

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE is made and entered into as of February 29, 199⁶, pursuant to Ordinance No. HD-1684 adopted by the Board of Harbor Commissioners of the City of Long Beach at its JANUARY 29, 199⁶ meeting by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City") and APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation ("Assignee").

1. The Lease dated as of June 29, 1990 (Harbor Department Document No. HD-4757) (the "Lease") between the parties is hereby amended as follows:

1.1 Paragraphs 3 of the Lease is amended and restated in their entirety to read as follows:

"3. PREMISES

3.1 Commencing on the date this First Amendment to Lease is approved by the Board of Harbor Commissioners, City grants to Lessee, and Lessee accepts, the following rights in certain property located on Pier G in the Harbor District of the City of Long Beach, as shown on the Harbor Department Drawing No. HD-4-89, Revised 9/8/95, attached hereto as Exhibit "A" and by this reference made a part hereof.

(a) An exclusive lease of those certain premises located on Pier G containing approximately 135,300 square feet and designated Parcel I on Exhibit "A" attached hereto;

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1 (b) A nonexclusive aerial easement
2 to construct, maintain and operate an overhead
3 conveyor system over and across premises adjacent to
4 Parcel I containing approximately 6,600 square feet
5 and designated Parcel II on Exhibit "A", together
6 with surface easements below the aerial easement for
7 support structures.

8 3.2 Parcel I and the footings for support
9 structures contained within Parcel II shall extend down-
10 ward only fifty (50) feet below the ground surface
11 thereof. Said areas, together with the improvements now
12 situated thereon, are collectively referred to in this
13 Lease as the "Premises".

14 3.3 City also grants to Lessee nonexclu-
15 sive rights of access to the Premises for vehicles and for
16 utilities across adjacent property of City within such
17 corridors or rights of way as shall be determined by City.

18 3.4 There are excepted and reserved from
19 the Premises all minerals and mineral rights of every kind
20 and character now known to exist or hereafter discovered,
21 including, without limitation, oil, gas and water rights,
22 together with the full, exclusive and perpetual rights to
23 explore for, remove and dispose of said minerals from the
24 Premises without, however, the right of surface entry upon
25 the Premises for such purposes.

26 3.5 This Lease, and all rights granted to
27 Lessee hereunder, are subject to restrictions, reserva-
28 tions, conditions and encumbrances of record, including,

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without limitation, the trust and limitations set forth in Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 138, Statutes of 1964, First Extraordinary Session; and the federal navigational servitude.

3.6 City reserves to itself such rights of way and rights of entry for such sewers, storm drains, pipelines and utility conduits for telephone, electricity and water service as may from time to time be determined by the Board of Harbor Commissioners in accordance with Section 1207(g) of the Charter of the City of Long Beach."

1.2 Paragraph 6.2 of the Lease is amended and restated in its entirety to read as follows:

"6.2 Commencing on May 1, 1995, Lessee shall pay to City in advance as ground rent for the use of the Premises the sum of Forty-one Thousand Five Hundred Eighty Dollars (\$41,580.00) per quarter on July 1, October 1, January 1, and April 1 of each calendar year. The Ground Rent for any period less than a quarter shall be prorated based on a ninety (90) day quarter. Ground rent for any subsequent segment of the term shall be subject to adjustment in accordance with the provisions of paragraph 8."

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2. Except as expressly provided in this First Amendment,
all of the terms and conditions of the Agreement as amended shall
remain unchanged and in full force and effect.

APPLIED INDUSTRIAL MATERIALS
CORPORATION, a Delaware corporation

Dated: 1/3, ¹⁹⁹⁶ ~~1995~~

By: [Signature]
Name: Joseph Lombardi
Title: Vice-President

Dated: _____, 1995

By: _____
Name: _____
Title: _____

ASSIGNEE

CITY OF LONG BEACH, a municipal
corporation, acting by and through
its Board of Harbor Commission

Dated: Feb 29, 199~~5~~⁶

By: [Signature]
S. R. Dillenbeck,
Executive Director
Long Beach Harbor Department

CITY

The foregoing First Amendment to Lease is hereby approved
as to form this 1st day of February, 199~~5~~⁶.

