHEREAS, the execution and delivery of this Security Agreement have been authorized by an Ordinance duly adopted by the County Council of Lexington County and the County, in accordance with the requirements of the Act, has submitted its Petition to the State Budget and Control Board of South Carolina and the said Board has duly approved the said undertaking and thereby authorized the County Council of Lexington County to proceed with the acquisition and financing of the same. Notice of such approval was duly published in a newspaper having general circulation in Lexington County and, notwithstanding more than twenty (20) days have elapsed from the date of the publication of such notice, no challenge has been made to the validity of such approval as provided in the Act; and

WHEREAS, the cost of such facilities is estimated to be \$\_\_\_\_\_ and the Lessee has agreed to pay all amounts required in excess of the proceeds available from a \$1,000,000 note issue, and therefore to finance the cost of the Leased Equipment, including the necessary expenses incidental thereto, will require the issuance, sale and delivery of a

\$1,000,000 Lexington County Industrial Revenue Note, Series 1978 (Summit Container Corporation Project), which has been purchased by United Virginia Bank; and

WHEREAS, the said County Council of Lexington County, in and by its \$1,000,000 Industrial Revenue Note, Series 1978 (Summit Container Corporation Project) is indebted to United Virginia Bank in accordance with the terms and conditions of the said Note in the amount of \$1,000,000 and is now minded, pursuant to the authorization of the Act, to secure payment thereof by this Security Agreement granting a security interest in the said Leased Equipment acquired with the proceeds of the said Note and the lease rentals and revenues hereinafter described.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That the said Lexington County, in consideration of the said debt and sum of money aforesaid, and for the better securing of the payment thereof to the said United Virginia Bank and also in consideration of the further sum of THREE DOLLARS (\$3.00) to it, the said Lexington County, in hand well and truly paid by the said United Virginia Bank at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents, DOES GRANT, bargain, sell and release unto the said UNITED VIRGINIA BANK, its successors and assigns, subject always to the Lease Agreement and the rights of the Lessee thereunder, a security interest in:



I

The machinery, equipment or other property described in Exhibit A attached hereto, and substitutions or replacements therefor; all machinery, equipment or other property acquired by the County with the proceeds from the Note secured by this Security Agreement, and substitutions or replacements therefor; all machinery, equipment or other property which under the terms of the Lease Agreement is to become the property of the County or subjected to the security interest of this Security Agreement; and, without limiting the foregoing, all of the property of the County at any time installed or located on the land described in Exhibit B attached hereto.

II

All right, title and interest of the County in and to the Lease Agreement, and all lease rentals, revenues and receipts received or to be received under the Lease Agreement, except amounts paid by the Lessee thereunder to the County and other local taxing authorities in lieu of taxes pursuant to Section 5.5 thereof and all amounts paid by Lessee to the County pursuant to Sections 6.3, 8.4 or 10.4 thereof.

IV

All lease rentals, revenues and receipts arising out of or in connection with the ownership of the Leased Equipment, except amounts paid under Section 5.5 or Sections 6.3, 8.4 or 10.4 of the Lease Agreement.

IV

Any and all other property from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder by the County or by anyone on its behalf or with its written consent to United Virginia Bank, which is hereby authorized to receive any and all such property at any and all times to hold and apply the same subject to the terms hereof.

IT IS THE EXPRESS CONDITION of this Security Agreement and to all obligations of Lexington County hereunder and resulting herefrom that neither this Security Agreement nor any obligation or covenant of Lexington County hereunder shall create any pecuniary liability of Lexington County nor any charge against its taxing powers or upon its general credit; but any such obligation for the payment of money shall be payable solely from the lease rentals, revenues and receipts derived from or in connection with the facilities hereinabove described, including moneys received under the Lease Agreement as hereinabove more fully described; and nothing in the Note nor in this Security Agreement shall be considered as pledging any other funds or assets of Lexington County.

AND the said Lexington County does hereby bind itself and its successors to warrant and forever defend all and singular the said premises and properties unto the said

United Virginia Bank, its successors and assigns, from and against itself and successors and assigns lawfully claiming, or to claim the same, or any part thereof.

IT IS AGREED in the Lease Agreement that the Lessee shall keep the Leased Equipment insured, inter alia, against loss and damage from fire and extended coverage hazards for the benefit of the said United Virginia Bank. In default thereof, the said United Virginia Bank, its successors or assigns, may effectuate such insurance and reimburse themselves under this Security Agreement for the expense thereof, with interest thereon from the date of its payment at the rate of \_\_\_\_\_ per centum (\_\_\_\_%) per annum. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said United Virginia Bank, its successors or assigns, shall be entitled to receive from the aggregate of the insurance moneys to be paid, a sum equal to the amount of the debt secured by this Security Agreement.

IT IS AGREED in the Lease Agreement that the Lessee shall pay (subject to Lessee's right to contest) all lawful taxes, assessments and other charges upon the said premises when the same shall first become payable. In default thereof the said United Virginia Bank, its successors or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this Security Agreement for the sum so paid,



with interest thereon from the date of such payment at the rate of \_\_\_\_\_ per centum (\_\_\_\_%) per annum.

AND IT IS AGREED by and between the said parties that upon any default by the Lessee under the Lease Agreement, or upon any default made in the payment of or the interest on or the principal of the said Note, when the same shall become payable, then the entire amount of the debt secured or intended to be secured hereby shall become due, at the option of the said United Virginia Bank, its successors or assigns, although the period for the payment thereof may not then have expired.

AND IT IS AGREED by and between the said parties that should legal proceedings be instituted for the collection of the debt secured hereby, then in that event the said United Virginia Bank, its successors or assigns, shall have the right to have a receiver appointed of the rents and profits of the above described premises, who, after deducting all charges and expenses attending such proceedings, and the execution of the said trust as receiver, shall apply the residue of the said rents and profits towards the payment of the debt secured hereby.

AND IT IS FURTHER AGREED, by and between the parties that should legal proceedings be instituted for the foreclosure of this Security Agreement or for any purpose involving this Security Agreement, or should the debt hereby secured be placed in the hands of an attorney at law for

collection by suit or otherwise, that all costs and expenses incurred by the United Virginia Bank, including a reasonable counsel fee, shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these Presents, that if the said LEXINGTON COUNTY shall well and truly pay, or cause to be paid unto the said UNITED VIRGINIA BANK, its successors or assigns, the said debt or sum of money aforesaid, with interest thereon, if any shall be due, then this Security Agreement shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue.

AND IT IS AGREED by and between the said parties, that Lexington County is to hold and enjoy the said Leased Equipment until default of payment shall be made.

IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, has caused these presents to be signed in his name and behalf by the Chairman of the County Council of Lexington County, and the Clerk of the County Council of Lexington County, and its corporate seal to be hereunto affixed, all as of the 1st day of June, A.D., 1978.

LEXINGTON COUNTY, SOUTH CAROLINA

(SEAL)

By \_\_\_\_\_  
Chairman, County Council of  
Lexington County

By \_\_\_\_\_  
Clerk, County Council of  
Lexington County

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

PERSONALLY appeared before me \_\_\_\_\_  
and made oath that he saw the within named LEXINGTON COUNTY,  
SOUTH CAROLINA, by \_\_\_\_\_, Chairman of the  
County Council of Lexington County, and by \_\_\_\_\_,  
Clerk of the County Council of Lexington County, sign, and  
affix the corporate Seal, and as the Act and Deed of the  
said Lexington County deliver the within written Security  
Agreement, and that he with \_\_\_\_\_  
witnessed the execution thereof.

\_\_\_\_\_

SWORN to before me this  
\_\_\_\_ day of \_\_\_\_\_, 1977.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF LEASED EQUIPMENT  
ATTACHED TO SECURITY AGREEMENT FROM LEXINGTON COUNTY  
TO UNITED VIRGINIA BANK

DATED AS OF JUNE 1, 1978

EXHIBIT B

DESCRIPTION OF REAL PROPERTY UPON WHICH  
LEASED EQUIPMENT IS LOCATED  
ATTACHED TO SECURITY AGREEMENT FROM LEXINGTON COUNTY  
TO UNITED VIRGINIA BANK

DATED AS OF JUNE 1, 1978



POST OFFICE BOX 340

SINKLER GIBBS & SIMONS  
PROFESSIONAL ASSOCIATION  
ATTORNEYS & COUNSELLORS AT LAW  
2 PRIOLEAU STREET  
CHARLESTON, S. C. 29402

TELEPHONE 722-3366  
AREA CODE 803

*Ed - for B+CB  
5/23/78  
meeting.  
Bill*

May 16, 1978

Karen LeCraft Henderson  
Assistant Attorney General  
Hampton Office Building  
Box 11549  
Columbia, South Carolina 29211

Re: \$1,000,000 Lexington County, South Carolina,  
Industrial Revenue Note, Series 1978 (Summit  
Container Corporation Project)

Dear Karen:

Enclosed are copies of the Lease Agreement, the Guar-  
anty Agreement (Exhibit C to the Lease Agreement), the  
Security Agreement and the Resolution authorizing the Peti-  
tion of Lexington County relating to the above referenced  
note issue. Tuck Rawl is forwarding the original Petition  
as of this date.

If you require any further information, please advise.

Sincerely,

TAH:jpw  
Enclosures  
cc: William A. McInnis

*Ed -  
with investment letter,  
OK.  
Advised Tom H*

1-  
SUMMIT CONTAINER CORPORATION  
Richmond, Virginia

Report on  
EXAMINATION

For the Year Ended  
June 30, 1976

MITCHELL WIGGINS & COMPANY  
CERTIFIED PUBLIC ACCOUNTANTS  
RICHMOND, VA 23220  
FREDERICKSBURG, VA 22401

SUMMIT CONTAINER CORPORATION  
Richmond, Virginia

Report on  
EXAMINATION

For the Year Ended  
June 30, 1976

(Incorporated September 29, 1967, under the laws of Virginia)



OFFICERS

Jehan B. Johnson - President, Chief Executive Officer and Treasurer

Charles W. Throckmorton, III - Executive Vice-President and Secretary

Roy N. Taylor - Executive Vice-President

Lyttleton B. Scott, Jr. - Vice-President

Robert C. Conners - Vice-President Production

George B. Doggett - Vice-President Sales

Morris E. Grubbs - Vice-President Administration

DIRECTORS

J. N. Cargill - Chairman

Charles W. Throckmorton, III

Lyttleton B. Scott, Jr.

Jehan B. Johnson

W. N. Street, Jr.

George B. Little

Roy N. Taylor

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June 30, 1976

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MITCHELL, WIGGINS & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

411 ROSS BUILDING

RICHMOND, VIRGINIA 23213

648-7211 AREA CODE 804

Board of Directors  
Summit Container Corporation  
Richmond, Virginia

We have examined the Balance Sheet of Summit Container Corporation, Richmond, Virginia, as of June 30, 1976, and 1975, and the related Statements of Retained Earnings, Income, and Changes in Financial Position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion the financial statements identified above present fairly the financial position of Summit Container Corporation at June 30, 1976, and 1975, and the results of its operations and the changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis, except for the change, with which we concur, in the method for determining the value of certain inventories as described in Note 2 to the financial statements.

*Mitchell, Wiggins & Company*  
Certified Public Accountants

July 28, 1976



# BALANCE SHEET

June 30, 1976 and 1975

A S S E T S

1 9 7 6

1 9 7 5

## CURRENT ASSETS

Cash	\$ 27 078 64	\$ 58 530 50
Accounts receivable - Trade (Less allowance for doubtful accounts: June 30, 1976, \$8,452.51; June 30, 1975, \$9,764.47)	851 004 89	671 996 95
Inventories - At lower of cost or market (Notes 1 and 2)	918 749 68	668 393 41
Prepaid expenses	69 299 40	48 677 07
Insurance claim receivable	35 449 84	-
Overpayment of Federal and State income taxes	124 075 02	36 999 47

## TOTAL CURRENT ASSETS

\$2 025 657 47 \$1 484 597 40

## FIXED ASSETS (Partially pledged) (Note 1)

Land	\$ 82 684 35	\$ 82 684 35
Building and improvements	584 371 96	310 429 92
Machinery and equipment	2 639 944 48	2 292 103 14
Office furniture and equipment	45 605 02	40 043 81
	<u>\$3 352 605 81</u>	<u>\$2 725 261 22</u>
Less: Accumulated depreciation	<u>1 136 714 47</u>	<u>785 393 69</u>
	<u>\$2 215 891 34</u>	<u>\$1 939 867 53</u>

## DEFERRED CHARGES (At cost less amortization) (Note 1)

Plant acquisition costs	\$ 500 00	\$ 1 500 00
Leasehold improvements	132 360 21	134 786 48
Loan costs	8 317 37	6 610 52
	<u>\$ 141 177 58</u>	<u>\$ 142 897 00</u>
	<u>\$4 382 726 39</u>	<u>\$3 567 361 93</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.

# LIABILITIES AND CAPITAL

1 9 7 6

1 9 7 5

## CURRENT LIABILITIES

Accounts payable - Trade	\$ 348 621 93	\$ 375 019 42
Current portion of long-term debt (Note 3)	644 603 10	142 662 82
Payroll taxes withheld and accrued	18 225 89	11 764 06
Accrued expenses	22 897 02	46 904 62
Accrued salaries (Note 4)	7 278 03	34 042 17
Accrued profit-sharing contribution (Note 5)	<u>56 297 88</u>	<u>98 269 57</u>

## TOTAL CURRENT LIABILITIES

\$1 097 923 85   \$ 708 662 66

## LONG-TERM DEBT (Note 3)

Notes payable (Less current portion  
shown above)

\$1 164 299 03   \$ 873 572 01

## CAPITAL

Common stock - Par value \$5.00  
per share: (Note 6)

Class "A" - Authorized 37,500  
shares, issued and outstanding  
18,750 shares

\$ 93 750 00   \$ 93 750 00

Class "B" - Authorized 62,500  
shares, issued and outstanding  
33,875 shares in 1976 and 1975

169 375 00   169 375 00

Capital contributed in excess of par  
value of stock

291 025 00   291 025 00

Retained earnings

1 566 353 51   1 430 977 26

\$2 120 503 51   \$1 985 127 26

\$4 382 726 39   \$3 567 361 03

STATEMENT OF RETAINED EARNINGS

For the years ended June 30, 1976 and 1975

	<u>1976</u>	<u>1975</u>
<u>BALANCE</u> - July 1	\$1 430 977 26	\$1 109 718 2
Add: Net income	<u>219 576 25</u>	<u>404 959 0</u>
<u>TOTAL</u>	\$1 650 553 51	\$1 514 677 2
Deduct: Dividends paid during the year	<u>84 200 00</u>	<u>83 700 0</u>
<u>BALANCE</u> - June 30	<u>\$1 566 353 51</u>	<u>\$1 430 977 2</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.



