

# FRUEHAUF TRAILER OPERATIONS

DECATUR PLANT • TUSCUMBIA HIGHWAY No. 20 • DECATUR, ALABAMA  
Mailing Address: P.O. Box 608, Decatur, Alabama 35602-0608

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ORIGINAL  
(Red)

31 May 1990

Charles Hayden, Esquire  
United States Environmental Protection Agency  
Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

Re: Middletown Air Field Site  
Middletown, Pennsylvania

Dear Mr. Hayden:

This letter notifies the EPA that Terex Trailer Corporation, Fruehauf Trailer Corporation intends to pursue negotiations with EPA concerning the "innocent landowners" defense set forth in Section 107(b)(3) and 101(35) of CERCLA for our property at the above referenced site.

In support of our claim for the "innocent landowners" defense, Terex Trailer provides the following information.

The predecessor to Terex Trailer Corporation, Fruehauf Corporation, entered into a lease, with option to buy agreement, with the then Harrisburg Area Industrial Development Corporation (Attachment A). The lease period was from 19 May 1966 to 23 May 1986. At the end of the lease agreement, Fruehauf Corporation exercised its option to buy the property. Fruehauf Corporation actual purchase price for the land was not to exceed Two million dollars

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Charles Hayden, Esquire  
31 May 1990

(\$2,000,000.00)<sup>1</sup> (Attachment B). The Harrisburg Area Industrial Development Corporation helped secure financing for the lease payments, alterations and improvements to the property. The amount of secured financing obtained totaled Three million one hundred thousand dollars (\$3,100,00.00)<sup>2</sup>. These payments were paid quarterly over a twenty (20) year period.

Terex Trailer Corporation, a Delaware corporation, as successor in interest by merger with Fruehauf Corporation, a Michigan corporation, became the owner of the property on 6 July 1989 (Attachment C).

There is no record of an appraisal being performed at the time the lease was entered into in our files nor at the end of the lease agreement to determine the fair market value of the property.

At the time Fruehauf Corporation entered into the lease agreement, there was no regards to the condition of the property at that time. The only representation to the prior use of the property was stated in the lease agreement that the "... leased premises shall remain in the control of the United States Air Force for a period up to eighteen (18)

(1) Memorandum of Agreement, p. 6, 7(a)1.

(2) Lease Agreement, p.3.

Charles Hayden, Esquire  
31 May 1990

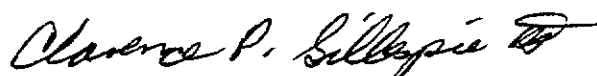
months<sup>3</sup>." That is to say the property was part of a former Air Force Base. Fruehauf Corporation did not have any relevant or specialized knowledge of the conditions of the site at the time of the lease agreement.

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(1-2)

As stated in our 104(e) response of 12 April 1990, there are no records or personal knowledge of any hazardous waste, material, or substances in quantities greater than fifty-five (55) gallons having been spilled at the site.

Terex Trailer Corporation believes that there is enough evidence to support our claim of "innocent landowner" under Section 107(b)(3) and 101(35) of CERCLA and wishes to proceed with negotiations to that end. Should you have any questions or require any additional information, please contact me at (205) 353-1550, Ext. 316.

Sincerely,



Clarence P. Gillespie III  
Manager - Environmental Services

CPG,III/gc

cc: P. S. Lancaster  
R. D. Montgomery

Attachments

(3) Lease Agreement, p. 1.

# Attachment A

## LEASE

This Indenture made and executed this 17<sup>th</sup> day of  
MAY, 1966, by and between HARRISBURG AREA INDUSTRIAL  
DEVELOPMENT CORPORATION, a Pennsylvania nonprofit corporation  
having its principal office in the City of Harrisburg, Dauphin  
County, Pennsylvania (hereinafter called "Lessor"), Party of the  
first part,

AND

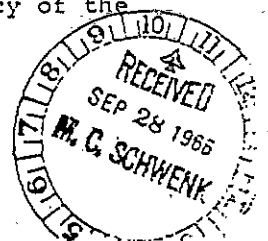
FRUEHAUF CORPORATION, a Michigan corporation having its  
principal office in Detroit, Michigan (hereinafter called  
"Lessee"), Party of the second part;

W I T N E S S E T H:

The Lessor does hereby lease unto Lessee all those  
certain premises and the structures erected thereon, set forth  
in the description thereof which is attached hereto and made a  
part hereof as Exhibit A, together with all easements, rights of  
way and rights of access appurtenant thereto, upon the following  
terms and conditions:

1. The term of this lease shall be for twenty (20)  
years beginning on the 1<sup>st</sup> day of MAY, 1966. It is  
expressly understood and agreed that certain portions of the  
herein described leased premises shall remain in the control of  
the United States Air Force for a period up to eighteen (18)  
months. The General Services Administration of the United  
States Government has agreed with Lessor that the entire premises  
leased hereby will be available for the use and occupancy of the

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Lessee no later than eighteen (18) months after the date hereof. Such areas of said premises as are not immediately available to Lessee will be released to the use and occupancy of Lessee as they are released by the United States Air Force. At the end of the said eighteen (18) month period, the entire leased premises will be available for the use and occupancy by the Lessee exclusively pursuant to the terms and conditions of this lease, but if any of said areas are not then available for the use and occupancy of the Lessee, they shall be made available to the Lessee as soon as they are released by the United States Air Force. If said entire leased premises are not available for the use and occupancy of Lessee within said eighteen (18) month period, Lessee shall have the right to sue in its own name or in the name of Lessor for any and all damages caused by the failure of the Government of the United States to vacate the premises, Lessor having no other liability in the matter.