JOHN R. CALHOUN, City Attorney

By: [Signature]
Principal Deputy

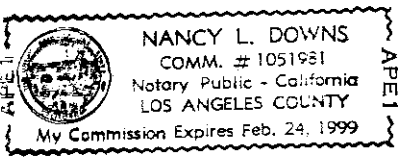
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Calif
County of LA
On 1/3/96 before me, Nancy L. Downs
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared JOSEPH LOMBARDI
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Nancy L. Downs
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: 1st Amendment to lease

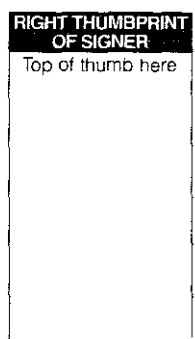
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

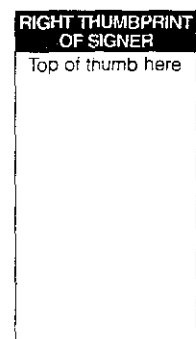
- Individual
- Corporate Officer
Title(s): VP
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

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LEASE

THIS LEASE is made and entered into as of the 29th day of JUNE, 1990, by and between CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to Ordinance No. HD-1538, adopted by said Board at its meeting of MAY 29, 1990, and APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation ("Lessee").

1. **PURPOSE**

This Lease is entered into for the purpose of permitting Lessee to construct improvements and to operate a proprietary and/or contract dry bulk shipping and storage facility on certain Premises owned by City in conjunction with City's existing Pier G Bulk Terminal, to facilitate the waterborne shipment of petroleum coke and other dry bulk products from Southern California via the Port of Long Beach. The granting of this Lease is for a purpose in connection with and for the promotion and accommodation of commerce and navigation and is consistent with the trusts upon which said Premises are held by City.

2. **TERM**

The term of this Lease shall be for a period of twenty one (21) years and two (2) months, commencing on May 1, 1990 and ending on June 30, 2011 unless earlier terminated by the provisions hereof. For purposes of renegotiation of compensation as provided in paragraph 8, the term shall be divided into five (5) segments; the first shall be four (4)

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1 years and two (2) months, followed by three (3) segments of
2 five (5) years each and one (1) segment of two (2) years.

3 **3. PREMISES** *See 1st para*

4 3.1 As of the commencement of the term, City
5 grants to Lessee, and Lessee accepts, the following rights
6 in certain property located on Pier G in the Harbor
7 District of the City of Long Beach, as shown on the Harbor
8 Department Drawing No. HD4-89, dated January 25, 1990,
9 attached hereto as Exhibit "A" and by this reference made
10 a part hereof:

11 (a) An exclusive lease of those certain
12 premises located on Pier G containing approximately
13 132,673 square feet and designated Parcel I on
14 Exhibit "A" attached hereto;

15 (b) A nonexclusive easement to construct,
16 maintain and operate a conveyor system in, over, upon
17 and under the parcel of real property containing
18 approximately 1,344 square feet and designated Parcel
19 II on Exhibit "A";

20 (c) A nonexclusive aerial easement to
21 construct, maintain and operate an overhead conveyor
22 system over and across premises adjacent to Parcel I
23 designated Parcel III on Exhibit "A", together with
24 surface easements at appropriate locations below the
25 aerial easement for support structures. The exact
26 locations and descriptions of said conveyor and
27 support structures shall be prepared by the City,
28 initialled by the parties and attached hereto as a

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1 supplement to Exhibit "A".

2 3.2 Upon written notice from City to Lessee that
3 Water Source Well No. SG-3, including its appurtenances,
4 has been abandoned and removed, City grants to Lessee, and
5 Lessee accepts, an exclusive lease of those certain
6 premises containing approximately 3970 square feet and
7 designated Parcel IA on Exhibit "A".