STATEMENT OF INCOMEFor the years ended June 30, 1976 and 1975

	<u>1 9 7 6</u>	<u>1 9 7 5</u>
<u>SALES</u> (Net of customer discounts: June 30, 1976, \$75,826.06; June 30, 1975, \$62,264.73)	\$10 041 695 64	\$7 769 898 34
<u>COST OF GOODS SOLD</u>	<u>7 758 324 25</u>	<u>5 508 158 20</u>
<u>GROSS PROFIT</u>	<u>\$ 2 283 371 39</u>	<u>\$2 261 740 14</u>
<u>OPERATING EXPENSES</u>		
Delivery	\$ 470 833 55	\$ 359 858 53
Administrative and general	<u>1 470 639 23</u>	<u>1 192 135 93</u>
<u>TOTAL OPERATING EXPENSES</u>	<u>\$ 1 941 472 78</u>	<u>\$1 551 994 46</u>
<u>INCOME FROM OPERATIONS</u>	<u>\$ 341 898 61</u>	<u>\$ 709 745 68</u>
<u>OTHER INCOME</u>		
Interest earned	308 32	10 558 05
Gain on sale of fixed assets	500 00	4 056 22
Miscellaneous	<u>-</u>	<u>1 124 63</u>
<u>INCOME BEFORE INCOME TAXES</u>	<u>\$ 342 706 93</u>	<u>\$ 725 484 58</u>
<u>PROVISION FOR INCOME TAXES</u> (Note 7)		
Federal	\$ 102 027 14	\$ 276 462 15
State	<u>21 103 54</u>	<u>44 063 38</u>
<u>TOTAL</u>	<u>\$ 123 130 68</u>	<u>\$ 320 525 53</u>
<u>NET INCOME</u>	<u>\$ 219 576 25</u>	<u>\$ 404 959 05</u>
<u>EARNINGS PER SHARE</u> (Note 8)	<u>\$ 4 17</u>	<u>\$ 7 76</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.

## STATEMENT OF CHANGES IN FINANCIAL POSITION

For the years ended June 30, 1976 and 1975

	<u>1976</u>	<u>1975</u>
<u>SOURCES OF WORKING CAPITAL</u>		
Operations:		
Net income	\$ 219 576 25	\$404 959 05
Add (Deduct) - Items entering into the above which did not use (Provide) working capital:		
Depreciation and amortization	374 739 52	230 386 51
Gain on sale of fixed assets	( 500 00)	( 4 056 22)
<u>WORKING CAPITAL PROVIDED BY OPERATIONS</u>	\$ 593 815 77	\$631 289 34
Proceeds from sale of capital stock	-	25 000 00
Proceeds from sale of fixed assets	3 300 00	7 425 00
Proceeds from bank loan	900 000 00	300 000 00
Increase in long-term leases payable	35 330 12	-
<u>TOTAL SOURCES OF WORKING CAPITAL</u>	\$1 532 445 89	\$963 714 34
<u>USES OF WORKING CAPITAL</u>		
Dividends paid	\$ 84 200 00	\$ 83 700 00
Current maturity of long-term debt	644 603 10	142 662 75
Purchase of fixed assets	649 925 71	519 393 05
Loan costs incurred	1 918 20	3 000 00
<u>TOTAL USES OF WORKING CAPITAL</u>	\$1 380 647 01	\$748 755 80
<u>INCREASE IN WORKING CAPITAL</u>	\$ 151 798 88	\$214 958 54
<u>CHANGES IN WORKING CAPITAL</u>		
<u>CURRENT ASSETS</u>		
	<u>INCREASE (DECREASE)</u>	
Cash	\$ 31 451 86	(\$265 951 06)
Accounts receivable	179 007 94	272 415 07
Inventories	250 356 27	27 815 89
Prepaid expenses	20 622 33	17 492 54
Insurance claim receivable	35 449 84	-
Overpayment of Federal and State income taxes	87 075 55	36 999 47
<u>TOTALS</u>	\$ 541 060 07	\$ 88 771 91
<u>CURRENT LIABILITIES</u>		
Accounts payable	\$ 26 397 49	\$ 52 884 91
Current portion of long-term debt	501 940 28	35 437 77
Payroll taxes withheld and accrued	6 461 83	2 347 58
Accrued expenses	24 007 60	13 919 79
Accrued salaries	26 764 14	36 844 73
Accrued profit-sharing contribution	41 971 69	9 147 79
Federal and State income taxes	-	(203 072 65)
<u>TOTALS</u>	\$ 389 261 19	\$126 186 63
<u>INCREASE IN WORKING CAPITAL</u>	\$ 151 798 88	\$214 958 54

NOTE: The accompanying notes to financial statements are an integral part of this statement.

NOTES TO FINANCIAL STATEMENTSJune 30, 1976 and 1975PAGE 1NOTE 1 - Summary of Significant Accounting Policies:

Fixed assets are recorded at cost. Depreciation is computed using the straight-line method on assets acquired prior to June 30, 1972, and the declining balance method on assets acquired after that date.

Development costs incurred in the opening of the South Carolina plant are being amortized over a period of five years. Leasehold improvements and the loan costs incurred in the acquisition of the mortgage on the South Carolina plant are being amortized over the lives of the lease and mortgage, respectively.

Inventories, which include raw materials, work in process and finished goods are valued at the lower of cost or market. All inventories, except the raw material inventory of roll stock, are costed using the first-in, first-out method. Roll stock is costed using the last-in, first-out method of cost accumulation. This method of costing roll stock is a change from prior years which is explained further in Note 2.

NOTE 2 - Change in Accounting Method - Inventory:

Effective with the year ended June 30, 1976, the Company has changed its method of accounting for roll stock inventory on hand from the lower of cost or market method of valuation using the first-in, first-out (FIFO) method of cost accumulation to cost based on the last-in, first-out (LIFO) method. Management believes the use of the last-in, first-out (LIFO) method will more accurately reflect income from operations by matching current costs against current revenues.

The adoption of LIFO had the effect of reducing June 30, 1976, inventory by \$69,989.21 and net income by approximately \$34,210.75 (\$.65 per share). There is no cumulative effect of the change on prior years because the amount of June 30, 1975, inventories as previously reported is the opening inventory under the LIFO method.

NOTE 3 - Long-term debt at June 30, 1976, is summarized below:

(See next page)



NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 2NOTE 3 - (Continued)

<u>PAYABLE TO</u>	<u>DUE CURRENTLY</u>	<u>DUE AFTER ONE YEAR</u>
Life Insurance Company of Virginia	\$ 8 028 66	\$ 278 023 19
Life Insurance Company of Virginia	3 615 72	146 384 28
United Virginia Bank	400 000 00	-
United Virginia Bank	120 000 00	150 000 00
United Virginia Bank	97 500 00	552 500 00
Lease/purchase obligations	22 157 07	45 343 43
<u>TOTALS</u>	\$651 301 45	\$1 172 250 90
Less: Finance charges included in lease/purchase obligations	( 6 698 35)	( 7 951 87)
<u>TOTALS</u>	<u>\$644 603 10</u>	<u>\$1 164 299 03</u>

The notes payable to the Life Insurance Company of Virginia are mortgages secured by buildings and improvements in South Carolina which have a book value of \$556,987.46 at June 30, 1976. The mortgage with the balance of \$286,051.85 is payable in monthly payments of \$3,201.31 which include principal and interest of \$2,905.00 and an escrow payment of \$296.31 for real estate taxes and insurance. This mortgage bears interest at the rate of 9-1/2 percent per annum and matures July 1, 1992.

The mortgage payable to the Life Insurance Company of Virginia with an original balance of \$150,000.00 is payable in monthly installments of \$1,630.50 which includes principal and interest. The initial payment is due July 1, 1976, with final maturity on June 1, 1989. The mortgage bears interest at the rate of 10-3/4 percent per annum.

The note payable to United Virginia Bank in the amount of \$400,000.00 represents a demand note. The note bears interest at the rate of 7-3/4 percent per annum and is unsecured.

The note payable to United Virginia Bank in the amount of \$270,000.00 represents remaining balance due a term loan of \$500,000.00 executed July 30, 1973. The note bears interest at the rate of one percent in excess of the bank's prime rate on the first day of each calendar quarter. The remaining balance is to be repaid in nine consecutive quarterly installments of \$30,000.00 each.

The note payable to United Virginia Bank in the amount of \$650,000.00 represents the amount of a loan executed June 3, 1975. The note bears interest at the rate of one and three-quarters of one percent in excess of the bank's prime rate, on the first day of each calendar quarter. The first installment in the amount of \$65,000.00, is due November 1, 1976. Thereafter, the loan is to be repaid in sixteen consecutive quarterly installments beginning February 1, 1977; fifteen installments of \$16,250.00, and a final installment of

NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 3NOTE 3 - (Continued)

\$341,250.00, due November 1, 1980.

Under the terms of the loan agreement with United Virginia Bank the Company is required to maintain demand deposit average balances sufficient to equal at least ten percent of the average balance of its outstanding term debt. The loan agreement also provides for maintenance of a minimum amount of net worth and working capital; in addition there are limitations on the purchases of fixed assets, payments of dividends, maintenance of life insurance policies on certain officers of the Corporation, other borrowing, acquisition of treasury stock, the granting of loans or advances, investments, entering into leases and the right of the Corporation to enter into mergers, consolidations or the sale of the business without prior consent of United Virginia Bank.

The Corporation is leasing eight forklift trucks under lease/purchase agreements totaling \$118,944.00. The Corporation has capitalized these assets and they are included in the balance sheet as machinery and equipment. The unpaid balances of these lease/purchase obligations aggregate \$67,500.50, and are shown in the balance sheet net of finance charges of \$14,650.22. The original terms of these obligations were sixty months with remaining terms ranging from six to sixty months.

NOTE 4 - The Company has provided an incentive plan under which the officers receive a cash bonus of ten percent of income before income taxes, after deducting the income after taxes which would provide a twelve and one-half percent return on its beginning net worth. The amount of the bonus for the current year is zero. The prior year's bonus was \$34,042.17.

Also, the Company has adopted a salary continuation plan under which the president's salary will continue at a specified rate for seven years after his death. The plan is funded with life insurance.

NOTE 5 - The Company maintains two retirement plans; a profit-sharing retirement plan, and a pension benefit retirement plan. The profit-sharing retirement plan covers salaried personnel who have been employed continuously on a full-time basis for one year as of June 30 each year. The contribution as determined by the Board of Directors for the current year is \$56,297.88.

The pension benefit covers hourly employees of the Richmond, Virginia plant who are employed on a regular basis. The Company is obligated under a union agreement, as amended April 7, 1975, to contribute \$.06 per hour (up to a maximum of 40 hours per week) to the fund for each participant. Prior to April 7, 1975, the required contribution was \$.05 per hour. The expense for the current year is \$9,018.00. The Life Insurance Company of Virginia is administering the plan through a group annuity policy which provides normal re-



NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 4

NOTE 5 - (Continued)

tirement benefits of \$2.50 a month for each year of service, up to a maximum of 30 years. Credit will be given for past service.

NOTE 6 - The rights of Class "A" common stockholders and Class "B" common stockholders are identical, except with regard to election of directors of the Corporation. The shareholders of Class "A" common stock have two votes per share and the shareholders of Class "B" common stock have one vote per share. The Articles of Incorporation provide for cumulative voting which insures representation of the shareholders of Class "B" common stock on the Board of Directors. Both classes of stock share in dividends at the same rate.

NOTE 7 - Investment tax credit in the amount of \$43,171.47 resulting from the purchase of equipment during the year has been applied against the current year's provision for income taxes.

NOTE 8 - Earnings per share for the year ended June 30, 1976, are based on 52,625 shares outstanding for the entire year. Earnings per share for the year ended June 30, 1975, were based on a weighted average number of 52,204 shares outstanding during the year.

NOTE 9 - At June 30, 1976, the Company was obligated under a ten-year lease agreement with a remaining life of two years for its plant on Deepwater Terminal Road. The base annual rental under the lease is \$55,156.10, and the Company is to pay any increase in real estate taxes over the base year; for the current year the payments under this lease amounted to \$59,843.52. The lease has two renewal options of ten years each with the base annual rental to be increased in proportion to the increase in the Consumer Price Index. The addition to the plant which cost \$129,405.64 is being amortized over the life of the lease including both renewal options.

The Company leases office space in North Carolina under a one-year lease and during the current year the payments under this lease amounted to \$1,080.00.

Also, the Company leases automobiles under leases ranging from one to three years, and during the current year the payments under these leases amounted to approximately \$40,000.00. Trucks are leased under thirty-day agreements, and during the current year the payments under these leases amounted to approximately \$95,000.00.

Minimum annual rental commitments are listed below:

<u>YEAR ENDED</u> <u>JUNE 30,</u>	<u>REAL ESTATE</u>	<u>AUTOMOBILES</u> <u>AND TRUCKS</u>
1977	\$55 156 10	\$30 000 00
1978	\$55 156 10	\$10 000 00



## SUPPLEMENTAL INFORMATION

The information contained in the following pages is intended to be explanatory or statistical in nature. While some of the data may have been verified in accordance with generally accepted auditing standards, other data may have been supplied by management or be interpretive in nature.

For these reasons, we are unable to and do not express an opinion as to the fairness of the data presented on the following pages.