2. Lessor agrees to complete certain alterations and improvements to the said premises to render the same suitable for the manufacturing purposes of the Lessee, in accordance with plans and specifications submitted by Lessee and approved by the Pennsylvania Industrial Development Authority to the extent funds are provided by it for such alterations and improvements. Lessor agrees to pay the reasonable cost of such alterations and improvements, whether the same are actually performed by or for Lessor or Lessee, (all work done and all purchases of material and equipment for such alterations and improvements made by Lessee shall be deemed to have been made in the name of and on

behalf of Lessor), to the extent that funds are available to Lessor for the purpose of acquiring said real estate and for making such alteration and improvements from banks in the Harrisburg, Pennsylvania, area not in excess of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00); from the Pennsylvania Industrial Development Authority not in excess of One Million and Fifty Thousand Dollars (\$1,050,000.00), and from Lessor itself in an amount not in excess of Three Hundred Thousand Dollars (\$300,000.00). It is understood and agreed that the actual dollar amount of funds available to Lessor from said sources for the purpose of acquisition of said land and buildings, and for the making of said alterations and improvements, will be proportionate to the amount of loan funds committed to Lessor for such purposes by the Pennsylvania Industrial Development Authority so that the total contribution of Pennsylvania Industrial Development Authority will equal 30% of the total cost thereof, the contribution of said banks will equal 50% of the total cost thereof, and the contribution from Lessor and other sources will be no less than 20% thereof, provided, however, that the investment of the Lessor itself in said cost will not exceed Three Hundred Thousand Dollars (\$300,000.00), Lessee to bear and pay any part of said share thereof to be paid by Lessor and other sources in connection with the acquisition of said land and buildings or alterations and improvements thereto in excess of Three Hundred Thousand Dollars (\$300,000.00), except that Lessor will be solely responsible for the payment of the cost of acquisition of said

land and buildings in excess of Two Million Dollars (\$2,000,000.00). Lessee will be responsible for the payment of any amount by which the cost of said alterations and improvements exceeds the said funds available from the Pennsylvania Industrial Development Authority, said banks and from the Lessor, as above set forth.

The costs to be paid by Lessor with said funds advanced by the Pennsylvania Industrial Development Authority, said banks and by Lessor to the extent of Three Hundred Thousand Dollars (\$300,000.00) shall include, in addition to the direct costs of acquisition of land and buildings and alterations and improvements as above stated, all reasonable and necessary professional fees paid or to be paid by Lessor in connection with the acquisition of said land and buildings and the alteration and improvements thereto specified by Lessee, arrangements for financing the same and the negotiation and preparation of this lease, including all reasonable legal, architectural, engineering, surveyors, and appraisers services in connection therewith, and a fee or fees actually paid or to be paid by Lessor, not exceeding One Hundred Thousand Dollars (\$100,000.00), to an agent for services rendered in obtaining Lessee as a tenant in the said premises.

3. Lessee shall pay rent for said premises at such place as designated by Lessor in writing as follows:

Interim Financing Period

(a) For a period of eighteen (18) months from the date hereof, or until such earlier time as Lessee shall have received the right to use and occupy all of the demised premises,

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Lessee shall pay to Lessor as rent an amount equal to the actual interest required to be paid by Lessor for money borrowed by it or invested by it to acquire said real estate (limited to Two Million Dollars (\$2,000,000.00) for this purpose) and to improve said real estate and pay expenses incidental to said acquisition and improvements, not exceeding five and one-half per cent (5-1/2%) interest on One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00); two per cent (2%) interest on One Million and Fifty Thousand Dollars (\$1,050,000.00); and two and one-half per cent (2-1/2%) interest on Three Hundred Thousand Dollars (\$300,000.00); limited to the extent of such interest accrued and applicable to money actually borrowed or invested during said Interim Financing Period. Rent during the Interim Financing Period will be paid not less frequently than quarterly, annually, but shall be paid at least 10 days prior to the payment date when Lessor is obligated to make interest payments on said loans, or receive interest on Lessor's investment.

Permanent Financing Period

(b) Beginning with the first day of the calendar quarter following the end of the Interim Financing Period described in the foregoing paragraph, Lessee shall pay rent for the balance of the twenty (20) year term of this lease in equal quarterly installments, the total of which shall equal the total amount of all money borrowed or invested by Lessor to finance the acquisition of said real estate and to improve said real estate and pay expenses incidental to said acquisition and improvements, not including any money actually advanced or paid



by Lessee for such purposes, and not exceeding the amounts set forth in the foregoing subparagraph 3(a), plus interest on such money at the rates of interest applicable to such amounts as there set forth. Such total of principal and interest shall be determined at the end of the Interim Financing Period and shall then be divided by the number of calendar quarters remaining in the twenty (20) year term of this Lease, and such amount shall be paid by Lessee to Lessor as rent each calendar quarter in advance commencing with the first day of the calendar quarter following the end of the Interim Financing Period as set forth above. Lessor shall furnish to Lessee copies of receipts for principal and interest payments made by Lessor to the lending institutions above designated as such payments are made as well as receipts for the return of Lessor's investment and interest.