8 3.3 Parcels I, IA and II and the footings for
9 support structures contained within Parcel III shall
10 extend downward only fifty (50) feet below the ground
11 surface thereof. Said areas, together with the improve-
12 ments now situated thereon and improvements to be
13 constructed thereon, are collectively referred to in this
14 Lease as the "Premises".

15 3.4 If necessary, the precise boundaries of
16 Parcels I, IA, II and III may be adjusted in conformance
17 with the detailed design and construction of the
18 contemplated improvements. Additionally, Lessee may elect
19 not to construct the contemplated overhead conveyor system
20 over and across Parcel III. In either case, a revised
21 Drawing No. HD4-89 shall be prepared and substituted as
22 Exhibit "A" hereto and the ground rent set forth in
23 Paragraph 6 shall be adjusted accordingly. Additionally,
24 if the conveyor is not constructed, the provisions of this
25 Lease relating to Parcel III shall be null and void.

26 3.5 City also grants to Lessee nonexclusive
27 rights of access to the Premises for vehicles and for
28 utilities across adjacent property of City within such

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1 corridors or rights of way as shall be determined by City.

2 3.6 There are excepted and reserved from the
3 Premises all minerals and mineral rights of every kind and
4 character now known to exist or hereafter discovered,
5 including, without limitation, oil, gas and water rights,
6 together with the full, exclusive and perpetual rights to
7 explore for, remove and dispose of said minerals from the
8 Premises without, however, the right of surface entry upon
9 the Premises for such purposes.

10 3.7 This Lease, and all rights granted to Lessee
11 hereunder, are subject to restrictions, reservations,
12 conditions and encumbrances of record, including, without
13 limitation, the trusts and limitations set forth in
14 Chapter 676, Statutes of 1911; Chapter 102, Statutes of
15 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes
16 of 1956, First Extraordinary Session; Chapter 138,
17 Statutes of 1964, First Extraordinary Session; and the
18 federal navigational servitude.

19 3.8 City reserves to itself such rights of way
20 and rights of entry for such sewers, storm drains,
21 pipelines and utility conduits for telephone, electricity
22 and water service as may from time to time be determined
23 by the Board of Harbor Commissioners in accordance with
24 Section 1207(g) of the Charter of the City of Long Beach.

25 **4. USE OF PREMISES**

26 4.1 The Premises may be used by Lessee for the
27 following purposes:

28 (a) Parcels I and IA shall be used for the

1 construction, erection, installation, use, operation,
2 maintenance, repair, and renewal of an enclosed
3 storage facility, conveyor systems, and other
4 improvements by Lessee thereon, all in conjunction
5 with the operation on the Premises of a facility for
6 the receipt, handling, loading, unloading, storage,
7 transporting, marketing and other disposition of bulk
8 commodities.

9 (b) Parcel II shall be used for the
10 construction, erection, installation, use, operation,
11 maintenance, repair, and renewal of a conveyor system
12 for the conveying and transferring of said bulk
13 commodities from Parcel I for transfer to City's Pier
14 G conveyor system for ultimate conveyance and
15 transfer of said bulk commodities to the shiploader
16 or shiploaders at Berths 212 to 215, inclusive, Pier
17 G.

18 (c) Parcel III may be used for the
19 construction, installation, use, operation,
20 maintenance, repair, and renewal of an aerial
21 conveyor system to transport bulk commodities between
22 Parcel I and another bulk storage facility leased by
23 Lessee which is located at 1235 Pier G Avenue.

24 4.2 Lessee shall not stockpile or handle any
25 bulk commodities on the Premises, other than petroleum
26 coke, coke breeze, coal, soda ash, potash and cement
27 clinker, without the prior approval of the Executive
28 Director of the Long Beach Harbor Department ("Executive

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1 Director"), which approval shall not be unreasonably
2 withheld.

3 4.3 Lessee is not granted the right to, nor
4 shall Lessee, operate a public terminal or public ware-
5 housing business upon the Premises.