MITCHELL, WIGGINS & COMPANY

SCHEDULE OF COST OF GOODS SOLD

For the years ended June 30, 1976 and 1975

	<u>1 9 7 6</u>	<u>1 9 7 5</u>
<u>RAW MATERIALS</u>		
Inventory - July 1	\$ 587 533 89	\$ 560 763 13
Purchases:		
Paper	5 033 565 98	3 157 413 84
Adhesives	113 605 51	68 819 39
Ink	87 419 73	55 401 56
Other materials	136 935 49	107 378 40
Outside materials	27 269 63	6 935 65
Sheets	611 062 98	728 316 46
	<u>\$6 597 393 21</u>	<u>\$4 685 028 43</u>
<u>MATERIALS AVAILABLE FOR USE</u>		
Less: Inventory - June 30	<u>877 598 38</u>	<u>587 533 89</u>
<u>COST OF MATERIALS CONSUMED</u>	<u>\$5 719 794 83</u>	<u>\$4 097 494 54</u>
<u>DIRECT LABOR</u>	<u>\$ 880 725 26</u>	<u>\$ 618 263 69</u>
<u>MANUFACTURING EXPENSES</u>		
Indirect labor	\$ 73 444 25	\$ 56 127 18
Plates and dies	47 390 04	35 117 24
Repairs and maintenance	164 193 97	112 001 66
Rent - Building	47 800 69	51 678 74
Utilities	148 911 62	108 007 03
Miscellaneous factory supplies	12 576 36	7 461 91
Depreciation	368 147 64	225 592 77
Other factory expenses	27 722 82	26 062 32
Payroll taxes	76 653 27	49 282 27
Other taxes and licenses	1 262 68	2 015 13
Vacation pay - Factory	43 400 00	36 581 69
Retirement plan contribution	9 018 00	12 760 02
Insurance - General	53 969 55	41 662 70
Group insurance	43 605 05	29 094 44
	<u>\$1 118 095 94</u>	<u>\$ 793 445 10</u>
<u>TOTAL MANUFACTURING EXPENSES</u>		
<u>TOTAL MANUFACTURING COSTS</u>	<u>\$7 718 616 03</u>	<u>\$5 509 203 33</u>
Add: Work in process inventory - July 1	<u>44 152 75</u>	<u>39 844 61</u>
<u>TOTAL</u>	<u>\$7 762 768 78</u>	<u>\$5 549 047 94</u>
Less: Work in process inventory - June 30	<u>18 162 80</u>	<u>44 152 75</u>
	<u>\$7 744 605 98</u>	<u>\$5 504 895 19</u>
Add: Finished goods inventory - July 1	<u>36 706 77</u>	<u>39 969 78</u>
<u>TOTAL</u>	<u>\$7 781 312 75</u>	<u>\$5 544 864 97</u>
Less: Finished goods inventory - June 30	<u>22 988 50</u>	<u>36 706 77</u>
<u>COST OF GOODS SOLD</u>	<u>\$7 758 324 25</u>	<u>\$5 508 158 20</u>

SCHEDULE OF EXPENSES

For the years ended June 30, 1976 and 1975

	<u>1 9 7 6</u>	<u>1 9 7 5</u>
<u>DELIVERY EXPENSES</u>		
Labor	\$ 75 103 44	\$ 49 796 24
Truck expenses	179 527 99	132 769 39
Freight out	216 202 12	177 292 90
<u>TOTAL DELIVERY EXPENSES</u>	<u>\$ 470 833 55</u>	<u>\$ 359 858 53</u>
<u>ADMINISTRATIVE AND GENERAL EXPENSES</u>		
Administrative salaries	\$ 280 254 66	\$ 194 665 11
Other salaries	464 919 21	430 634 86
Commissions	90 300 88	65 777 97
Rent	8 435 41	9 119 78
Utilities	32 050 92	18 258 21
Office supplies	19 082 34	11 669 85
Depreciation	5 380 53	3 600 00
Travel	185 180 80	114 725 62
Interest	137 919 66	84 970 00
Professional services	35 207 99	31 621 80
Other expenses	27 936 24	19 290 90
Payroll taxes	35 130 21	28 923 74
Other taxes	28 751 68	27 464 60
Insurance - General	5 869 62	4 629 19
Group insurance	47 688 12	38 405 89
Life insurance	9 018 73	8 905 10
Amortization of loan costs	1 211 35	1 193 74
Profit-sharing contribution	56 297 88	98 269 57
<u>TOTAL ADMINISTRATIVE AND GENERAL EXPENSES</u>	<u>\$1 470 639 23</u>	<u>\$1 192 135 93</u>
<u>TOTAL EXPENSES</u>	<u>\$1 941 472 78</u>	<u>\$1 551 994 46</u>



SUMMIT CONTAINER CORPORATION  
Richmond, Virginia

Report on  
EXAMINATION

For the Year Ended  
June 30, 1977

(Incorporated September 29, 1967, under the laws of Virginia)

SUMMIT CONTAINER CORPORATION

INTERIM STATEMENT OF INCOME

July 1, 1977 - December 31, 1977

	Month of: Quarter Ending:		Previous Year Month/Quarter	Year to Date		Previous Year to Date
	Actual	Budget		Actual	Budget	
<u>SALES</u>	6,155,766.99					
Less: Discounts, returns, allowances	46,837.70					
<u>NET SALES</u>	6,108,929.29					
<u>COST OF GOODS SOLD</u>						
Work in process - Beginning of period	60,545.49					
Material used	3,622,173.86					
Direct labor	591,220.49					
Delivery expense	251,487.24					
<u>TOTAL</u>	4,525,377.08					
Factory overhead	769,729.80					
<u>TOTAL</u>	5,295,106.88					
Less: Work in process - End of period	32,921.68					
<u>COST OF GOODS MANUFACTURED</u>	5,262,185.20					
Add: Finished goods inventory - Beginning of period	50,917.61					
<u>TOTAL</u>	5,313,102.81					

SUMMIT CONTAINER CORPORATION

INTERIM STATEMENT OF INCOME (Cont'd)

July 1, 1977 - December 31, 1977

	Month of: Quarter Ending:	Previous Year Month/Quarter	Year to Date	Previous Year to Date
	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>	<u>Budget</u>
Deduct: Finished goods - End of period	<u>49,420.91</u>			
<u>COST OF GOODS SOLD</u>	<u>5,263,681.90</u>			
<u>GROSS PROFIT</u>	<u>845,247.39</u>			
<u>OTHER INCOME</u>				
Interest	<u>78,226.69</u>			
<u>TOTAL INCOME</u>	<u>923,474.08</u>			
<u>GENERAL AND ADMINISTRATIVE EXPENSES</u>	<u>841,291.66</u>			
<u>NET INCOME BEFORE TAXES</u>	<u>82,182.42</u>			
Estimated taxes - Federal and State	<u>36,147.63</u>			
<u>NET INCOME AFTER TAXES</u>	<u>46,034.79</u>			

This statement reflects Declining Balance depreciation on assets acquired since 6-30-72 as do the previous years and the budget. Results for the Current Quarter and Current Year to Date only have, also, been calculated using the Straight Line basis and are, as follows:

NET INCOME BEFORE TAXES 141,150.42



SUMMIT CONTAINER CORPORATION

INTERIM BALANCE SHEET

December 31, 1977

A S S E T S

CURRENT ASSETS

Cash in bank		<u>27,003.77</u>
Petty cash		<u>400.00</u>
Accounts receivable	<u>957,346.54</u>	
Less: Allowance for bad debts	<u>5,905.79</u>	<u>951,440.75</u>
Stock subscriptions receivable		<u>—</u>
Special accounts receivable		<u>—</u>
Inventories:		
Finished goods	<u>49,420.91</u>	
Work in process	<u>37,921.68</u>	
Raw materials	<u>905,505.71</u>	<u>987,848.30</u>
Prepaid expenses		<u>99,054.24</u>
<u>TOTAL CURRENT ASSETS</u>		<u>2,065,747.06</u>

FIXED ASSETS

Land - South Carolina	<u>82,684.55</u>	
Building - South Carolina	<u>645,146.32</u>	
Machinery - South Carolina	<u>1,497,849.48</u>	
Machinery and equipment - Virginia	<u>2,135,278.52</u>	
Leasehold improvements	<u>184,043.83</u>	
Less: Accumulated depreciation	<u>1,812,956.96</u>	<u>2,727,045.74</u>
		<u>4,797,797.80</u>

SUMMIT CONTAINER CORPORATION

INTERIM BALANCE SHEET

December 31, 1977

LIABILITIES AND NET WORTH

CURRENT LIABILITIES

Accounts payable		<u>208,646.32</u>
Payroll taxes withheld and accrued		<u>36,691.24</u>
Accrued expense		<u>38,424.05</u>
Federal and State income taxes		<u>(47,263.71)</u>
Notes payable		<u>100,000.00</u>
Current portion long-term loans		<u>158,286.29</u>
<u>TOTAL CURRENT LIABILITIES</u>		<u>494,784.19</u>

LONG-TERM LIABILITIES

Long-term debt	<u>838,035.71</u>	
United Virginia Mortgage	<u>417,885.87</u>	
Other	<u>839,540.03</u>	
Equipment loans	<u>34,840.49</u>	
<u>TOTAL LONG-TERM LIABILITIES</u>	<u>2,130,302.11</u>	
Less: Current portion shown above	<u>158,286.29</u>	<u>1,972,015.82</u>

NET WORTH

Capital stock:		
Class "A" Common	<u>93,750.00</u>	
Class "B" Common	<u>169,375.00</u>	<u>263,125.00</u>
Less: Treasury stock		<u>—</u>
Capital contributed in excess of par value		<u>291,025.00</u>
Net income to date		<u>46,034.79</u>
Retained earnings	<u>1,725,808.00</u>	<u>2,325,992.79</u>
		<u>4,792,792.80</u>

SUMMIT CONTAINER CORPORATION

INTERIM STATEMENT OF INCOME

	<del>XXXXXX</del> Quarter Ending: 9-30-76		Previous Year <del>XXXX</del> /Quarter	Year to Date		Previous Year to Date
	Actual	Budget	Actual	Actual	Budget	Actual
<u>SALES</u>	3,126,236.39	3,047,498	2,396,101.60			
Less: Discounts, returns, allowances	20,505.36	22,858	17,397.68			
<u>NET SALES</u>	3,105,731.03	3,024,640	2,378,703.92			
<u>COST OF GOODS SOLD</u>						
Work in process - Beginning of period	18,162.80	-0-	44,152.75			
Material used	1,875,279.94	1,782,547	1,331,618.82			
Direct labor	271,199.45	259,282	212,740.79			
Delivery expense	126,388.82	130,787	129,583.27			
<u>TOTAL</u>	2,291,031.01	2,172,616	1,718,095.63			
Factory overhead	295,370.67	307,877	221,626.92			
<u>TOTAL</u>	2,586,401.68	2,480,493	1,939,722.55			
Less: Work in process - End of Period	39,051.12	-0-	46,846.16			
<u>COST OF GOODS MANUFACTURED</u>	2,547,350.56	2,480,493	1,892,876.39			
Add: Finished goods inventory - Beginning of period	22,988.50	-0-	36,706.77			
<u>TOTAL</u>	2,570,339.06	2,480,493	1,929,583.16			



SUMMIT CONTAINER CORPORATION

INTERIM STATEMENT OF INCOME (Cont'd)

	<del>XXXXXXXX</del> Quarter Ending: 9-30-76		<del>XXXXXXXX</del> Previous Year Quarter	Year to Date		Previous Year to Date
	Actual	Budget	Actual	Actual	Budget	Actual
Deduct: Finished Goods - End of Period	53,842.65	-0-	33,421.28			
<u>COST OF GOODS SOLD</u>	2,516,496.41	2,480,493	1,896,161.88			
<u>GROSS PROFIT</u>	589,234.62	544,147	482,542.04			
<u>OTHER INCOME</u>						
Interest	5,887.67	-0-	263.81			
<u>TOTAL INCOME</u>	595,122.29	544,147	482,805.85			
<u>GENERAL AND ADMINISTRATIVE EXPENSES</u>	409,730.48	407,483	315,621.73			
<u>NET INCOME BEFORE TAXES</u>	185,391.81	136,664	167,184.12			
Estimated taxes - Federal and State	88,272.29	63,363	78,964.52			
<u>NET INCOME AFTER TAXES</u>	97,119.52	73,301	88,219.60			

SUMMIT CONTAINER CORPORATION

INTERIM BALANCE SHEET

September 30, 1976

A S S E T S

CURRENT ASSETS

Cash in bank		<u>4,045.43</u>
Petty cash		<u>400.00</u>
Accounts receivable	<u>1,131,086.67</u>	
Less: Allowance for bad debts	<u>8,452.51</u>	<u>1,122,634.16</u>
Stock subscriptions receivable		<u>-0-</u>
Special account receivable		<u>-0-</u>
Inventories:		
Finished goods	<u>53,842.65</u>	
Work in process	<u>39,051.12</u>	
Raw materials	<u>952,777.71</u>	<u>1,045,671.48</u>
Prepaid expenses		<u>48,396.63</u>
<u>TOTAL CURRENT ASSETS</u>		<u>2,221,147.70</u>

FIXED ASSETS

Land - South Carolina	<u>82,684.35</u>	
Building - South Carolina	<u>584,371.96</u>	
Machinery - South Carolina	<u>830,768.60</u>	
Machinery and equipment - Virginia	<u>1,870,655.48</u>	
Leasehold improvements	<u>183,723.73</u>	
Less: Accumulated depreciation	<u>1,283,448.35</u>	<u>2,268,755.77</u>
		<u>4,489,903.47</u>

SUMMIT CONTAINER CORPORATION

INTERIM BALANCE SHEET

September 30, 1976

LIABILITIES AND NET WORTH

CURRENT LIABILITIES

Accounts payable		<u>399,234.44</u>
Payroll taxes withheld and accrued		<u>36,828.69</u>
Accrued expenses		<u>110,648.42</u>
Federal and State income taxes		<u>(38,091.55)</u>
Notes payable		<u>400,000.00</u>
Current portion long-term loans		<u>244,603.10</u>
<u>TOTAL CURRENT LIABILITIES</u>		<u>1,153,223.10</u>

LONG-TERM LIABILITIES

Long-term debt	<u>890,000.00</u>	
United-Virginia Mortgage	<u>432,968.04</u>	
Other	<u>-0-</u>	
Equipment loans	<u>61,673.45</u>	
Total Long-term Liabilities	<u>1,384,641.49</u>	
Less: Current portion shown above	<u>244,603.10</u>	<u>1,140,038.39</u>

NET WORTH

Capital stock:		
Class "A" Common	<u>93,750.00</u>	
Class "B" Common	<u>169,375.00</u>	<u>263,125.00</u>
Less: Treasury stock	<u>-0-</u>	
Capital contributed in excess of par value	<u>291,025.00</u>	
Net income to date	<u>97,119.52</u>	
Retained Earnings	<u>1,545,372.46</u>	<u>2,196,641.98</u>
		<u>4,489,903.47</u>



OFFICERS

Jehan B. Johnson - President, Chief Executive Officer and Treasurer

Charles W. Throckmorton, III - Executive Vice-President and Secretary

Roy N. Taylor, Jr. - Executive Vice-President

Lyttleton B. Scott, Jr. - Vice-President

Robert C. Conners - Vice-President Production

George B. Doggett - Vice-President Sales

Morris E. Grubbs - Vice-President Administration

DIRECTORS

J. N. Cargill - Chairman

Charles W. Throckmorton, III

Lyttleton B. Scott, Jr.

Jehan B. Johnson

W. N. Street, Jr.

George B. Little

Roy N. Taylor, Jr.