4. The Lessee shall pay all taxes that may be imposed, assessed or levied upon the leased premises and property thereon or on any part thereof, or upon the earnings of Lessee as the same shall become due and payable. Taxes covering any period not within the term of this lease shall be apportioned between the Lessor and the Lessee in order that Lessee shall pay taxes applicable to the term of this lease. Lessee shall promptly pay all special assessments properly levied against the premises for local improvements.

5. Lessee shall at its sole cost and expense during the said term insure and keep insured all buildings, fixtures erected thereon and improvements on the leased premises from loss or damage by fire with extended coverage in a sum equal to

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the cost of the leased premises, including the cost of the alterations and improvements, or Three Million One Hundred Thousand Dollars (\$3,100,000.00), whichever is less; and insure and keep insured the leased premises from loss or damage from pressure vessels in responsible insurance companies licensed to do business in Pennsylvania. Said policies of insurance shall designate the Lessor, Lessee and mortgagees of the premises as insured parties as their interests may appear; provided, however, insurance proceeds payable in the amount of \$25,000.00 or less shall be paid to Lessor for use in restoration or repair. The Lessee shall pay all premiums necessary for those purposes within thirty (30) days after the same shall become due and will promptly deliver to the Lessor the certificates or copies of the policies of insurance and the copies of the receipts for such premiums; provided, that if the Lessee shall at any time fail to insure or keep insured as aforesaid, the Lessor may do all things necessary to secure or maintain in force such insurance, and any monies expended by it for that purpose shall be repayable by the Lessee on demand and may be recovered as rent in arrears. In no event shall there be any abatement whatsoever in the term of this lease for rent due and payable hereunder by reason of any interruption or interference with Lessee's use and occupancy of the leased premises by reason of any calamity, nor shall any such interruption or interference be deemed a constructive eviction of Lessee from the demised premises.

The Lessor shall use the money payable under the above fire, extended coverage and explosion insurance to repair or

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replace property damaged or destroyed, all in accordance with the original plans and specifications or as the same may be altered by agreement between the Lessor and Lessee. In no event shall the Lessor be required to expend more than the above referred to insurance funds actually collected from the insurance carriers. Anything to the contrary herein notwithstanding, Lessee shall have the right and option to direct that any of the proceeds of any such insurance be used to pay and discharge all loans or advances of money invested by Lessor upon which rent hereunder is based, supplementing such proceeds with its own funds if necessary, and, upon the payment and discharge thereof in full, immediately exercise its option to purchase said premises whether or not within sixty (60) months from the date hereof.

6. The Lessee will save harmless and indemnify the Lessor from and against all loss, liability or expense that may be incurred by reason of any and all claims or demands from any person or persons whatsoever from loss, injury or damage suffered by reason of or in connection with the occupancy and use of the said leased premises by or under the Lessee, its agents or employees.

7. The Lessee shall promptly pay all charges for gas, electric, sewage, water and any other utility or service furnished to or consumed by Lessee upon the leased premises which may become payable during the term of this lease. In the event Lessee shall fail to pay the charges for any of the aforesaid utilities or services or premiums on insurance as they

become due, the Lessor shall have the right to pay same and to collect the amount so paid as rent in arrears.

8. Title to any machinery or equipment installed or placed upon the leased premises by or on behalf of Lessee shall remain the property of the Lessee. The Lessee covenants that it will remove the said machinery or equipment within thirty (30) days after the end of the term of the lease and will repair at its own expense any damage caused the leased premises or structures erected thereon in the course of such removal. All machinery or equipment of any kind that may be on the premises during the term of this lease shall be so situated at the risk of the Lessee and the Lessor shall not be liable to the Lessee or any other person for any injury, loss or damage to any person or property on the premises.

9. The Lessee at its sole cost and expense may make any reasonable alteration, addition or change in the buildings or structures on the leased premises, provided, however, the Lessee shall not make any alteration in the external elevation or architectural design of the buildings or structures on the premises or injure or remove any bearing wall or supports thereof without the prior written consent of the Lessor.

10. The Lessee shall have the option exercisable at any time after sixty (60) months from the beginning of the term of this lease (and prior thereto as hereinafter provided) to purchase the leased premises. The purchase price shall be the aggregate unpaid principal and interest with respect to money borrowed, or invested by Lessor as set forth in Paragraph 3 above, including

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interest due thereon to the date of closing of said purchase. The Lessee shall exercise its option by giving not less than thirty (30) days' written notice to the Lessor of its election to exercise the said option to purchase. Upon payment of the applicable purchase price, the Lessor shall deliver to the Lessee a good and sufficient deed conveying to the Lessee the leased premises warranting the leased premises to be free and clear of all defects, liens, and encumbrances made or suffered by the Lessor or those claiming under it but against none other except those noted on Exhibit B attached hereto. The Lessor shall, together therewith, assign to Lessee all of the interest of the Lessor under any insurance policies covering the leased premises. Thereupon, the term of this lease shall end and all facilities, fixtures, alterations, additions, changes and other property installed or placed upon or made in the leased premises shall, notwithstanding any other provision hereof, become or remain the property of the Lessee. The Lessee, in the event it exercises its option to purchase the premises leased hereunder, may designate a nominee in its place to whom the premises shall be conveyed. Lessee shall pay all documentary stamp taxes or real estate transfer taxes applicable to such sale and all costs of recording and satisfaction of mortgages.