6 4.4 The Premises shall not be used for any other
7 purposes without the prior consent in writing of the
8 Executive Director, which consent shall not be unreason-
9 ably withheld. The Premises shall not be used for any
10 purpose which shall interfere with commerce, navigation or
11 fisheries or be inconsistent with the trusts and limita-
12 tions upon which the Premises are now or may hereafter be
13 held by the City of Long Beach.

14 **5. CITY'S CONVEYOR SYSTEM**

15 City owns a conveyor system, consisting of
16 mechanical shiploaders, conveyors, structures and appurtenant
17 equipment for stockpiling and reclaiming bulk commodities at
18 the wharf premises adjacent to the wharf at Berths 212 to 215,
19 inclusive, and for the loading of vessels with bulk commodities
20 at said berths. Said conveyor system, wharves and wharf
21 premises are presently preferentially assigned to Metropolitan
22 Stevedore Company ("City's preferential assignee"). It is
23 contemplated City's conveyor system and shiploaders will be
24 used to move bulk commodities from the Premises to vessels
25 berthed at Berths 212-215.

26 Lessee shall have the right, in accordance with
27 the provisions of City's Tariff No. 4, and subject to the
28 rights of City's preferential assignee, to use City's conveyor

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1 system and shiploaders and wharves at Berths 212-215 for the
2 conveyance of bulk commodities from the Premises for loading
3 aboard vessels. In moving bulk commodities from the Premises
4 over City's conveyor system and through City's shiploaders,
5 Lessee may exercise its rights granted hereunder by contracting
6 with City's preferential assignee, or by contracting with
7 independent stevedoring contractors and terminal operators who
8 would request assignments of said conveyor system and ship-
9 loaders from City pursuant to the provisions of said Tariff No.
10 4, or Lessee itself may obtain assignments thereof, subject to
11 the preferential rights held by City's preferential assignee
12 and to the provisions of said Tariff No. 4. The intent of the
13 parties is to assure the movement of Lessee's bulk commodities
14 from the Premises over City's conveyor system to vessels at
15 Berths 212-215, without unreasonable delay or expense to
16 Lessee.

17 Lessee's right to use City's conveyor system and
18 shiploaders to convey and load any dry bulk commodity other
19 than petroleum coke or other product presently handled by the
20 conveyor system and shiploaders is subject to City's
21 determination, set forth in writing, that the handling of such
22 commodity will not be unduly detrimental to said conveyor
23 system or shiploaders.

24 6. COMPENSATION

25 6.1 Definitions

26 6.1.1 The word "lease year" as used herein
27 shall mean the twelve (12) consecutive month period
28 commencing on July 1 of each calendar year during the

1 term hereof and ending the following June 30. Any
2 period which is less than a lease year shall be
3 deemed and called a "partial lease year".

4 6.1.2 The words "tariff" or "Tariff No. 4"
5 as used herein shall mean City's "Tariff No. 4 Naming
6 Rates, Rules and Regulations Governing the Port of
7 Long Beach, California" as amended, or the successor
8 to such tariff.

9 6.1.3 The words "ton" or "metric ton" as
10 used herein shall mean 1000 kilograms.

11 6.2 During the initial segment of the term
12 hereof, Lessee shall pay to City as ground rent the
13 following annual amounts:

14 Parcel I	-	\$159,208.00
15 Parcel IA	-	4,764.00
16 Parcel II	-	806.00
17 Parcel III	-	3,986.00

18 Adjustment of said amounts, to be made upon completion of
19 construction in accordance with subparagraph 3.4, if any,
20 shall be made on the basis of One Dollar Twenty Cents
21 (\$1.20) per square foot for Parcels I and IA, and Sixty
22 Cents (\$0.60) per square foot for Parcels II and III.
23 Ground rent for Parcel IA shall commence on the date
24 contained in City's notice to Lessee described in
25 subparagraph 3.2 above. Ground rent payable for the
26 months of May and June 1990 shall be one-sixth of the
27 annual rent and shall be payable May 1, 1990. Thereafter,
28 the annual ground rent shall be paid in four (4) equal

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1 quarterly installments, payable on July 1, October 1,
2 January 1 and April 1 of each calendar year. Ground rent
3 for any subsequent segment of the term is subject to
4 renegotiation and arbitration in accordance with the
5 provisions of paragraph 8.