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June 30, 1977

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THE REPORT

THE REPORT



MITCHELL, WIGGINS & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

411 ROSS BUILDING

RICHMOND, VIRGINIA 23213

646-7211 AREA CODE 804

Board of Directors  
Summit Container Corporation  
Richmond, Virginia

We have examined the Balance Sheet of Summit Container Corporation, Richmond, Virginia, as of June 30, 1977, and 1976, and the related Statements of Retained Earnings, Income, and Changes in Financial Position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements identified above present fairly the financial position of Summit Container Corporation at June 30, 1977, and 1976, and the results of its operations and the changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

*Mitchell, Wiggins & Company*  
Certified Public Accountants

July 26, 1977

# BALANCE SHEET

June 30, 1977 and 1976

## A S S E T S

1 9 7 7

1 9 7 6

### CURRENT ASSETS

Cash	\$ 33 144 70	\$ 27 078 64
Accounts receivable - Trade (Less allowance for doubtful accounts; June 30, 1977, \$6,462.27; June 30, 1976, \$8,452.51) (Note 1)	1 164 950 77	851 004 89
Inventories - At lower of cost or market (Notes 1 and 2)	1 031 695 28	918 749 68
Prepaid expenses	85 424 21	69 299 40
Insurance claim receivable	-	35 449 84
Overpayment of Federal and State income taxes	-	124 075 02
<u>TOTAL CURRENT ASSETS</u>	<u>\$2 315 214 96</u>	<u>\$2 025 657 47</u>

### FIXED ASSETS (Partially pledged) (Note 1)

Land	\$ 82 684 35	\$ 82 684 35
Buildings and improvements	645 146 32	584 371 96
Machinery and equipment	3 228 024 59	2 639 944 48
Office furniture and equipment	46 820 45	45 605 02
	<u>\$4 002 675 71</u>	<u>\$3 352 605 81</u>
Less: Accumulated depreciation	<u>1 500 945 83</u>	<u>1 136 714 47</u>
	<u>\$2 501 729 88</u>	<u>\$2 215 891 34</u>

### DEFERRED CHARGES (At cost less amortization) (Note 1)

Plant acquisition costs	\$ -	\$ 500 00
Leasehold improvements	121 205 70	132 360 21
Loan costs	8 481 96	8 317 37
	<u>\$ 129 687 66</u>	<u>\$ 141 177 58</u>
	<u>\$4 946 632 50</u>	<u>\$4 382 726 39</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.

LIABILITIES AND CAPITAL1 9 7 71 9 7 6CURRENT LIABILITIES

Accounts payable - Trade	\$ 398 721 93	\$ 348 621 93
Current portion of long-term debt (Note 3)	381 708 64	644 603 10
Payroll taxes withheld and accrued	20 063 95	18 225 89
Accrued expenses	45 095 03	22 897 02
Accrued salaries	43 483 57	7 278 03
Accrued profit-sharing contribution (Note 5)	60 553 28	56 297 88
Federal and State income taxes payable	41 751 37	-
<u>TOTAL CURRENT LIABILITIES</u>	<u>\$ 991 377 77</u>	<u>\$1 097 923 85</u>

LONG-TERM DEBT (Note 3)

Notes payable (Less current portion shown above)	<u>\$1 633 726 60</u>	<u>\$1 164 299 03</u>
--	-----------------------	-----------------------

CAPITAL

Common stock - Par value \$5.00 per share: (Note 6)		
Class "A" - Authorized 37,500 shares, issued and outstanding 18,750 shares	\$ 93 750 00	\$ 93 750 00
Class "B" - Authorized 62,500 shares, issued and outstanding 33,875 shares	169 375 00	169 375 00
Capital contributed in excess of par value of stock	291 025 00	291 025 00
Retained earnings	<u>1 767 378 13</u>	<u>1 566 353 51</u>
	<u>\$2 321 528 13</u>	<u>\$2 120 503 51</u>
	<u>\$4 946 632 50</u>	<u>\$4 382 726 39</u>



STATEMENT OF RETAINED EARNINGSFor the years ended June 30, 1977 and 1976

	<u>1977</u>	<u>1976</u>
<u>BALANCE</u> - July 1	\$1 566 353 51	\$1 430 977 26
Add: Net income	<u>285 224 62</u>	<u>219 576 25</u>
<u>TOTAL</u>	\$1 851 578 13	\$1 650 553 51
Deduct: Dividends paid during the year	<u>84 200 00</u>	<u>84 200 00</u>
<u>BALANCE</u> - June 30	<u>\$1 767 378 13</u>	<u>\$1 566 353 51</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.

STATEMENT OF INCOME

For the years ended June 30, 1977 and 1976

	<u>1 9 7 7</u>	<u>1 9 7 6</u>
<u>SALES</u> (Net of customer discounts: June 30, 1977, \$85,983.61; June 30, 1976, \$75,826.06)	\$12 114 596 50	\$10 041 695 64
<u>COST OF GOODS SOLD</u>	<u>9 509 030 05</u>	<u>7 758 324 25</u>
<u>GROSS PROFIT</u>	<u>\$ 2 605 566 45</u>	<u>\$ 2 283 371 39</u>
<u>OPERATING EXPENSES</u>		
Delivery	\$ 510 707 70	\$ 470 833 55
Administrative and general	<u>1 659 073 30</u>	<u>1 470 639 23</u>
<u>TOTAL OPERATING EXPENSES</u>	<u>\$ 2 169 781 00</u>	<u>\$ 1 941 472 78</u>
<u>INCOME FROM OPERATIONS</u>	<u>\$ 435 785 45</u>	<u>\$ 341 898 61</u>
<u>OTHER INCOME</u>		
Interest earned	322 74	308 32
Gain on sale of fixed assets	10 180 13	500 00
Miscellaneous	<u>5 887 67</u>	<u>-</u>
<u>INCOME BEFORE INCOME TAXES</u>	<u>\$ 452 175 99</u>	<u>\$ 342 706 93</u>
<u>PROVISION FOR INCOME TAXES</u> (Note 7)		
Federal	\$ 139 297 60	\$ 102 027 14
State	<u>27 653 77</u>	<u>21 103 54</u>
<u>TOTAL</u>	<u>\$ 166 951 37</u>	<u>\$ 123 130 68</u>
<u>NET INCOME</u>	<u>\$ 285 224 62</u>	<u>\$ 219 576 25</u>
<u>EARNINGS PER SHARE</u> (Based on 52,625 shares outstanding for both years)	<u>\$ 5 42</u>	<u>\$ 4 17</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.

STATEMENT OF CHANGES IN FINANCIAL POSITION  
For the years ended June 30, 1977 and 1976

	<u>1 9 7 7</u>	<u>1 9 7 6</u>
<u>SOURCES OF WORKING CAPITAL</u>		
Operations:		
Net income	\$ 285 224 62	\$ 219 576 25
Add (Deduct) - Items entering into the above which did not use (Provide) working capital:		
Depreciation and amortization	388 107 16	374 739 52
Gain on sale of fixed assets	( 10 180 13)	500 00)
<u>WORKING CAPITAL PROVIDED BY       OPERATIONS</u>	\$ 663 151 65	\$ 593 815 77
Proceeds from advances on bond issuance	426 407 50	-
Proceeds from sale of fixed assets	12 000 00	3 300 00
Proceeds from bank loan	902 500 00	900 000 00
Increase in long-term leases payable	-	35 330 12
<u>TOTAL SOURCES OF WORKING CAPITAL</u>	<u>\$2 004 059 15</u>	<u>\$1 532 445 89</u>
<u>USES OF WORKING CAPITAL</u>		
Dividends paid	\$ 84 200 00	\$ 84 200 00
Current maturity and curtailment of long- term debt	859 479 93	644 603 10
Purchase of fixed assets	663 592 32	649 925 71
Loan costs incurred	683 33	1 918 20
<u>TOTAL USES OF WORKING CAPITAL</u>	<u>\$1 607 955 58</u>	<u>\$1 380 647 01</u>
<u>INCREASE IN WORKING CAPITAL</u>	<u>\$ 396 103 57</u>	<u>\$ 151 798 88</u>
<u>CHANGES IN WORKING CAPITAL</u>		
<u>CURRENT ASSETS</u>	<u>INCREASE (DECREASE)</u>	
Cash	\$ 6 066 06	(\$ 31 451 86)
Accounts receivable	313 945 88	179 007 94
Inventories	112 945 60	250 356 27
Prepaid expenses	16 124 81	20 622 33
Insurance claim receivable	( 35 449 84)	35 449 84
Overpayment of Federal and State income taxes	( 124 075 02)	87 075 55
<u>TOTALS</u>	<u>\$ 289 557 49</u>	<u>\$ 541 060 07</u>
<u>CURRENT LIABILITIES</u>		
Accounts payable	\$ 50 100 00	(\$ 26 397 49)
Current portion of long-term debt	( 262 894 46)	501 940 28
Payroll taxes withheld and accrued	1 838 06	6 461 83
Accrued expenses	22 198 01	24 007 60
Accrued salaries	36 205 54	26 764 14
Accrued profit-sharing contribution	4 255 40	41 971 69
Federal and State income taxes	41 751 37	-
<u>TOTALS</u>	<u>(\$ 106 546 08)</u>	<u>\$ 389 261 19</u>
<u>INCREASE IN WORKING CAPITAL</u>	<u>\$ 396 103 57</u>	<u>\$ 151 798 88</u>

NOTE: The accompanying notes to financial statements are an integral part of this statement.



NOTES TO FINANCIAL STATEMENTSJune 30, 1977 and 1976PAGE 1NOTE 1 - Summary of Significant Accounting Policies:

An allowance for doubtful accounts is provided based on the historical bad debt experience. Receivables are written off against the allowance account in the period they are determined to be uncollectible.

Fixed assets are recorded at cost. Depreciation is computed using the straight-line method on assets acquired prior to June 30, 1972, and the declining balance method on assets acquired after that date.

Development costs incurred in the opening of the South Carolina plant are being amortized over a period of five years. Leasehold improvements and the loan costs incurred in the acquisition of the mortgage on the South Carolina plant are being amortized over the lives of the lease and mortgage, respectively.

Inventories, which include raw materials, work in process and finished goods are valued at the lower of cost or market. All inventories, except the raw material inventory of roll stock, are costed using the first-in, first-out method. Roll stock is costed using the last-in, first-out method of cost accumulation. This method of costing roll stock is explained further in Note 2.

NOTE 2 - Change in Accounting Method - Inventory:

Effective with the year ended June 30, 1976, the Company changed its method of accounting for roll stock inventory on hand from the lower of cost or market method of valuation using the first-in, first-out (FIFO) method of cost accumulation to cost based on the last-in, first-out (LIFO) method. Management believes the use of the last-in, first-out (LIFO) method will more accurately reflect income from operations by matching current costs against current revenues.

The inventory under the first-in, first-out (FIFO) method of cost accumulation would have been \$1,073,565.79 and \$988,738.89 at June 30, 1977, and 1976, respectively.

NOTE 3 - Long-Term Debt:

Long-term debt at June 30, 1977, is summarized below:

(See next page)

NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 2NOTE 3 - Long-Term Debt: (Continued)

<u>PAYABLE TO</u>	<u>DUE CURRENTLY</u>	<u>DUE AFTER ONE YEAR</u>
Life Insurance Company of Virginia	\$ 4 060 16	\$ 142 004 98
Life Insurance Company of Virginia	8 825 49	269 245 55
United Virginia Bank	225 000 00	-
United Virginia Bank	128 928 56	773 571 44
United Virginia Bank	-	426 407 50
Lease/purchase obligations	19 752 39	25 591 04
<u>TOTALS</u>	\$386 566 60	\$1 636 820 51
Less: Finance charges included in lease/purchase obligations	( 4 857 96)	( 3 093 91)
<u>TOTALS</u>	<u>\$381 708 64</u>	<u>\$1 633 726 60</u>

The notes payable to the Life Insurance Company of Virginia are mortgages secured by buildings and improvements in South Carolina which have a book value of \$598,834.05 at June 30, 1977. The mortgage with the balance of \$278,071.04 is payable in monthly payments of \$3,673.16 which include principal and interest of \$2,905.00 and an escrow payment of \$768.16 for real estate taxes and insurance. This mortgage bears interest at the rate of 9-1/2 percent per annum and matures July 1, 1992.

The mortgage payable to the Life Insurance Company of Virginia with a balance of \$146,065.14 is payable in monthly installments of \$1,630.50 which includes principal and interest. The initial payment was due July 1, 1976, with final maturity on June 1, 1989. The mortgage bears interest at the rate of 10-3/4 percent per annum.

The note payable to United Virginia Bank in the amount of \$225,000.00 represents a demand note. The note bears interest at the rate of 7-1/4 percent per annum and is unsecured.

The note payable to United Virginia Bank in the amount of \$902,500.00 represents the amount of a loan executed June 30, 1977. The note bears interest at the rate of one and three-quarters of one percent in excess of the bank's prime rate with such interest billed monthly. Changes in the rate will be on the day that a new rate is posted at the bank. The principal will be repaid in 27 consecutive quarterly installments of \$32,232.14 with a final installment of \$32,232.22.

Under the terms of the loan agreement with United Virginia Bank the Company is required to maintain demand deposit average balances sufficient to equal at least ten percent of the average balance of its outstanding term debt. The loan agreement also provides for main-

NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 3NOTE 3 - Long-Term Debt: (Continued)

tenance of a minimum amount of net worth and working capital; in addition there are limitations on the purchases of fixed assets, payments of dividends, maintenance of life insurance policies on certain officers of the Corporation, other borrowing, acquisition of treasury stock, the granting of loans or advances, investments, entering into leases and the right of the Corporation to enter into mergers, consolidations or the sale of the business without prior consent of United Virginia Bank. All requirements of the loan agreement have been met for the current year.

The debt to United Virginia Bank in the amount of \$426,407.50 represents advances made to the Company in accordance with the Bank's commitment to purchase bonds to be issued by Industrial Development Authorities located in Lexington County, South Carolina and Richmond, Virginia. The maximum amount of the issue is to be \$1,000,000.00 and \$700,000.00 for Lexington and Richmond, respectively, with the funds to be used to purchase machinery and equipment which will then be sold or leased to the Company. Interest on the advances is computed at the Bank's prime lending rate plus 1-3/4% per annum and is payable monthly. The bonds, when issued, will be treated as a single instrument and will be payable over 15 years in quarterly installments beginning on the first day of the month in which the bonds are fully funded. Principal payments (assuming full funding) are to be \$16,667.00 and \$11,667.00 per quarter for Lexington and Richmond, respectively. Interest will be computed on the outstanding principal balance on a daily basis at the annual rate of 7-1/2% and will be payable quarterly.

The Corporation is leasing seven forklift trucks under lease/purchase agreements totaling \$107,423.37. The Corporation has capitalized these assets and they are included in the balance sheet as machinery and equipment. The unpaid balances of these lease/purchase obligations aggregate \$45,343.43, and are shown in the balance sheet net of finance charges of \$7,951.87. The original terms of these obligations were sixty months with remaining terms ranging from 8 to 48 months.

NOTE 4 - Incentive and Salary Continuation Plans:

The Company has provided an incentive plan under which the officers receive a cash bonus of ten percent of income before income taxes, after deducting the income after taxes which would provide a twelve and one-half percent return on its beginning net worth. The amount of the bonus for both the current and prior years is zero.

Also, the Company has adopted a salary continuation plan under which certain officers' salaries will continue at a specified rate for specified period of time after their death or disability. The plan is funded with life insurance.



NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 4NOTE 5 - Retirement Plans:

The Company maintains three retirement plans; a profit-sharing retirement plan, and two pension benefit retirement plans. The profit-sharing retirement plan covers salaried personnel. The contribution as determined by the Board of Directors for the current year is \$60,553.28.

The pension benefit plans cover hourly employees of both the Virginia and South Carolina plants who are employed on a regular basis. The benefits to the Virginia plant employees are union negotiated with a comparable benefit to the South Carolina employees. The contribution for the current year to both plans is \$9,983.00 which includes an appropriate amount for the funding of past service costs. The plan in South Carolina is a new plan this year and has not as yet been approved by the Internal Revenue Service. It is opinion of the Company's management that the plan meets all requirements and will be approved.

NOTE 6 - Capital Stock:

The rights of Class "A" common stockholders and Class "B" common stockholders are identical, except with regard to election of directors of the Corporation. The shareholders of Class "A" common stock have two votes per share and the shareholders of Class "B" common stock have one vote per share. The Articles of Incorporation provide for cumulative voting which insures representation of the shareholders of Class "B" common stock on the Board of Directors. Both classes of stock share in dividends at the same rate.

NOTE 7 - Investment Tax Credit:

Investment tax credit in the amount of \$54,697.49 resulting from the purchase of equipment during the year has been applied against the current year's provision for income taxes.

NOTE 8 - Equipment Purchase Obligations:

The Company has made deposits of \$21,173.80 on two pieces of equipment which were not received prior to June 30, 1977. These deposits are shown as machinery and equipment on the Balance Sheet. The balance owed for this equipment is \$148,072.20. This amount is not reflected on the Balance Sheet at June 30, 1977.

NOTE 9 - Income Taxes:

The corporate tax returns for the three previous years are open to examination by the taxing authorities.

NOTES TO FINANCIAL STATEMENTS

(Continued)

PAGE 5NOTE 10 - Leases:

At June 30, 1977, the Company was obligated under a ten-year lease agreement with a one year remaining life for its plant on Deepwater Terminal Road in Richmond, Virginia. The base annual rental under the lease is \$55,156.10, and the Company is to pay any increase in real estate taxes over the base year, for the current year the payments amounted to \$61,074.98. The lease has two renewal options of ten years each with the base annual rental to be increased in proportion to the increase in the Consumer Price Index. The addition to the plant which cost \$129,405.64 is being amortized over the life of the lease including both renewal options.

The Company leases space in North Carolina under a one-year lease for the annual rental of \$1,080.00.

Also, the Company leases automobiles under leases ranging from one to three years. During the current year approximately \$40,000.00 was paid on the leases. Under a master agreement with approximately a two-year life remaining, trucks are leased under thirty-day agreements and during the current year approximately \$95,000.00 was paid for the truck leases. Minimum annual rental commitments for vehicles for the years ended June 30, 1978, and 1979 are \$30,000.00 and \$10,000.00, respectively.

STATE BUDGET AND CONTROL BOARD

EXHIBIT IX  
5/23/78

MEETING OF May 23, 1978

AGENDA ITEM NUMBER Proposed Supplemental  
#1

---

Agency: Technical and Comprehensive Education

---

Subject: Use of Capital Improvement Bonds Funds

Request is for authorization to use for construction \$57,789 of Capital Improvement Bond funds which were authorized for equipment.

If approved, TEC would be in position to accept the low bid on Denmark TEC Student Services Building.

---

Board Action Requested:

Approve use of \$57,789 of Capital Improvement Bond funds for construction.

---

Staff Comment:

---

Attachments:

Shealy 5/18/78 letter to Putnam





STATE BOARD FOR TECHNICAL  
AND  
COMPREHENSIVE EDUCATION

G. WILLIAM DUDLEY, JR.  
EXECUTIVE DIRECTOR

1429 SENATE STREET  
COLUMBIA, S. C. 29201

May 18, 1978

Mr. William T. Putnam, State Auditor  
Office of the State Auditor  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Putnam:

On May 3, bids for construction of a Student Services Building at Denmark Technical Education Center were opened. The invitation to bid contained five alternates; two of a construction nature, and three items of equipment. We have decided to accept the two construction alternates and add them to the base bid, but we feel that it would be in our best interest to handle the equipment items separately. Marchant Construction Company, Inc. was the low bidder based upon acceptance of alternates one and two. Marchant's bid exceeds available funds by \$54,011; and in addition, fees must be increased by \$3,778, plus the equipment alternates total \$107,000 for a total \$164,789 shortage.

We have available to us sufficient Capital Improvement Bonds which have previously been authorized by the General Assembly to provide the additional funds required to enter into a contract for construction. These Bonds have been authorized for the purchase of equipment; however, the urgency of this project has forced us to make this a priority item.

We respectfully request approval to utilize \$164,789 of previously authorized Capital Improvement Bonds to fund the Student Services Building at Denmark TEC (H59-001), and authorization to enter into a contract with Marchant Construction Company, Inc. for construction.

Your early consideration of this matter would be greatly appreciated.

With kind personal regards,

Sincerely,

Wyman D. Shealy  
Associate Executive Director

WDS:bhc  
Enclosures

cc: John A. McPherson, Jr.  
John W. Henry, Jr.  
William A. McInnis

REQUEST FOR AUTHORITY TO EXECUTE A CONSTRUCTION CONTRACT

Date May 17 19 78

Institution or Agency State Board for Technical and Comprehensive Education

Name of Project Denmark TEC - Student Services Building No. H59-001

To: State Budget and Control Board

Columbia, South Carolina

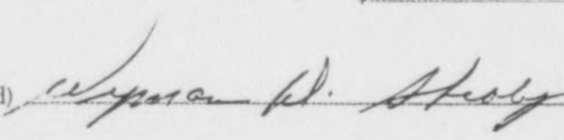
Attached herewith is a tabulation of bids received on the above named project on May 3 19 78

Your authorization is requested to enter into a contract with the following bidder, whose bid has been determined to be the most advantageous:

Name of Bidder Marchant Construction Company, Inc.

\*Amount of Bid - - - - - \$ 996,301

Amount Estimated Prior to Receipt of Bids - - - - - \$ 942,290

(Signed) 

Title Associate Director for Management

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
State Auditor

Note:—Two copies of Form E-11, "Revision of Project Cost Estimate" should be submitted with this Request.

\*If alternates were involved in the call for bids, it should be clearly shown how the proposed contract figure was determined.

REVISION OF PROJECT COST ESTIMATE

Date May 17 19 78

Institution or Agency State Board for Technical and Comprehensive Education

Name of Project Denmark TEC - Student Services Building No. H59-001

To: State Budget and Control Board  
Columbia, South Carolina

Your approval of the following revised cost estimate on the above project is requested.

A statement is attached indicating the necessity of these revisions. \*

Item	Last Estimate	Revised Estimate	Change
Site	\$ <u>20,000</u>	\$ <u>20,000</u>	\$ <u>(20,000)</u>
Grading	<u>922,290</u>	<u>996,301</u>	<u>74,011</u>
Construction	<u>56,000</u>	<u>59,778</u>	<u>3,778</u>
Fees			
Renovation			
Basic Equipment and Supplies		<u>107,000</u>	<u>107,000</u>
Landscaping	<u>10,000</u>	<u>10,000</u>	
Builder's Risk Insurance	<u>1,000</u>	<u>1,000</u>	
Other			
Contingencies	<u>28,000</u>	<u>28,000</u>	
Total Estimated Cost	\$ <u>1,037,290</u>	\$ <u>1,202,079</u>	\$ <u>164,789</u>

Additional Costs To Be Funded by Approved

Bond Funds for Equipment:

Act 1377 Acts of 1968 As Amended by Act 354 of 1973 (Signed)

As Amended by Act 759 Acts of 1976 (Equipment)

\$164,789

Associate Director for Management

Title

\* If the total estimated cost of the project has been increased, the source of the additional funds required should be indicated also.

APPROVED: \_\_\_\_\_

State Auditor

DATE: \_\_\_\_\_





## NEW ADDRESS

TIME: 2:30 P.M.

1736 ST JULIAN PLACE  
COLUMBIA, S. C. 29204

DATE: MAY 3, 1978

[illegible]

STATE BUDGET AND CONTROL BOARD

MEETING OF May 23, 1978

AGENDA ITEM NUMBER

EXHIBIT X

3 5/29/78

---

Agency: Clemson University

---

Subject: Source of Funds for Certain Employer Contributions  
(Please refer to attachment for details.)

- (1) Employer contributions associated with salaries and wages paid by Clemson for June 25-30, 1977 and charged by accrual to FY 1976-77.  
Clemson has paid \$73,802.27 to the Retirement System from funds budgeted for other purposes and requests reimbursement from funds appropriated to the Board for these purposes.
- (2) Employer contributions associated with establishment of non-member or prior years' service credit. (On 3/15/78, the Board authorized the State Auditor and the Retirement System to approve the payment of these costs from funds appropriated to the Board.)
- (3) Employer Contributions associated with employees on leave without pay.  
Examples are employees on maternity leave or employees who, because of work-related sickness or injury are paid by Workmen's Compensation. Employees in these categories may remain in the Retirement System by remitting the employee portion of the contribution.

---

Board Action Requested:

- (1) Authorize the payment of \$73,802.77 as a reimbursement from funds appropriated to the Board;
  - (3) Authorize State Auditor and Retirement System to approve and pay this and similar requests from funds appropriated to the Board.
- 

Staff Comment:

Request number (2) can be handled under the authorization granted previously to State Auditor and the Retirement System.

---

Attachments:

Barnette 5/4/78 letter to Putnam



VICE PRESIDENT FOR BUSINESS AND FINANCE

May 4, 1978

Mr. Edgar A. Vaughn, Jr., CPA  
Assistant State Auditor  
Office of the State Auditor  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Ed:

As a result of our recent telephone conversations and my visit to your office last Monday I am writing to provide you a summary of the previous requests made to the State Budget and Control Board pertaining to certain employer costs for fringe benefits programs (Employer Contributions) which have been and are being paid by Clemson University but which have not been provided for in the current year's appropriations for such items. As both you and I have agreed, the new procedures implemented this year whereby the employer costs of fringe benefits programs associated with State funds are to be paid by the individual institutions and agencies from appropriations now made to the institution or agency rather than to the Budget and Control Board (South Carolina Retirement System) did not address the problems we have encountered. Consequently, no provisions have yet been made for either the institution (agency) or the South Carolina Retirement System to pay for them.

In summarizing these problems I shall address them as three different categories, the first of which is a one-time occurrence and the other two are recurring situations. For this reason the first situation (perhaps peculiar only to Clemson University) needs to be resolved independently of and perhaps in a different manner from the second and third types of situations. Each is summarized below:

1. Employer Costs of Fringe Benefits Programs (Employer Contributions)  
Associated with Salaries and Wages Paid by Clemson University for the  
Period June 25-30, 1978 and Charged By Accrual to Fiscal Year 1976-77.

Since fiscal year 1973-74 Clemson University, because of the large number of federal programs requiring that all Personal Services charges be reflected as expenditures to the applicable fiscal year or project period, began to accrue payrolls paid the first payday of the new year but chargeable as an expenditure against the previous fiscal year. This meant that on July 7, 1977 (the first payday of fiscal year 1977-78) employees' salaries and wages actually disbursed were charged in part to two fiscal years -- to 1976-77 for salaries and wages earned during the period June 25 - June 30, 1977, and to 1977-78 for salaries and wages earned during the period July 1-7, 1977. This was indeed accurate and proper under accrual accounting.



The corresponding charges for costs to the employer for fringe benefits programs (Employer Contributions) were likewise made to these two fiscal years in proportion to the salaries and wages charged to each year. In the case of such "Employer Contributions" associated with the salaries and wages paid from State funds for the period July 1-7, remittance was made by Clemson University to the South Carolina Retirement System from State funds appropriated for this purpose in the General Appropriation Act for 1977-78. In the case of "Employer Contributions" associated with the salaries and wages paid from State funds for the period June 25-30, remittance was not initially made because during fiscal year 1976-77 such funds were appropriated to the State Budget and Control Board (South Carolina Retirement System) for direct transfer to the appropriate fringe benefits accounts. Upon the request of the State Auditor, Clemson University subsequently remitted from funds budgeted for other purposes the amount of \$73,802.27 to cover this period. Consequently, it is this budget overdraft of \$73,802.27 that has been requested to be covered by transfer or other action by the State Budget and Control Board and/or the General Assembly.

Specific details for this item are included in a letter dated September 15, 1977 from me to Mr. William T. Putnam, Secretary, State Budget and Control Board and a letter dated October 18, 1977 from me to you. Copies of these two letters are attached as Exhibits A. and B.

2. Employer Costs of South Carolina Retirement System (Employer Contributions) Associated with the Establishment of Non-member or Prior Year's Service Credit.

Institution or agency requests for State appropriations for employer's costs of fringe benefits programs did not and cannot include such items because they cannot be projected with any reasonable degree of accuracy. During the period July 1, 1977 through March 31, 1978 Clemson University has already remitted \$2,564.00 for this purpose. No funds are available for this nor for any similar payments which might be made during the last three months of the current fiscal year. A copy of my letter dated October 14, 1977 to Mr. William T. Putnam, Secretary, Budget and Control Board addressing this item is attached as Exhibit C.

3. Employer Costs of Fringe Benefits Programs (Employer Contributions) Associated with Employees on Leave Without Pay.

Institution or agency requests for State appropriations for the employer's costs of fringe benefits programs did not include such items and, therefore, were not funded. During the period July 1, 1977 through March 31, 1978 Clemson University has already remitted \$5,033.39 for this purpose. It is estimated that approximately \$2,000.00 more will be remitted during the last three months of the fiscal year, bringing this overdraft to approximately \$7,000.00. A copy of my letter dated November 3, 1977 to Mr. William T. Putnam, Secretary, State Budget and Control Board addressing this item is attached as Exhibit D.

Mr. Edgar A. Vaughn, Jr., CPA  
Assistant State Auditor

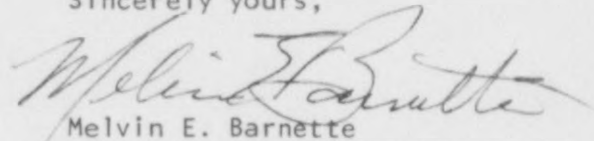
-3-

May 4, 1978

It is respectfully requested that provision for transfer and/or deficiency appropriation in the amount of the above overdrafts be furnished Clemson University. Further, it is requested that future payments for costs described in Items 2 and 3 above be paid directly for all institutions and agencies from an appropriate fund at the State level.

If I can provide additional information or be of further assistance in getting this matter resolved, please let me know.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Melvin E. Barnette".