11. (a) The Lessee at any time after sixty (60) months from the commencement of the term of this lease may assign this lease and all its rights under this instrument, including without limitation its option to purchase the said premises, to any corporation, association, trust, partnership or individual,

provided, however, that such corporation, association, trust, partnership or individual shall be approved in writing by the Lessor as financially responsible with respect to probable ability to meet the rent payments for the balance of the term, which approval shall not be unreasonably withheld. The assignee in such event shall attorn to the Lessor by agreeing in writing with Lessor to pay the rent and carry out and perform all other covenants and obligations of the Lessee hereunder. Thenceforth, the assignee shall be substituted for the Lessee and shall have all rights, duties and obligations of the Lessee hereunder, including without limitation, the provisions of this paragraph relative to the right to assign the lease, which right may be exercised from time to time by any assignee for the time being on the terms herein provided. For the balance of the term thereafter references in this instrument to the Lessee shall be deemed to refer to the assignee. All such assignments and agreements of attornment shall be recorded in all places of public record permitted or required by law upon the request of the Lessor, the assignor or the assignee.

(b) Acceptance of rent by the Lessor from any assignee or other dealings by the Lessor with any assignee or sublessee shall not of themselves operate to substitute such assignee or sublessee in place of the Lessee hereunder or to relieve the Lessee of any of its obligations under this instrument.

(c) Lessee may at any time during the term hereof assign this lease and all its rights under this instrument, including without limitation its option to purchase the demised premises,

to any corporation, association, trust, partnership or individual, without the approval of Lessor, provided, however, that Lessee shall continue to remain primarily liable for the full and faithful performance of all the terms and conditions of this lease notwithstanding any such assignment, and provided further that the merger or consolidation of Lessee by, into or with another corporation shall be permitted, in which event such merged or consolidated corporation shall have all of the rights and obligations of Lessee hereunder.

(d) Lessee may at any time during the term hereof sublet any part or parts of the demised premises to any corporation, association, trust, partnership or individual. Any subletting of the premises shall not relieve Lessee of its primary obligations under this Lease.

12. In the event the whole or any part of the demised premises is condemned by any lawful authority for any public or quasi public use or purpose, Lessee shall have the sole right and option either to continue this lease in full force and effect in all respects, or, whether or not within sixty (60) months of the date hereof, to exercise its option to purchase said premises as provided herein. In either event, Lessee shall have the right to recover any and all damages lawfully payable by said condemning authority as a result of said condemnation. Lessee in such event will not have the option to terminate this lease without the payment in full of all funds borrowed or invested by Lessor plus interest thereon to date under Paragraph 3(b) above.

13. The Lessee hereby covenants and agrees with the

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Lessor that during the term of this lease:

- (a) The Lessee will pay rent at the times and in the manner herein provided.
- (b) The Lessee, at its own expense, and not at the expense of the Lessor, will keep, repair and maintain the interior and exterior of the leased premises in the same good quality and condition as the same exist at the commencement of the term thereof, reasonable use and wear excepted.
- (c) The Lessee will save Lessor harmless and keep it exonerated from and against all loss, damage, liability or expense occasioned by the wrongful or negligent acts of the Lessee or its employees or guests or of independent contractors engaged on the premises of or paid by the Lessee.
- (d) The Lessee will not permit any use of the leased premises which shall be contrary to any law, ordinance, rule or regulation from time to time established by any public authority having jurisdiction in the premises, and Lessor hereby warrants that no law, zoning restriction or other rule or regulation prohibits the use of the leased premises for the purpose intended by Lessee and this lease.
- (e) The Lessee expressly covenants that it shall do no act or fail to do any act which (1) shall in any way encumber the title of Lessor in and to said premises, or (2) shall in any manner subject the interest or estate



of the Lessor to any claim by way of lien or encumbrance, whether claimed by operation by law or by virtue of any expressed or implied contract by the said Lessee. The Lessee acknowledges that any claim to a lien upon the said leased premises arising from any act or omission of the Lessee, shall accrue only against the leasehold estate of the Lessee and shall in all respects be subject to the paramount title and rights of the Lessor in and to the said premises.

(f) Lessee agrees not to enter into any contract with any person, firm or corporation, for labor, services or materials in connection with any building to be placed upon said premises or to be rebuilt or remodeled thereon, which contract involves an amount in excess of Two Thousand Dollars (\$2,000.00) unless it shall be stipulated in and be a condition of such contract that no liens shall arise or be claimed on account of such contract or on account of any work done or material furnished under said contract as against the title or interest of the Lessor and said premises, or unless such contract provides that the contractor, person, firm or corporation shall waive all rights thereto.

14. Lessor reserves the right to enter upon the leased premises during business hours to inspect the same or to make necessary repairs in the event Lessee fails to make such repairs within 30 days after notice to Lessee by Lessor.

15. Lessee hereby agrees to surrender the leased

premises to the Lessor at the expiration or other termination of the term hereof except by purchase of the leased premises by Lessee.

16. No waiver by the Lessor and no assent, expressed or implied to any breach on the part of the Lessee of any provision, covenant or condition herein contained shall be held or construed as a waiver of or assent to any other breach of the same or any other covenant or condition.