6 6.3 In addition to the ground rent for use of
7 the Premises, Lessee shall pay, or cause to be paid, to
8 City the total amount of all applicable tariff charges
9 accruing in connection with the movement of Lessee's bulk
10 commodities across the wharves at Berths 212-215. In
11 connection therewith, Lessee shall file, or cause to be
12 filed, with the Executive Director on forms provided or
13 approved by City, on or before the tenth day following the
14 departure of each vessel docking at Berths 212-215 and
15 aboard which bulk commodities from the Premises have been
16 loaded, a verified statement showing all charges which
17 shall have accrued for wharfage, shiploader charges and
18 other applicable charges with reference to each such
19 vessel. Lessee shall furnish any additional reports
20 relating to its bulk commodity terminal operations when
21 requested by City. Unless required for reasons of public
22 safety or necessity, nothing herein shall require Lessee
23 to disclose names of customers, pricing, or similar
24 proprietary information.

25 6.4 During each of the four (4) full lease years
26 in the initial segment of the term hereof, commencing July
27 1, 1990, Lessee guarantees that it will ship from the
28 Premises or by direct loading to vessel from truck or rail

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1 car 300,000 metric tons of petroleum coke or other dry
2 bulk commodities ("product") per lease year ("Guaranteed
3 Minimum Annual Throughput" or "GMAT"). If Lessee has not,
4 by the end of each lease year, shipped quantities of
5 product from the Premises or by direct loading to vessel
6 from truck or rail car at least equal to the GMAT, Lessee
7 shall pay to City, within thirty (30) days after the end
8 of said lease year, the difference between the amount
9 actually paid to City during said year and the amount
10 which would have been paid to City had such quantity of
11 product been shipped from the Premises or by direct
12 loading to vessel from truck or rail car during said lease
13 year. Said sum shall be calculated by multiplying the
14 difference in quantity between the GMAT and the actual
15 quantity shipped (the "throughput deficiency") times a
16 rate calculated by multiplying each of the wharfage and
17 shiploader charges established in City's Tariff No. 4,
18 Items 356 and 515 which were in effect during said lease
19 year times the number of days each of said rates was in
20 effect divided by 365 (the "average Tariff rate"). If
21 said sum is paid within said thirty (30) days, Lessee's
22 failure to ship the specified minimum quantities of
23 product from the Premises or by direct loading to vessel
24 from truck or rail car shall not otherwise constitute a
25 default of its obligations hereunder. GMAT for any
26 subsequent segment of the term is subject to renegotiation
27 and arbitration in accordance with paragraph 8.

28 6.5 If the Premises or the improvements thereon

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1 are damaged or destroyed so as to render them wholly or
2 partially untenable or unfit for use or so as to make
3 it impracticable for Lessee to make reasonably full use of
4 the Premises for the authorized purposes, the Guaranteed
5 Minimum Annual Throughput for the then-current lease year
6 shall be adjusted according to the nature and extent of
7 the damage sustained and the impairment of use. In the
8 event the parties cannot agree upon the amount of such
9 adjustment, the amount thereof shall be determined by
10 arbitration as provided in paragraph 8.

11 6.6 If, by reason of strikes or other labor
12 disputes, lockouts, or other work stoppages occurring
13 within the Harbor District of the City of Long Beach for a
14 period in excess of thirty (30) consecutive days, Lessee
15 is prevented from making substantial use of the Premises
16 for the purposes authorized, then the Guaranteed Minimum
17 Annual Throughput for the then-current lease year shall be
18 proportionately adjusted in an amount determined by mutual
19 agreement. In the event the parties cannot agree upon the
20 amount of such adjustment, the amount thereof shall be
21 determined by arbitration as provided in paragraph 8.