Melvin E. Barnette  
Vice President for Business and Finance

MEB/jac  
Attachments



VICE PRESIDENT FOR BUSINESS AND FINANCE

September 15, 1977

Mr. William T. Putnam  
Secretary  
State Budget and Control Board  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Putnam:

During the last several days staff members at Clemson have been in telephone contact with Mr. Wayne Pruitt of the South Carolina Retirement System and Mr. Ed Vaughn of your office with respect to a problem that has arisen pertaining to the payment of the employer portion of fringe benefits costs to the Retirement System by State agencies and institutions. Upon the recommendation of Mr. Ed Vaughn, I am writing to request that you on behalf of the State Budget and Control Board assist in resolving this problem.

The current problem stems from two factors relating to the accounting systems of Clemson University and of the State of South Carolina. Firstly, Clemson, on the recommendation of the State Auditors and in order to be in conformity with the accounting principles established by the American Institute of Certified Public Accountants and the National Association of College and University Business Officers, operates on the basis of accrual accounting. This first began in Fiscal Year 1973-74 when Clemson began to accrue payrolls. It was expanded to include payables, receivables, deferred revenues, etc., when on July 1, 1975, a computerized accounting information system was implemented.

Secondly, the University changed in January of 1973 from monthly and semi-monthly payrolls to biweekly payrolls for all employees, which coincide with the State's recommended periods. In Section 88 of the General Appropriations Act for the Fiscal Year 1972-73 (copy attached), the State established the policy that whenever a pay period extended from one fiscal year into a second fiscal year, the entire pay period would be charged to the second fiscal year. This presented major problems at Clemson because of the large number of federal programs requiring that all Personal Services charges be reflected as expenditures to the applicable fiscal year or project period. Relief was sought from federal officials, but not obtained. Consequently, under the provisions of Section 88 of the 1972-73 General Appropriations Act which provides that "the Budget and Control Board is authorized to approve any exceptions to this schedule where circumstances are deemed justifiable", and similar provisions which have been in each subsequent General Appropriations Act, approval was sought and received for Clemson to pay according to the State's established pay



periods but to accrue the charges to the appropriate fiscal periods. This has worked satisfactorily until now.

Whenever Clemson University remitted its employer portions for South Carolina Retirement for the month of July 1977, Mr. Pruitt of the South Carolina Retirement System challenged our procedures based on the following amounts and circumstances involved:

The total payroll paid in the month of July was \$2,864,658.65, \$732,226.48 of which was applicable to Fiscal Year 1976-77. Of the \$732,226.48, \$169,272.82 was paid from sources other than State funds. The employer's portion (\$12,018.37) applicable to this \$169,272.82 was paid to the South Carolina Retirement System on the June 30, 1977 South Carolina Retirement Report. The remaining amount of \$561,953.66 is the amount of payrolls accrued and charged to State funds. In other words, this accrual is an expense applicable to Fiscal Year 1976-77 and is not a proper expense to our current fiscal year.

It should be pointed out that the current problem about South Carolina Retirement is also going to occur when we submit the July 1 - September 30, 1977 Social Security Report. This involves FICA on \$561,965.11 accrued payrolls paid July 7 and chargeable to State funds for Fiscal Year 1976-77. Already paid on the June 30, 1977 Social Security Report was \$9,960.29, which represents accrued salaries and wages of \$170,261.37 charged to other than State funds. This was also charged to Fiscal Year 1976-77.

Obviously, the Retirement System needs to have the funds paid to the System that are applicable to the salaries and wages paid from State appropriations and accrued against Fiscal Year 1976-77 but not paid to employees until July 7, 1977. Equally obvious is the fact that Clemson University is not liable in 1976-77 for the employer contributions, and it did not request or receive funds in 1977-78 for these accruals. As a result, Clemson does not have funds available from which to make this payment, and in accordance with Section 146 of the General Appropriations Act of 1977-78 (copy attached), has no recourse except to request transfer of funds from already inadequate general operating item to the item for Employer Contributions.

It would appear that the third proviso of Section 13 of the General Appropriations Act of 1977-78 (copy attached) provides that the State Treasurer and Comptroller General are authorized to transfer from the General Fund of the State to the proper Retirement System accounts "such funds as are necessary to comply with the terms of the Retirement Act, as amended, as to contributions by the State of South Carolina." It is true that the amounts involved pertain to the prior fiscal year, however, it would seem to me to be no different than the long-standing practice of the Retirement System to use current year's appropriations to transfer amounts applicable to the establishment of prior year's retirement credit.

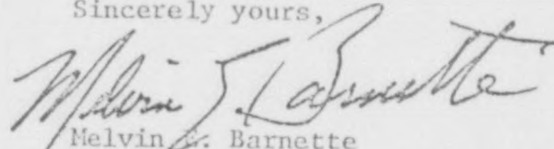
Mr. William T. Putnam

- 3 -

September 15, 1977

Please do not hesitate to call on us in any way we can be of assistance in resolving this problem. We sincerely appreciate the cooperation of Mr. Vaughn and you in this and all matters.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Melvin C. Barnette". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Melvin C. Barnette  
Vice President for Business and Finance

MEB/gck  
Attachments

cc: Mr. Wayne Pruitt  
bxc: Mr. T. N. Hinton



VICE PRESIDENT FOR BUSINESS AND FINANCE

October 18, 1977

Mr. Edgar A. Vaughn, Jr., CPA  
 Assistant State Auditor  
 Office of the State Auditor  
 Post Office Box 11333  
 Columbia, South Carolina 29211

Dear Ed:

In reply to your letter of September 28, 1977, regarding the payment of fringe benefits costs attributable to the accrued payroll items at the end of Clemson's fiscal year which ended June 30, 1977, I am providing the following amounts and computations:

Payroll Accruals for the period 6/25 - 6/30/77  
Paid to Employees on July 7, 1977

S. C. Retirement -- \$561,953.66

Regular Retirement	-	\$561,953.66 x 6.8%	=	\$ 38,212.85
Group Life Insurance	-	" x .003	=	<u>1,685.86</u>
Total				\$ 39,898.71

Police Officers Retirement -- \$ 9,436.67

Police Officers Retirement	-	\$9,436.67 x 10%	=	\$ 943.67
Accidental Death	-	" x .0035	=	33.03
Group Life Insurance	-	" x .0055	=	<u>51.90</u>
Total				\$ 1,028.60

Social Security -- \$ 561,965.11

FICA	-	\$561,965.11 x 5.85%	=	\$ <u>32,874.96</u>
Total				\$ 32,874.96

Grand Total -- \$ 73,802.27

By copy of this letter, I am requesting that Mr. Wayne Pruitt of the South Carolina Retirement System confirm to you these amounts and computations on behalf of the Retirement System. Should there be any question by either you or Mr. Pruitt our staff at Clemson will be available to assist in the reconciliation of any differences.



Mr. Edgar A. Vaughn, Jr., CPA  
Assistant State Auditor

-2-

October 17, 1977

Thank you very much for your assistance and cooperation in this matter.

Sincerely yours,

Melvin E. Barnette  
Vice President for Business and Finance

MEB/jac

xc: Mr. Wayne Pruitt  
Mr. Trescott N. Hinton



VICE PRESIDENT FOR BUSINESS AND FINANCE

October 14, 1977

Mr. William T. Putnam  
Secretary  
State Budget and Control Board  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Bill:

I am enclosing a letter addressed to Mr. T. N. Hinton from Mrs. Joyce Comisky of the South Carolina Retirement System which presents another problem occasioned by the General Assembly's decision to appropriate funds for employee benefits costs to the individual agencies instead of to the State Budget and Control Board. As you well know, our request for such funds for 1977-78 and for 1978-79 did not include any funds for the payment of costs related to the establishment of non-member service or for any other cost related to prior years.

Although this particular request for payment is a relatively small amount, similar situations during a fiscal year can amount to substantial sums for Clemson. It would seem to me that the third proviso of Section 13 of the General Appropriation Act for 1977-78 would permit these types of payments to be continued as they have in prior years. Please investigate this situation, request Board approval as necessary, and notify Clemson and the Retirement System of the results of your efforts.

Thank you very much for your continued assistance and cooperation.

Sincerely yours,

Melvin E. Barnette  
Vice President for Business and Finance

MEB/jac

CLEMSON  
UNIVERSITY

VICE PRESIDENT FOR BUSINESS AND FINANCE

November 3, 1977

Mr. William T. Putnam, Secretary  
State Budget and Control Board  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Putnam:

In further reference to my letter to you of October 14, 1977 (copy attached), I would like to add two additional types of employer contributions for employee benefits costs which were not provided for in the recent change in procedures whereby appropriations are made to the individual agencies instead of the State Budget and Control Board.

The first type is that of individuals in a Leave Without Pay status (such as maternity leave) whereby the employee is permitted to remain in the Retirement System by remitting the employee portion. Obviously, in such cases appropriations requested for employer contributions for these positions will be used to provide for the costs associated with individuals employed to replace those on leave without pay. This leaves no funds available for the employer portion associated with those costs for the individuals on leave without pay corresponding to the amounts paid personally by the employee.

The second case deals with employees who because of work-related sickness or injury are not on Clemson University's payrolls (in a leave without pay status) but are being paid through Workmen's Compensation. Here again no funds were requested nor provided to pay for the employer portion of fringe benefits costs associated with these individuals.

As I stated in my original letter, it appears possible that the third proviso of Section 13 of the General Appropriation Act for 1977-78 would permit all of these "exception" types of payments to be continued as they come about, upon the approval of the State Treasurer and Comptroller General, directly from the general fund of the State.

It was very nice to have you and Mrs. Putnam in Clemson last Saturday. Please come back and visit with us often.

Sincerely yours,

Melvin E. Barnette  
Vice President for Business and Finance

MEB/jac

xc: Mr. Wayne Pruitt  
Mr. T. N. Hinton



STATE BUDGET AND CONTROL BOARD

MEETING OF May 23, 1978

AGENDA ITEM NUMBER

EXHIBIT XI  
4 5/23/78

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Agency: Grants and Contracts Review Subcommittee

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Subject: Grant and Contract Requests

The Subcommittee's package includes 40 projects involving these funds:

Federal	\$4,035,034
State	455,801
Other	<u>252,215</u>
Total	<u>\$4,743,050</u>

Subcontracts between State agencies covering \$682,910 are included.

If these proposals are approved, the personnel to be employed include 31 full-time and 65 part-time.

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Board Action Requested:

Approve recommendations of Subcommittee.

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Staff Comment:

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Attachments:

Patterson 5/16/78 memo to Putnam plus attachments.

MEMORANDUM

TO: Mr. W. T. Putnam, Secretary  
Budget and Control Board

FROM: Grady L. Patterson, State Treasurer  
Chairman, Grants and Contracts Review Subcommittee *GLP*

DATE: May 16, 1978

RE: Federal Grants and Contracts Recommendation to the Budget and  
Control Board, May 23, 1978

The Federal Grants and Contracts Review Subcommittee of the Budget and Control Board reviewed 40 project requests from 23 state agencies on May 16, 1978, and the attached summary is provided for final Budget and Control Board action on May 23, 1978.

The state agencies requested the following new amounts from federal, state, and other sources:

Federal Funds	\$4,035,034
State Match	455,801
Other Match	<u>252,215</u>
Total	<u>4,743,050</u>

(NOTE: These totals include \$682,910 in 9 subcontracts between 7 state agencies.)

The total number of personnel to be hired on these programs if all are approved by the federal government are indicated as follows:

Full-time Employees	31
Part-time Employees	<u>65</u>
Total	<u>96</u>

The recommendations for these projects as agreed to by the subcommittee members are reflected in Column 10 of the attached summary report.

CS  
Enclosure

SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
1 Division of Administration	8-D15-061	8,000	5-13-78 8-1-78	8,000 100%	0	0	0	To survey and identify locations to accommodate temporary housing for potential disaster victims	Approval	
2 Division of Economic Opportunity	8-D30-010	208,000	6-1-78 5-3-79	208,000 100%	0	0	0	To provide recreational opportunities for approximately 55,000 disadvantaged youth during the summer months	Approval	
3 Division of Economic Opportunity	8-D30-011	443,944	7-1-78 6-30-79	288,000 65%	155,944 35%	0	0	To provide for operation of the State Economic Opportunity Office (SEOO)	Approval	
4 Division of Research & Statistical Services	8-F08-005	475	5-5-78 6-6-78	475 100%	0	0	0	To provide aerial photography to aid Dept. of Interior in environmental evaluations of Charleston Harbor	Approval	
5 Commission on Higher Education	8-H03-004	91,837	7-1-78 6-30-79	48,437 53%	43,400 47%	0	0	A planning program supported by the U. S. Office of Education to facilitate student entrance and retention for incoming freshmen.	Approval	



SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
6 The Citadel	8-H09-015	1,020	11-2-77 6-30-78	500 49%	520 51%	0	0	To provide for the keynote speaker, Dr. Edward O. Wilson of Harvard University for the annual S. C. Society for Philosophy	Approval	
7 Clemson University	8-H12-075	103,820	10-15-78 9-14-79	103,820 100%	0	0	3	To develop more detailed information regarding the bacterial canker disease of peach trees and obtain the rationale for controlling the disease	Approval	
8 Clemson University	8-H12-076	47,463	10-15-78 9-14-79	47,463, 100%	0	0	1	To provide the small fruit farmer With tools with which desirable germ-plasm can easily manipulated for improved quality and adapatability	Approval	
9 Clemson University	8-H12-077	113,998	10-1-78 9-30-79	113,998 100%	0	0	3	To quantify the dynamic rates of photosynthesis and nitrogen fixation and assimilation as influenced by the environment	Approval	
10 Clemson University	8-H12-078	87,915	8-1-78 7-31-79	87,915 100%	0	0	2	To determine if the relatively large intake of dietary sucrose is contributing to the influence of cardiovascular disease and stroke using swine as the experimental model	Approval	

SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
11 Clemson University	8-H12-079	75,000	10-1-78 9-30-79	75,000 100%	0	0	3 Temporary Graduate Assistants	To enhance the production of cowpeas through biological nitrogen fixation as related selection of varieties, rhizobia specificity, fertilizer, and soil nitrogens and concentrations	Approval	
12 South Carolina State College	8-H24-019	87,141	6-1-78 5-31-79	87,141 100%	0	0	4	To continue support for a minority Biomedical Support program	Approval	
13 Winthrop College	8-H47-024	4,900	6-1-78 5-31-79	4,900 100%	0	0	0	A research program designed to determine the effects of musical training on the individual and the retention of this training	Approval	
14 Medical University	8-H51-211	47,273	7-1-78 6-30-79	31,290 66%	15,983 34%	0	1	A research program to evaluate specific inhibitors in restoring damaged cells	Approval	
15 Medical University	8-H51-212	45,259	4-1-77 7-31-78	43,349 96%	1,910 4%	0	2	A basic Biochemistry program support from National Institute of Health	Approval	



SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
16 Trident TEC	8-H59-196	39,181	7-1-78 6-30-78	24,972 64%	0	14,209 36%	5	To fund a four phased research study to test the effects of an intensive career education program on a group of low-achieving students at Trident	Approval	
17 Trident Tec	8-H59-197	47,625	7-1-78 6-30-79	24,300 51%	0	23,325 49%	7 Temporary	To develop and document a practical, systematic method of evaluating the effects of Trident's occupational programs	Approval	
18 Denmark Tec	8-H59-200	152,158	10-1-78 9-30-79	123,958 81%	25,000 16%	2,700 2%	7	To develop and operate a Learning Resources Center to meet educational and occupational needs	Approval	
19 Midlands Tec	8-H59-201	38,000	8-1-78 7-30-79	38,000 100%	0	0	0	To provide funds for interest bearing loans to eligible students in crime-related degree programs	Approval	
20 Florence - Darlington Tec	8-H59-202	92,020	10-15-77 10-14-78	92,000 100%	0	0	30 Temporary	To enhance the beautification of the campus through landscaping, painting and through construction of two small storage buildings	Conditional Approval	These are Title VI funds and the employment of the personal must conform to the B & C Board action Title VI funds.



SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
21 Florence - Darlington Tec	8-H59-203	27,614	7-1-77 6-30-78	27,614 100%	0	0	0	To assist veterans through notifying the eligibles of their educational benefits and to provide assistance in obtaining these benefits through F. D. Tec - counseling and tutoring are available after enrollment	Approval	
22 Florence Darlington Tec	8-H59-204	145,201	7-1-77 6-30-78	116,161 80%	0	29,040 20%	0	To provide meaningful employment to very needy students, allowing them to work up to 20 hours per week	Approval	
23 Florence Darlington Tec	8-H59-205	86,444	7-1-78 6-30-79	82,000 95%	0	4,444 5%	0	To assist qualified nursing students obtain their Associate Degree program thru low interest bearing loans and scholarships	Approval	
24 Florence Darlington Tec	8-H59-206	14,989	7-1-77 6-30-78	14,989 100%	0	0	0	To supplement the funds in the school of Nursing in order to provide better instruction for the students	Approval	

SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
25 Florence Darlington Tec	8-H59-207	44,222	7-1-77 6-30-78	44,222 100%	0	0	0	Direct grants to eligible students with exceptional financial need to enable them to begin and/or continue their educational pursuits	Approval	
26 Florence Darlington Tec	8-H59-208	3,855	10-1-77 9-30-78	3,855 100%	0	0	0	To fund the purchase of eligible library materials	Approval	
27 Florence Darlington Tec	8-H59-209	12,000	8-1-77 7-30-78	12,000 100%	0	0	0	To provide low interest bearing loans to law enforcement trainees in order to obtain better instructed law officers	Approval	
28 Florence Darlington Tec	8-H59-210	18,833	7-1-77 6-30-78	17,270 92%	0	1,563 8%	0	To provide low interest bearing loans and scholarships to qualified nursing students in order to obtain their associate degree	Approval	
29 Florence Darlington Tec	8-H59-211	21,400	7-1-77 6-30-78	21,400 100%	0	0	0	To allow students from exceptionally needy families the opportunity to complete their education through a direct loan	Approval	

SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
30 S. C. Arts Commission	8-H91-044	121,257	1-1-79 2-31-79	49,573 41%	62,684 52%	9,000 7%	0	To continue to design, expand and implement high quality programs to impact the development of the media arts in S. C.	Conditional Approval	The agency has applied for an indirect rate and when negotiated the budget is to be modified to reflect the indirect cost recovery
31 Mental Health	8-J12-012	80,994	7-1-77 6-30-78	60,211 75%	20,069 25%	714	0	To provide special mental health service to eligible clients in, Chesterfield, Dillon and Marlboro Counties (Title XX)	Approval	
32 Mental Health	8-J12-013	488,336	7-1-77 6-30-79	240,837 50%	80,279 16%	167,220 34%	0	To provide mental health services, i.e. Daily Living Activities, Residential Counseling & Group Social and Recreational Activities, to Title XX eligible clients	Approval	
33 Commission on Alcohol & Drug Abuse	8-J20-011	842,797	7-1-77 6-30-78	842,797 100%	0	0	0	To provide for the treatment, intervention, and Education in accordance with State program on Alcoholism and Alcohol Abuse	Approval	



SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
34 Commission on Alcohol & Drug Abuse	8-J20-012	557,753	7-1-77 6-30-78	557,753 100%	0	0	0	To provide for the treatment intervention and education in accordance with the State program on Drug Abuse	Approval	
35 Youth Services	8-N12-020	27,787	5-1-78 6-30-79	27,787 100%	0	0	1	To provide a psychologist who will provide a screening mechanism necessary to identify handicapped children and address individually needed educational experiences	Approval	
36 S. C. Criminal Justice Academy	8-N20-006	12,234	5-1-78 9-30-79	12,234 100%	0	0	0	To purchase a driving simulator to demonstrate impairment of driving skills when alcohol has been consumed	Approval	
37 Department of Corrections	8-N04-056	250,061	7-1-78 6-30-79	200,049 80%	50,012 20%	0	0	To provide beneficial reintegration of offenders into the community through the extended work release program	Approval	

SUMMARY  
FEDERAL GRANTS AND CONTRACTS REQUESTS

State Agency	State Identifier	Amount	Time Period	% of Fed. Funds	% of State Funds	% of Other Funds	No. New Personnel	Program Purpose	B&C Board/ GCR Subcommittee Recommendation	Remarks
20 S. C. Wildlife & Marine Resources Dept.	8-P24-006 (Amendment)	100,000	6-1-78 9-20-78	100,000 100%	0	0	0 5 - for 4 months	To make additional surveys under the MARMAP program in order to make an assessment of priority live bottom ground fish species independent of the commercial or sport fisheries	Approval	This an amendment to a project already approved by the Budget & Control Board
30 S. C. Employment Security Comm.	8-R60-014	22,698	4-1-78 9-30-78	22,698 100%	0	0	2	To fund a joint project by Vocational Rehabilitation, State Dept. of Education, S. C. State Manpower Services Council and Employment Security (the fiscal Agent) to develop and implement statewide comprehensive Occupational Information System (OIS) to serve all data users for employment in the state	Approval	
40 S. C. Employment Security Comm.	8-R60-015	130,046	4-1-78 8-30-78	130,046 100%	0	0	0 20 Temporary 5 months	To assist graduating seniors and other students find regular employment, thus supporting the President's initiatives to reduce unemployment	Approval	

SUMMARY--BUDGET AND CONTROL BOARD ACTION  
FEDERAL GRANTS AND CONTRACTS REQUESTS

DATE OF ACTION	# OF PROJECTS	SOURCE OF FUNDING				INDIRECT COSTS	NEW PERSONNEL	
		FEDERAL	STATE	OTHER	TOTAL		PERMANENT	TEMPORARY
July-December, 1977 <i>Subcontracts</i>	793 179	858,296,056 -45,842,898	119,268,243	54,829,256	1,032,393,555 -45,842,898	4,039,789	2,013.14	446.33
January 9, 1978 <i>Subcontracts</i>	76 15	20,256,672 -1,449,880	5,546,324	1,220,685	27,023,681 -1,449,880	520,230	126.15	88.25
January 25, 1978 <i>Subcontracts</i>	40 13	12,001,907 -550,345	17,326,499	7,287,549	36,615,955 -550,345	369,875	29.41	52.00
February 15, 1978 <i>Subcontracts</i>	148 46	26,971,981 -1,890,598	11,377,228	1,401,490	39,750,699 -1,890,598	392,802	111.43	124.22
March 1, 1978 <i>Subcontracts</i>	78 18	11,784,538 -1,511,174	7,344,175	2,167,144	21,295,857 -1,511,174	290,526	73.15	30.23
March 15, 1978 <i>Subcontracts</i>	86 19	43,518,636 -656,984	342,744	109,968	43,971,348 -656,984	249,242	85.70	80.14
April 5, 1978 <i>Subcontracts</i>	139 18	21,749,330 -4,419,125	4,397,544	3,862,123	30,008,997 -4,419,125	1,229,595	145.50	330.61
April 19, 1978 <i>Subcontracts</i>	66 8	7,772,986 -1,499,580	1,567,350	3,412,138	12,752,474 -1,499,580	442,348	26.15	37.36
May 2, 1978 <i>Subcontracts</i>	68 14	57,739,484 -483,302	1,802,164	474,041	60,015,689 -483,302	559,374	49.15	43.7
May 9, 1978 <i>Subcontracts</i>	55 18	13,097,611 -1,033,571	383,091	267,830	13,748,532 -1,033,571	260,841	72.75	26.74
Subtotal	1,549 348	1,073,189,201 -59,337,457	169,355,362	75,032,224	1,317,576,787 -59,337,457	8,354,622	2,732.53	1,260.08
TOTAL		1,013,851,744	169,355,362	75,032,224	1,258,239,330	8,354,622	2,732.53	1,260.08



SUMMARY--BUDGET AND CONTROL BOARD ACTION  
FEDERAL GRANTS AND CONTRACTS REQUESTS

AG. NO.	AGENCY	# OF PROJECTS	S O U R C E O F F U N D I N G				INDIRECT COSTS	NEW PERSONNEL	
			FEDERAL	STATE	OTHER	TOTAL		PERMANENT	TEMPORARY
A20	Legislative Audit Council	3	49,467	---	---	49,467	---	3	--
B04	Judicial Department	4	70,591	11,511	---	82,102	---	16	--
D10	State Law Enforcement Division	3	134,713	524	---	135,237	---	--	--
D15	Division of Administration	58	187,266,438	1,140,341	3,491,397	191,898,176	330,333	19.5	97
D25	Health and Social Development	4	554,635	74,886	115,770	745,291	25,840	3	--
D30	Division of Economic Opportunity	7	2,246,360	67,142	1,327,002	3,640,504	5,200	6	--
D35	Disaster Preparedness Agency	8	969,468	323,766	---	1,293,234	69,992	--	--
E04	Lieutenant Governor's Office	2	19,003	3,635	---	22,638	3,395	1.5	1
E20	Attorney General's Office	15	1,356,026	221,815	80,723	1,658,564	1,291	26.75	--
F04	Finance Division	1	10,994	3,664	---	14,658	1,333	2	--
F08	Research and Statistical Services	4	257,000	---	---	257,000	6,970	3	3.5
F12	Division of General Services	1	125,910	125,910	---	251,820	---	--	--
F16	Motor Vehicle Management	2	395,079	250	83,000	478,329	---	6	--
F24	State Personnel Division	6	309,356	180,718	137,140	627,214	---	2	--
H03	Commission on Higher Education	3	365,403	182,943	62,377	610,723	14,560	.3	4
H06	Higher Education Tuition Grants	3	1,515,601	17,438,758	4,000	18,958,359	---	--	--
H09	The Citadel	7	111,195	12,153	---	123,348	---	5	20
H12	Clemson University	70	8,817,633	6,593,314	179,665	15,590,612	317,738	38.5	51.48
H15	College of Charleston	27	2,250,369	526,945	35,041	2,812,855	49,536	9.8	56.1
H18	Francis Marion College	11	241,798	53,836	700	296,334	5,975	4.5	54
H21	Lander College	12	273,193	19,632	83,229	376,054	39,482	5	11
H24	South Carolina State College	18	2,122,535	52,665	101,962	2,277,162	23,147	13.5	1
H27	University of South Carolina	165	25,614,113	6,294,422	192,670	32,101,205	974,943	223.5	158.54
H31	USC--Aiken Campus	10	153,852	16,994	---	170,846	11,125	2.1	1.73
H35	USC--Coastal Carolina Campus	5	29,729	44,582	---	74,311	---	--	--
H39	USC--Spartanburg Regional Campus	11	226,214	74,402	150	300,766	15,582	11.9	.43
H43	USC--Two Year Regional Campuses	14	141,193	17,734	2,378	161,305	10,879	1.5	4
H47	Winthrop College	34	1,304,027	222,436	53,935	1,580,398	39,034	33.8	30.4
H51	Medical University	139	21,151,839	2,591,635	1,680,610	25,424,134	2,821,070	282.92	81.6
H55	Advisory Council, Vocational & Technical Ed.	1	205,436	---	---	205,436	324	1	--
H59	Technical and Comprehensive Education	137	20,558,182	1,560,371	4,915,715	27,034,268	239,607	397.3	114
H63	Department of Education	81	204,254,559	21,618,120	8,049,443	23,922,122	314,249	424.01	--
H67	Educational Television Commission	22	523,903	466,756	2,234,672	3,225,331	69,643	17	3

AG. NO.	AGENCY	# OF PROJECTS	SOURCE OF FUNDING				INDIRECT COSTS	NEW PERSONNEL	
			FEDERAL	STATE	OTHER	TOTAL		PERMANENT	TEMPORARY
H71	Wil Lou Gray Opportunity School	6	146,498	9,000	15,072	170,570	---	--	--
H75	School for the Deaf and the Blind	15	880,175	86,107	---	966,282	18,540	24.25	33.5
H79	Archives and History	15	1,805,946	559,319	1,202,417	3,567,682	---	1	--
H87	State Library	9	2,685,308	7,050,844	---	9,736,152	---	--	--
H91	S. C. Arts Commission	38	1,575,856	590,879	1,188,932	3,355,667	---	36.5	39
H95	S. C. Museum Commission	5	74,548	35,657	12,936	123,141	357	1.5	.5
J04	Health and Environmental Control	114	37,370,916	11,981,921	15,255,942	64,608,779	834,296	183.2	56
J12	Department of Mental Health	11	985,831	1,189,136	48,984	2,223,951	74,459	9	--
J16	Department of Mental Retardation	24	16,363,782	1,803,905	41,200	18,208,887	9,807	574	--
J20	Alcohol and Drug Abuse	10	2,156,423	83,527	2,160,785	4,400,735	140,437	12	7
L04	Department of Social Services	26	372,702,464	70,009,271	26,106,304	468,728,039	---	1	4.75
L08	Vocational Rehabilitation	21	5,777,301	205,089	25,489	6,007,969	52,176	28	--
L12	John de la Howe School	3	141,422	---	---	141,422	---	--	--
L16	Foster Care Review Board	4	57,539	---	---	57,539	---	4	3
L24	Commission for the Blind	7	570,056	105,077	---	675,133	26,525	3	--
L28	Commission on Aging	11	6,750,259	488,794	1,084,492	8,323,545	21,224	1	--
L32	State Housing Authority	1	1,249,496	---	---	1,249,496	---	4	--
L36	Human Affairs Commission	1	63,960	---	---	63,960	---	--	1
N04	Department of Corrections	48	4,607,871	492,901	10,586	5,117,358	204,915	142	8
N12	Department of Youth Services	17	1,665,751	349,842	---	2,015,593	159,239	14.8	--
N16	Juvenile Placement and Aftercare	6	192,202	17,930	---	210,132	7,040	8	--
N20	Law Enforcement Training Council	5	61,543	13,137	---	74,680	---	--	--
P04	Water Resources	6	203,750	83,250	25,000	312,000	---	2	.25
P08	Land Resources Conservation Commission	15	1,025,353	82,636	47,955	1,155,944	31,548	26	37.3
P12	Forestry Commission	18	1,608,986	1,182,495	50,200	2,841,681	18,323	5.9	22
P16	Department of Agriculture	4	40,648	39,860	---	80,508	3,048	--	1
P24	Wildlife and Marine Resources	50	4,089,765	1,298,853	272,869	5,661,487	162,001	22.5	216
P25	S. C. Coastal Council	3	622,457	140,517	24,329	787,303	22,413	1	4
P28	Parks, Recreation and Tourism	10	5,401,380	382,280	4,675,362	10,459,022	22,574	12	92
P32	State Development Board	3	104,930	---	---	104,930	---	--	--
P35	Patriots Point Development Authority	4	4,362,500	2,240,000	---	6,602,500	---	--	--
P40	Clark Hill Authority	1	10,000	10,000	---	20,000	---	--	--
P48	Old Exchange Building Commission	3	700,000	650,000	---	1,350,000	---	--	--