17. Any notice, demand or request required or provided for by this instrument shall be deemed to have been duly given or made, if in writing and sent by registered or certified mail, postage prepaid, addressed to the party to be bound thereby at such address as shall be designated from time to time for that purpose by written notice given by that party to the other, or in the absence of such designation to the registered office of either Lessor or Lessee in the Commonwealth of Pennsylvania.

18. In the event of any default by Lessee under and pursuant to the terms and conditions of this lease, whether in the payment of rent or the failure to perform or observe any of the covenants, agreements, provisions or conditions herein contained, within thirty (30) days after written notice thereof by Lessor to Lessee, or in the event the Lessee's estate in the leased premises shall be levied upon in execution or by other process of law and said execution or other process is not stayed or satisfied within twenty (20) days from the date of the issuance thereof, or in the event there shall be filed by or against Lessee any petition under the Bankruptcy Laws or any

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insolvency laws, or Lessee shall assign any or all of its property for the benefit of its creditors, or if a receiver shall be appointed for all or any part of its property, and if such bankruptcy or insolvency proceeding, or assignment for the benefit of creditors, or the appointment of a receiver, shall not be discharged, vacated, dismissed or otherwise terminated and ended within thirty (30) days after the filing of the same or a valid appeal taken therefrom and is pending, then in any of such cases, Lessor may, upon the expiration of said period of time, or at any time thereafter, and without further demand or notice, enter upon and into the leased premises and repossess the same as of its former estate and expel and evict the Lessee and those claiming under it, all without prejudice to any other remedy which might otherwise be taken to recover rent in arrears, or for any other breach or default by the Lessee, and upon such entry as aforesaid, this lease shall terminate without prejudice to the rights of the Lessor hereunder which may be exercised after the end of the term of this lease.

No release from any expulsion or eviction as above provided, nor the receipt of any rent after default as above provided, shall be deemed a waiver of Lessor's rights hereunder. Further, in the event of any default as above provided, or in the event of the continuance of any bankruptcy, insolvency, assignment, receivership or execution proceeding as above set forth, for the stated periods of time, or the issuance of any execution process, then the rent for a twelve (12) month period,

together with any rent in arrears shall at once become due and payable and shall be collectible by Landlord's distraint and shall be first paid out of the proceeds of the said execution, assignment or bankruptcy, any law, usage or custom to the contrary notwithstanding, without waiving any other right to collect damages for such default by Lessee.

19. This lease constitutes the entire agreement between Lessor and Lessee and may not be modified or amended except in writing signed by the parties hereto.

20. The parties hereto agree that they will each execute a memorandum of this lease duly acknowledged and that the same shall be recorded in the appropriate land record office.

IN WITNESS WHEREOF, each of the parties hereto has caused this instrument to be executed in its name and behalf and under its corporate seal by its officers hereunto duly authorized, as of the day and year above written.

LESSOR:

HARRISBURG AREA INDUSTRIAL  
DEVELOPMENT CORPORATION

ATTEST:

Mattew M. Douglas Jr.  
Secretary

By C. J. Fick  
President

LESSEE:

FRUEHAUF CORPORATION

ATTEST:

Arthur R. Kustner  
Secretary

By Wm. D. [Signature]  
Senior Executive Vice President

**FRUEHAUF**  
CORPORATION

10900 HARPER AVENUE • DETROIT, MICHIGAN 48232

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

March 5, 1986

Capital Region Economic  
Development Corporation  
214 Senate Avenue  
Suite 605  
Camphill, Pennsylvania 17011

Attention: Mr. William S. Graf  
Executive Vice President

Gentlemen:

Pursuant to the Lease Agreement dated May 19, 1966, Fruehauf Corporation is leasing certain properties described in said Lease from the Capital Region Economic Development Corporation (formerly known as Harrisburg Area Industrial Development Corporation). The base term of the lease is for a period of twenty (20) years commencing on May 19, 1966 and ending May 18, 1986.

The leased premises includes approximately 93.208 acres land with the buildings and improvements thereon situated in the Township of Lower Swatara, County of Dauphin, Pennsylvania, and as further described in Exhibit A attached hereto.

Item 10 of the Lease provides the Lessee an option to purchase the leased premises upon not less than 30 days written notice to the Lessor with the purchase price to be the aggregate unpaid principal and interest to the date of closing. Fruehauf Corporation desires to exercise the option to purchase the leased premises and herein serves notice thereof. We would desire a closing date on Wednesday, April 23, 1986, in Harrisburg, Pennsylvania at a time and location to be determined later.

The final payment \$63,053.25 (representing \$62,389.78 principal and \$663.47 interest) will be made by Fruehauf on or before April 1, 1986 which is prior to the aforesaid closing date. As result, the purchase option price will be \$0.00.

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Mr. William S. Graf  
March 5, 1986  
Page Two

In connection with this matter, please forward the undersigned draft copies of the following documents which will be utilized in this transaction for our review as soon as possible. These would include the following:


- a. Warranty Deed
- b. Termination of Lease by Mutual Consent Agreement

We would appreciate your acknowledgement of this notice by signing the duplicate copy of this notice and returning same in the enclosed business reply envelope.

Thank you for your cooperation in this matter. Should you have any question, write or contact me at (313)267-1180.

Sincerely,

FRUEHAUF CORPORATION



JOHN HAGOPIAN  
Director-Real Estate

JH:pak

Encls.