22 **7. BOOKS OF ACCOUNTS, RECORDS AND STATEMENTS**

23 Lessee shall keep at the Premises or at another
24 location within thirty (30) miles of the Premises, full and
25 accurate books of accounts and records relating to its
26 operations on the Premises. City shall be entitled at all
27 reasonable times during the term and within two (2) years after
28 the expiration or termination of this Lease to inspect and

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1 examine such books of account and records so City can ascertain
2 the total quantity of petroleum coke and other product handled
3 at the Premises. Lessee shall cooperate fully with City's
4 representatives in making the inspection. City shall also be
5 entitled, once during each lease year and once after the
6 expiration of each segment of the term, to an independent audit
7 at City's expense of Lessee's books of account and records, by
8 a certified public accountant designated by City or by other
9 representative of City, to determine the total quantity of
10 petroleum coke or other product handled by Lessee on the
11 Premises. Any such audit shall be conducted during usual
12 business hours at Lessee's office. Lessee shall not be
13 required to disclose pricing or similar proprietary
14 information. If the audit shows that there is a deficiency in
15 the payment of any sums due City, the deficiency shall become
16 immediately due and payable, together with interest thereon at
17 the rate set forth in City's Tariff No. 4 from the date the
18 payment or payments should have been made. If the audit shows
19 an overpayment, such overpayment shall be credited against
20 current or future payment obligations of Lessee; if no further
21 payments are due, such overpayment shall be promptly refunded
22 to Lessee.

23 Lessee shall also, at City's request, make
24 available at Lessee's local offices or at City's offices for
25 City's review, at no cost to City, a copy of Lessee's current
26 balance sheet, certified by Lessee's chief financial officer to
27 be true and correct. Such statement shall be available to City
28 within ten (10) business days after City's request. Such

1 statement shall not be duplicated nor retained as City records.

2 **8. COMPENSATION AND INSURANCE RENEGOTIATION/**
3 **ARBITRATION**

4 8.1 In accordance with the provisions of Long
5 Beach City Charter Section 1207(d), the parties agree to
6 renegotiate the ground rent, the Guaranteed Minimum Annual
7 Throughput, and the insurance coverage and limits to be
8 provided by Lessee for the use of the Premises for each
9 five-year segment and the final two-year segment of the
10 term, commencing at least one hundred eighty (180) days
11 prior to the beginning of each succeeding segment of the
12 term. If the parties cannot reach agreement at least one
13 hundred twenty (120) days before the end of the
14 then-current segment of the term, either party may
15 initiate arbitration pursuant to subparagraph 8.3 or 8.5
16 hereof.

17 8.2 In the negotiations to establish such
18 renegotiated compensation, the parties shall take into
19 consideration the character of the Premises, their value,
20 the fair rental value of similar premises and facilities
21 within the Long Beach and Los Angeles Harbor Districts
22 devoted to similar use, the terms, conditions and
23 restrictions of this Lease, the terms, conditions and
24 restrictions of other marine bulk terminal leases for
25 similar premises and facilities within the Long Beach and
26 Los Angeles Harbor Districts, the quantity of material
27 handled at, on or from the Premises, the return on
28 investment to City, maintenance costs, insurance, taxes

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1 and any other facts and data necessary for the proper
2 determination of such compensation; provided, the
3 compensation to be paid by Lessee shall be determined
4 without regard to any improvements or facilities
5 constructed at Lessee's expense.

6 8.3 If the parties cannot reach agreement with
7 respect to compensation at least ninety (90) days prior to
8 the beginning of the next segment of the term, the matter
9 shall be resolved in the following manner:

10 8.3.1 Each party, at its cost, shall
11 appoint a real estate appraiser with at least five
12 (5) years' full time commercial and/or industrial
13 appraisal experience in the Long Beach and Los
14 Angeles harbor areas and who is a member in good
15 standing of the American Institute of Real Estate
16 Appraisers. If a party does not appoint an appraiser
17 within ten (10) business days after the other party
18 has given notice of the name of its appraiser, the
19 single appraiser appointed shall be the sole
20 appraiser and shall determine the compensation within
21 forty-five (45) days after his or her appointment.
22 If two (2) appraisers are appointed, each within
23 forty-five (45) days after the selection of the
24 second appraiser shall report his or her opinion, as
25 provided in subparagraph 8.3.3 below, as to the
26 compensation payable by Lessee to the City.