AG. NO.	AGENCY	# OF PROJECTS	S O U R C E   O F   F U N D I N G				INDIRECT COSTS	NEW PERSONNEL	
			FEDERAL	STATE	OTHER	TOTAL		PERMANENT	TEMPORARY
R04	Public Service Commission	1	5,147	1,050	---	6,197	---	--	--
R36	Department of Labor	8	2,254,456	996,268	---	3,250,724	187,232	32	--
R48	Alcoholic Beverage Control Commission	1	22,200	---	---	22,200	---	--	--
R52	Ethics Commission	1	2,802	---	---	2,802	---	--	6
R60	Employment Security Commission	13	27,267,307	176,922	---	27,444,229	410,830	28.5	1
U04	Aeronautics Commission	3	80,029	12,595	---	92,624	---	6	--
Z04	Highways and Public Transportation	19	83,875,940	7,038,340	41,791	90,956,071	---	4	30
Subtotal		1,549	1,073,189,201	169,355,362	75,032,224	1,317,576,787	7,795,248	2,732.53	1,260.08
Subcontracts		348	-59,337,457			-59,337,457			
TOTAL			1,013,851,744	169,355,362	75,032,224	1,258,239,330	7,795,248	2,732.53	1,260.08



# Subcontracts

AG. NO.	AGENCY	# OF PROJECTS	FEDERAL	SOURCE OF FUNDING	TOTAL
A20	Legislative Audit Council	3	49,467		49,467
B04	Judicial Department	4	70,591		70,591
D10	State Law Enforcement Division	2	132,655		132,655
D15	Division of Administration	3	445,294		445,294
D25	Health and Social Development	3	91,937		91,937
E04	Lieutenant Governor's Office	1	240		240
E20	Attorney General's Office	14	1,156,026		1,156,026
F04	Finance Division	1	10,994		10,994
F08	Research and Statistics	1	42,000		42,000
F16	Motor Vehicle Management	1	63,079		63,079
H09	The Citadel	1	27,353		27,353
H12	Clemson University	9	435,927		435,927
H15	College of Charleston	5	115,047		115,047
H18	Francis Marion College	3	33,726		33,726
H27	University of South Carolina	19	499,590		499,590
H39	USC Spartanburg Campus	1	500		500
H43	USC Two-Year Regional Campuses	1	32,867		32,867
H47	Winthrop College	7	141,910		141,910
H51	Medical University	7	373,825		373,825
H59	Technical and Comprehensive Ed.	45	7,196,038		7,196,038
H63	Department of Education	13	2,847,358		2,847,358
H67	Educational Television Comm.	3	6,587		6,587
H71	Wil Lou Gray Opportunity School	4	80,498		80,498
H75	School for the Deaf & Blind	8	493,565		493,565
H91	Arts Commission	4	376,862		376,862
J04	Health & Environmental Control	28	4,238,522		4,238,522
J12	Mental Health	4	254,456		254,456
J16	Mental Retardation	17	15,103,860		15,103,860
J20	Alcohol and Drug Abuse	5	1,406,686		1,406,686
L04	Social Services	8	374,351		374,351
L08	Vocational Rehabilitation	4	965,476		965,476
L12	John De La Howe School	2	89,422		89,422
L16	Foster Care for Children	4	57,539		57,539
L24	Commission for the Blind	2	93,202		93,202
L28	Commission on Aging	4	1,747,947		1,747,947
N04	Department of Corrections	43	4,188,022		4,188,022
N12	Youth Services	15	1,564,289		1,564,289
N16	Juvenile Placement & Aftercare	6	192,202		192,202
N20	Criminal Justice Academy	5	61,543		61,543
P08	Land Resources Conservation Comm.	9	766,501		766,501

AG. NO.	AGENCY	# OF PROJECTS	SOURCE OF FUNDING	
			FEDERAL	TOTAL
P12	Forestry Commission	1	162,711	162,711
P24	Wildlife and Marine Resources	6	305,014	305,014
P28	Parks, Recreation and Tourism	4	508,389	508,389
R04	Public Service Commission	1	5,147	5,147
R36	Labor Department	4	914,623	914,623
R48	Alcoholic Beverage Control Commission	1	22,200	22,200
R52	Ethics Commission	1	2,802	2,802
R60	Employment Security Commission	10	11,581,939	11,581,939
U04	Aeronautics Commission	1	6,678	6,678
TOTAL		348	59,337,457	59,337,457

STATE BUDGET AND CONTROL BOARD

MEETING OF May 23, 1978

AGENDA ITEM NUMBER

EXHIBIT XII  
5 5/23/78

Agency: Personnel Division

Subject: Amendment to Grievances and Appeals section of Personnel Policy Manual.

1. Amendment to Section 6.02 Statements of Policy, to incorporate Board policy regarding unemployment compensation and wages earned being deducted from reinstatement pay;
2. Approval of Grievance Committee revisions to their rules and regulations for incorporation into the Personnel Policy Manual.

Board Action Requested:

Approval

Staff Comment:

These revisions have been reviewed by the Office of the Attorney General.

Attachments:

1. Amendment to Section 6.02.H
2. State Employee Grievance Committee Rules and Regulations



## Section VI Grievances & Appeals

### 6.02 Statements of Policy

- H. Reinstatement with pay resulting from a reversed disciplinary action shall be less unemployment compensation and wages earned and shall be accomplished in the following manner:
  - a.) The appellant and/or representative shall submit to the State Personnel Director a notarized statement of any wages earned during the interim period between the date of dismissal and reinstatement;
  - b.) The agency shall submit a statement of back pay due less any unemployment compensation received by the employee to the State Personnel Director;
  - c.) The State Personnel Director in consultation with the Attorney General will approve the amount of reinstatement pay due the employee;
  - d.) The appellant and/or agency shall have the right to appeal to the Budget and Control Board the determination of the State Personnel Director.

RULES AND REGULATIONS  
SOUTH CAROLINA STATE EMPLOYEES GRIEVANCE COMMITTEE  
(Revised May 12, 1978)

1. All permanent State employees meeting the conditions specified under Section 3 of Act #1025, as amended, may bring proceedings before the State Employees Grievance Committee.
2. Based upon Section 2 of the Act, "grievances may include but are not necessarily limited to dismissals, suspensions, involuntary transfers, layoffs, reductions in pay, and demotions. Compensation shall not be deemed a proper subject for consideration under the grievance procedure except as it applies to alleged inequities within a particular agency or department. Classification and promotion shall be deemed proper subjects for consideration only as they relate to alleged discrimination."
3. Grievances shall be appealed through the State Personnel Director to the State Employee Grievance Committee. The State Personnel Director shall assemble all records, reports and documentation of the earlier hearings on the grievance and review the case to ascertain that there has been full compliance with the established grievance policies, procedures and regulations within the agency or department involved.
4. Before the grievance is forwarded to the Committee, the State Personnel Director or his designee shall meet with both sides of the issue and try to resolve the grievance on a voluntary basis. If that is not possible then the State Personnel Director shall forward as promptly as practicable to the chairman of the State Employee Grievance Committee those requests which are determined to be in order. Any discussions or agreements prior to the appeal being forwarded to the State Grievance Committee will not be admissible during the hearing.
5. Upon receipt of appeals of questionable jurisdiction, the State Personnel Director shall determine, after consultation with the Attorney General's office, whether the action is grievable.
6. Upon being advised by the chairman of the committee as to the date and time when the committee shall meet, the State Personnel Director shall notify all parties concerned of the date, time and place of the hearing and request their presence.
7. The State Personnel Division shall arrange for the reproduction of pertinent records and papers and distribute copies to the members of the committee. The division shall provide to the committee from its resources such administrative and clerical services as may be required.
8. In cases coming before the State Employee Grievance Committee, the State Personnel Division shall furnish each party the list of witnesses filed by the other party.
9. Each employee granted a hearing before the Grievance Committee will receive a copy of the file submitted by the agency. In like manner, a copy of any records filed by the employee will be sent to the agency.

10. \* [ The issuance of subpoenas by the State Employee Grievance Committee is provided in the State Employee Grievance Procedure Act of 1974, as amended, Section 3. In the event that either party in a case has difficulty in getting an essential witness to agree to testify, that party may request in writing the issuance of a subpoena at least 10 days before the date of the hearing, giving the name and address of the witness. The request should be forwarded to the State Personnel Division, P. O. Box 50367, Columbia, South Carolina 29250. Attention: State Employee Grievance Committee. The Chairman of the State Employee Grievance Committee, for the committee, issues the subpoena but the service of the subpoena rests in the hands of the party requesting it. Any reasonable expenses incurred by a subpoenaed witness will have to be paid by the requesting party.
11. Committee hearings shall normally be held in Columbia at a place specified by the chairman.
12. All proceedings of the Grievance Committee shall be in executive session. Only the parties involved in a hearing and officials specified by the Act may attend.
13. \* Each employee bringing a proceeding before the committee shall have the right of representation or the right to secure advisors or attorneys.
14. All proceedings before the committee shall be recorded. The tape shall be preserved as a permanent record of the Budget and Control Board and the committee. The tapes will not be transcribed unless the Budget and Control Board, the chairman, or committee members request such transcription.
15. All of the records, reports, documentations, and hearing proceedings on each case shall be maintained in a confidential file controlled by the Budget and Control Board and the State Employee Grievance Committee.
16. The chairman may designate some other member of the committee to serve as the presiding officer in his absence.
17. A quorum shall consist of at least five committee members and no hearing may be held without a quorum.
18. Whenever a grievance comes before the committee initiated by or involving an employee of an agency of which a committee member also is an employee, such member shall be disqualified from participating in the hearing.
19. \* If either party does not appear at the hearing and has not requested a postponement or a requested postponement has been previously denied, the hearing is held at the scheduled time, and the committee bases its decision on a review of the record and the presentation of the case by the party present. The committee may waive this rule based upon extenuating circumstances.
20. As presiding officer, the chairman of the committee will have control of the proceedings. He will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties will abide by his decisions, except when a committee member objects to a decision to accept evidence. Then the majority vote of the committee will govern.



21. The vote of each member of the committee shall be recorded. Any member voting in the minority shall have full privileges of preparing a minority report or statement.

\* 22. The State Employee Grievance Committee may grant reasonable delays of a scheduled hearing. The request for a delay must be submitted in writing. Both parties must agree on the requested delay unless the request is based on unusual circumstances such as an illness or death.

23. The testimony of witnesses shall be under oath or affirmation.

24. Witnesses shall not be in the hearing room except for preliminary comments, the opening statements, and testifying.

25. Witnesses may be cross-examined.

26. The testimony of a witness who cannot appear in person shall be submitted in the form of signed statements or affidavits with an explanation as to why the witness cannot appear in person.

27. A chairman and a secretary shall be elected from the membership of the committee each year for a term of office beginning July 1. A meeting for election of officers shall be held within two weeks after appointments are made.

28. The State Personnel Division shall develop standard forms to be used in all grievance procedures.

\* 29. The decision of the State Employee Grievance Committee shall include the findings of fact, statement of policy and conclusion of law, and the committee's decision. The decision shall be a part of the record of the proceedings to be submitted to the Budget and Control Board.

30. That portion of Section 4 of the State Employee Grievance Procedures Act providing for the attendance of the State Personnel Director at "all hearings" of the State Employee Grievance Committee is to be construed as providing for his attendance not only at the time testimony is taken but also at the beginning of the committee's deliberations following the taking of testimony, long enough to answer any questions of the committee concerning relevant laws, policies and regulations; after which he will withdraw. The State Personnel Director shall hold himself in readiness at his office to answer any such questions as may arise during the course of the committee's deliberations.

31. Six copies of the State Employee Grievance Committee's finding and decision and supporting papers shall be forwarded to the Secretary of the Budget and Control Board by the State Personnel Director and shall be forwarded immediately by the Secretary to the members of the Board. The fifteen day time period allowed by law for the Board to arrive at its decision shall be calculated so as to exclude the day of delivery to the Secretary of the Board. The State Personnel Director shall provide such transcripts, tapes, records, or other information as the Board may desire.

32. Unless the Budget and Control Board, within the fifteen day period allowed by law, takes action to reject a decision made by the State Employee Grievance Committee, the committee's decision shall be final. If, however, the Board rejects the decision of the committee, the Board shall make its own decision without further hearing at its (1) next regular meeting or (2) within ten days following the date formal Board action is taken to reject the committee's decision, whichever of the two dates comes first, and that decision shall be final. The agency-respondent in the appeal will be bound by the final decision agreed upon by the Board and will take action immediately to implement its obligation under the decision.
33. The Board shall make its decision to affirm, reject or modify solely on the basis of the record of the proceedings before the State Employee Grievance Committee. The Board is not a Board of Appeal and, during the course of its consideration of the committee's findings and decision, is not open to suggestion or contact by either of the parties of the grievance directly or by any third party.
34. The State Personnel Division shall notify the grievant, the agency or department and the chairman of the State Employee Grievance Committee of the final decision as approved, rejected or modified by the Budget and Control Board.
35. All notices prescribed by the Act shall be by first class mail unless notices shall be hand-delivered.

\* \* \* \* \*

The following is not part of the registered Rules and Regulations but is intended as a guideline to both parties:

The Grievance Committee feels that all written materials to be presented as evidence by both parties must be made a part of the file prior to the hearing so that it may be examined by interested parties. This is necessary to meet due process requirements and to save time.

If verbal warnings are included as evidence the employee must be given notice of such warnings before the case is heard by the Committee by notating the warnings in the file submitted to the State Personnel Division.

Written materials used as evidence in departmental hearings should also be a part of the file and statements made on this evidence included as a part of the transcript.