ACKNOWLEDGEMENT OF NOTICE TO EXERCISE PURCHASE OPTION

Capital Region Economic Development Corporation

BY: William S. Graf

DATE: 17 March 1986

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EXHIBIT A

ALL THAT CERTAIN tract or parcel of land, with the buildings and improvements thereon erected, situate in the Township of Lower Swatara, County of Dauphin, and Commonwealth of Pennsylvania, bounded and described in accordance with a survey and plan thereof made by Yule, Jordan & McNee, Engineers, dated December 9, 1965, last revised March 31, 1966, as follows:

BEGINNING at an iron pin on the South right-of-way line for the Pennsylvania Turnpike, said iron pin being the most Northwest point of said tract, also being south 2 degrees 22 minutes 42 seconds West 100.00 feet from the centerline of said turnpike. Thence along the Pennsylvania Turnpike right-of-way South 87 degrees 37 minutes 18 seconds East 1148.10 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West 100.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right-of-way South 27 degrees 54 minutes 55 seconds East 347.28 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West 400.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right-of-way South 37 degrees 37 minutes 18 seconds East 750.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West 400.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right-of-way North 58 degrees 15 minutes 55 seconds East 315.09 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West 225.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right-of-way North 2 degrees 22 minutes 42 seconds East 90.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West 135.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right-of-way South 87 degrees 37 minutes 18 seconds East 138.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West 135.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right-of-way South 2 degrees 22 minutes 42

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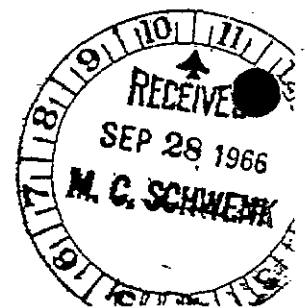
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MEMORANDUM OF AGREEMENT, made and executed as of this 30th day of March, 1966, by and between HARRISBURG AREA INDUSTRIAL DEVELOPMENT CORPORATION, a Pennsylvania nonprofit corporation having its principal office in the City of Harrisburg, Dauphin County, Pennsylvania (hereinafter called "Lessor"), and FRUEHAUF CORPORATION, a corporation organized under the laws of the State of Michigan having its principal office in Detroit, Michigan (hereinafter called "Lessee");

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W I T N E S S E T H :

WHEREAS, Lessor has arranged for the acquisition by it of all that certain tract of improved real estate and buildings and structures situated thereon located in Dauphin County, Pennsylvania (hereinafter sometimes referred to as the "premises"), more particularly described in Exhibit I annexed hereto and made a part hereof; and



AR000114



WHEREAS, Lessee desires to lease from Lessor said premises as altered, modified and converted into manufacturing facilities by Lessor (said premises as altered, modified and converted, exclusive of machinery and equipment in the nature of trade fixtures to be installed by Lessee at its own expense and owned by it, being hereinafter called the "Project") in accordance with plans and specifications approved by Lessee and accomplished as hereinafter set forth; and

WHEREAS, Lessor and Lessee desire to make said premises available for the required alterations, modifications and conversion as soon as possible, and enter into a definitive lease of the Project to Lessee for a period of twenty years following completion of the Project on terms substantially as set forth in the form of lease annexed hereto as Exhibit II, which lease shall provide for rental to be paid by Lessee in an aggregate amount not to exceed the cost of the Project plus all interest payable by Lessor in connection with financing the acquisition of the Project by it, and which lease shall provide that Lessee shall have the right to purchase the Project for the amount owing by Lessor for the acquisition of the Project; and

WHEREAS, Lessor represents to Lessee that Lessor has made preliminary arrangements to finance the acquisition of the

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Project by providing \$300,000 for twenty years at 2-1/2% interest and by loans to it from the Pennsylvania Industrial Development Authority to the extent of 30% of the cost of the Project for a period of twenty years at 2% interest, from Banks to the extent of 50% of the cost of the Project at 5-1/2% interest, which loans shall be for twenty years repayable without penalty after the first two years, and Lessee represents that it will provide any additional amounts to Lessor to enable it to acquire the Project and lease it to Lessee;

NOW, THEREFORE, the parties hereto agree as follows:

1. Lessor shall provide Lessee with all necessary permits or licenses to enter upon the premises as soon as possible to arrange for the alterations, modifications and conversion of the premises, and Lessee agrees to furnish the sum of \$300,000 to Lessor on demand to be used by Lessor to acquire the premises, it being understood and agreed that the Government of the United States will occupy the largest of the warehouses situated on the premises for the time being, vacating said warehouse on a bay-by-bay basis over a period of eighteen months from the date hereof. Payment for the acquisition of the premises and related loans to Lessor for the purpose shall

AR000116

be adjusted to such occupancy.

2. Lessor shall proceed with all reasonable expedition to purchase the premises and to alter, modify and convert the premises in accordance with plans and specifications to be prepared by Lessee.

3. Lessee, on behalf of Lessor, shall make or have made all alterations, modifications and conversion of the premises and, to the extent financed by the Pennsylvania Industrial Development Authority, such alterations, modifications and conversion shall be first approved by it. All contracts for such alterations, modifications and conversion in excess of \$100,000 shall be awarded on a competitive bid basis.

4. Lessor and Lessee mutually agree to enter into a definitive lease of the Project as soon as practicable, which lease shall be for a period of twenty years following completion of the Project on terms substantially in the form of Exhibit II and upon other terms set forth herein. Should the premises or any part thereof be available to Lessor prior to the time it acquires title or enters into possession thereof, and Lessee desires to enter upon the same for the purpose of construction, alteration or modification as set forth in

paragraphs above, Lessee shall pay such rent or rents as Lessor may be required to pay during said period and Lessee further agrees to indemnify and save harmless Lessor from any and all claims or causes of action for damages and/or for any personal injury or loss of life to, in, upon or on the premises during said period.

5. Prior to the time the lease referred to in paragraph 4 becomes effective, Lessee agrees to pay Lessor interest on amounts actually invested by Lessor, including reasonable working capital to facilitate the payment of construction bills, etc. (other than any sums derived by it from Lessee). Said interest shall be at the rate or rates at which Lessor is able to obtain such funds, and if the same is internally generated by Lessor, the rate applicable thereto shall be 2-1/2%. Said interest shall be payable at intervals no oftener than quarterly.

6. Lessor will obtain financing of the Project by loans from the Pennsylvania Industrial Development Authority to the extent of 30% of the cost of the Project for a twenty-year period at 2% interest, from Banks to the extent of 50% of the cost of the Project at 5-1/2% interest, which loans shall be for twenty years repayable without penalty after the first two years, and Lessor will provide \$200,000 of the purchase price

AR000118

of the premises and financing to the extent of \$300,000 at 2-1/2% for a period of twenty years. Lessee shall provide any additional amounts to enable Lessor to acquire the Project and lease it to Lessee.

7. (a) Lessee shall pay to Lessor as rent for the Project an amount equal to the interim and permanent financing as above provided, the proceeds of which are used to pay the cost of the Project determined as follows:

1. Actual purchase price of land not to exceed \$2,000,000, fees for title examination or title insurance, fees for recording any instruments required to be recorded in offices of public record, real estate transfer taxes payable by Lessor, notary fees and any other settlement costs payable by Lessor.

2. Final net contract payments after all adjustments, pay to contractors, subcontractors, equipment bailors, and material men for the construction, alteration, addition of any building, improvement or utility facility, including equipment, materials, labor, temporary installations and/or use of power and water, any demolition cost, all necessary permits, social security, general liability and Workmen's Compensation insurance, overhead and contractor's profit and cost of completion bonds and labor and material payment bonds, if any.

3. The taxes on land, buildings and improvements pro-rated from the date the Lessor acquires the title to the leased premises until the date when Lessee takes possession of the premises under the terms of the definitive lease and insurance premiums to protect the premises during the same period.

4. All necessary and reasonable professional fees paid by Lessor in connection with the acquisition of the land, construction of any building or alteration, addition to or improvements to existing structures and preparation of the definitive lease including but not limited to fees and expenses in connection with appraisals and legal, architectural, engineering and surveyor's fees, all subject to the approval of Lessee, which approval shall not be unreasonably withheld.

5. All other costs of any character, according to generally accepted accounting principles properly attributable to the acquisition of said land, alteration of any existing structure or improvement thereon and the construction of any other building or improvement.

6. Any fees paid or to be paid any agent for services in obtaining Lessee as a tenant in the leased premises; provided only the amount shall not exceed \$100,000 payable in equal installments without interest over a five-year period.

7. Nothing shall be allowed for any profit to the Lessor or the Lessee or any of their officers or employees.

8. Any of the above costs may be paid by the Lessee, and any cost so paid for which Lessee is not reimbursed by Lessor out of the proceeds of any loans made to finance the Project shall not be included as a cost of the Project.

9. Interest on loans and investment of Lessor in the Project as set forth above.

(b) The definitive lease shall provide that in addition to interim payments to be made by Lessee as herein provided, rental payments shall be made by Lessee to Lessor

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in such amounts and at such times, quarterly if practicable, as will enable Lessor to amortize the loans made to it and amortize its investment of \$300,000 in the Project at 2-1/2% interest. The definitive lease shall also provide that Lessee shall have the right to purchase the Project at any time by paying to Lessor the amount of the loans in respect of the Project then outstanding and unpaid, or assuming the payment thereof or making other arrangements satisfactory to Lessor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed, duly attested, as of the day and year first above written, they each intending to be bound hereby and binding hereby their successors and assigns.

HARRISBURG AREA INDUSTRIAL  
DEVELOPMENT CORPORATION

By *[Signature]* President

Attest:

*[Signature]* Secretary

FRUEHAUF CORPORATION

By *[Signature]* Vice-President

Attest:

*[Signature]* Secretary

AR000121

# This Deed,

Made the 6th day of ~~July~~ July in the year of our Lord one thousand nine hundred and eighty-nine (1989)

Between **FRUEHAUF CORPORATION**, a Delaware corporation, as successor in interest by merger with **FRUEHAUF CORPORATION**, a Michigan corporation, which has its principal office in Detroit, Michigan, (hereinafter sometimes called "Grantor"), party of the first part,

A N D

**TEREX TRAILER CORPORATION**, a Delaware corporation, which has its principal office in Detroit, Michigan, (hereinafter sometimes called "Grantee"),

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party of the second part.

Witnesseth, That the said Grantor,

for and in consideration of the sum of

TEN and NO/100 (\$10.00)

Dollars, lawful money of the United States of America, unto it

well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, encoffed, released, conveyed and confirmed, and by these Presents does grant, bargain, sell, alien, encoff, release, convey and confirm unto the said party of the second part, its successors

and Assigns.

All that certain premises situate in the Township of Lower Swatara County of Dauphin and Commonwealth of Pennsylvania, (for legal description see Exhibit A attached hereto and made a part hereof).

THIS CONVEYANCE is made subject to and from which is excepted the following:

- (a) All existing building and use restrictions, covenants, reservations, exceptions, easements and conditions of record;
- (b) All legal and/or dedicated roads, streets, and highways existing as of the date hereof;
- (c) All applicable zoning and building laws and regulations as of the date hereof; and
- (d) All general and special taxes and assessments which are a lien but not yet due and payable or for which statements have not been tendered.

*Middleton A.S.P.*  
Twp. of Lower Swatara  
Dauphin County, Pennsylvania  
Real Estate Transfer Tax  
Date 7-17-89 Amt. 19,000.00  
Philip Spawff  
Collecting Agent

Amount of Pa. Realty Transfer Tax Paid \$ 19,000.00

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
REALTY TRANSFER TAX JUL 17 '89  
PH. 11140

00.00

*Philip Spawff 7-17-89*



Exhibit A

ALL THAT CERTAIN premisses situate in the Township of Lower Swatara, County of Dauphin and Commonwealth of Pennsylvania, bounded and described in accordance with a survey and plan thereof made by Whittock-Hartman, Engineers and Surveyors, dated May 10, 1989, as follows:

BEGINNING at an iron pin on the southern right of way line for the Pennsylvania Turnpike, said iron pin being the most northwest point of said tract, also being South 2 degrees 22 minutes 42 seconds West, 100.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way South 87 degrees 37 minutes 18 seconds East, 1149.32 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 100.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, South 27 degrees 52 minutes 41 seconds East, 347.31 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 400.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, South 87 degrees 37 minutes 18 seconds East, 750.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 400.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, North 58 degrees 38 minutes 16 seconds East, 315.07 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 225.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, North 2 degrees 22 minutes 42 seconds East, 90.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 135.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, South 87 degrees 37 minutes 18 seconds East, 138.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 135.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, South 2 degrees 22 minutes 42 seconds West, 15.00 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 150.00 feet from the centerline of said turnpike; thence along the Pennsylvania Turnpike right of way, South 87 degrees 37 minutes 18 seconds East, 897.77 feet to an iron pin, said iron pin being South 2 degrees 22 minutes 42 seconds West, 150.00 feet from the centerline of said turnpike; thence South 4 degrees 30 minutes 29 seconds West, 95.24 feet to a stone; thence South 24 degrees 35 minutes 06 seconds East, 637.59 feet to an iron pin; thence South 65 degrees 4 minutes 45 seconds West, 619.31 feet to an iron pin, being North 65 degrees 04 minutes 45 seconds East, 80.69 feet from a hub; thence North 87 degrees 39 minutes 15 seconds West, 1782.79 feet to an iron pin; thence South 2 degrees 20 minutes 45 seconds West, 760.46 feet to an iron pin, said iron pin being 27.00 feet North of the centerline of "Q" Street; thence North 63 degrees 49 minutes 15 seconds West, 182.02 feet to an iron pin; thence North 79 degrees 07 minutes 15 seconds West, 899.60 feet to a hub, said course being parallel to "Q" Street 27.00 feet north of the centerline; thence North 10 degrees 52 minutes 45 seconds East, 23.00 feet to an iron pin;

Together with all and singular the buildings, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor

in law, equity or otherwise howsoever of, in and to the same and every part thereof

To Have and to Hold the said

hereditaments and premises hereby granted, or mentioned, and intended so to be with the appurtenances, unto the said party of the second part, its successors

and assigns, to and for the only proper use and behoof of the said party of the second part, its successors and assigns forever.

And the said Grantor and its

successors, by these presents covenant, grant and agree to and with the said party of the second part its successors and assigns, that said Grantor, and its

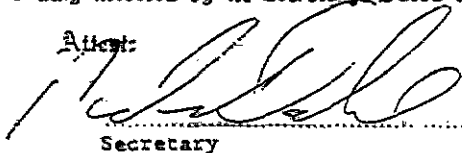
successors, all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, and assigns, against it the said Grantor

and its successors, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof,

Shall and Will Warrant and Forever Defend.

In Witness Whereof, the said Corporation, party of the first part, has caused its common and corporate seal to be affixed to these Presents by the hand of its <sup>Vice</sup> President, and the same to be duly attested by its Secretary. Dated the day and year first above written.

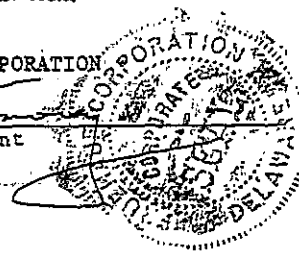
Attest:

  
Secretary

By:

FRUEHAUF CORPORATION

  
Vice President





thence North 79 degrees 7 minutes 15 seconds West, 497.86 feet to an iron pin; thence North 10 degrees 58 minutes 50 seconds East, 1472.75 feet to an iron pin, the place of BEGINNING.

BEING THE SAME PREMISES which Capital Region Economic Development Corporation, successor to Harrisburg Area Industrial Development Corporation, by deed dated May 23, 1986, and recorded May 23, 1986, in the Dauphin County Recorder of Deeds Office in Record Book 757, page 440, granted and conveyed unto Fruehauf Corporation.