27 8.3.2 In forming an opinion of the
28 compensation payable by Lessee, the appraiser or

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1 appraisers shall consider only comparable marine bulk
2 terminals within the Long Beach and Los Angeles
3 Harbor Districts and the provisions of those marine
4 bulk terminal leases for such comparable premises and
5 facilities.

6 8.3.3 On or before the expiration of the
7 forty-five (45) day period, the appraiser or
8 appraisers shall prepare and furnish the party who
9 appointed the appraiser with a report setting forth
10 the amount of compensation payable by Lessee with
11 supporting data and his or her reasons supporting the
12 conclusions. The parties shall promptly exchange
13 reports and shall have ten (10) business days after
14 the exchange of the reports to further negotiate the
15 amount of compensation payable by Lessee.

16 8.3.4 If the parties cannot agree as to the
17 compensation payable by Lessee, City and Lessee shall
18 each promptly notify its designated appraiser of that
19 fact and the two appraisers shall promptly select a
20 third appraiser meeting the qualifications stated in
21 subparagraph 8.3.1. If they are unable to agree on
22 the third appraiser, either of the parties, by giving
23 ten (10) days' notice to the other party, may apply
24 to the Presiding Judge or Assistant Presiding Judge
25 of the Superior Court of the County of Los Angeles,
26 or the Presiding Judge of the South District of said
27 Court, who shall select and appoint the third
28 appraiser. Each of the parties shall bear one-half

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1 of the cost of appointing the third appraiser and of
2 paying the third appraiser's fee. The third
3 appraiser shall: (i) promptly meet and confer with
4 the two appraisers appointed by the parties; (ii)
5 review the reports of the two appraisers and the
6 supporting data and reasons supporting the respective
7 conclusions; (iii) determine the compensation payable
8 by Lessee, provided however that said determination
9 shall not result in Lessee paying compensation for
10 the use of the Premises in an amount lower than the
11 lowest of, nor higher than the highest of, the
12 determinations of the two appraisers appointed by the
13 parties; and (iv) notify the parties of his or her
14 determination of compensation within ten (10)
15 business days after his or her appointment.

16 8.4 After the compensation has been determined
17 (whether by agreement or by arbitration), the parties
18 shall promptly execute a memorandum setting forth the
19 adjusted compensation. If either party fails or refuses
20 to execute the memorandum after the compensation has been
21 determined, the other party shall execute the memorandum
22 on behalf of the party refusing as that party's special
23 attorney-in-fact, and the memorandum shall thereupon be
24 effective.

25 8.5 For adjustment of insurance coverages and
26 limits which are submitted for determination by
27 arbitration, the party desiring arbitration shall select
28 an arbitrator and give written notice to the other party,

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1 who shall select an arbitrator within ten (10) business
2 days after receipt of such notice. If the other party
3 fails to name such second arbitrator within said ten (10)
4 business days, the arbitrator named by the first party
5 shall decide the matter. The two (2) arbitrators chosen
6 shall, within ten (10) business days after the appointment
7 of the second, select a third. If the two arbitrators
8 cannot agree upon selection of a third arbitrator, such
9 third arbitrator shall be appointed by any judge of the
10 Superior Court of the County of Los Angeles, California,
11 upon application made therefor by either party, upon ten
12 (10) days' written notice to the other. Upon their
13 appointment, the arbitrator or arbitrators shall enter
14 immediately upon the discharge of their duties. In doing
15 so, the arbitrator or arbitrators shall consider the risks
16 inherent in Lessee's operations, the number and type of
17 claims made during the preceding five-year segment of the
18 term, the disposition of such claims, and such other data
19 as may be deemed relevant. The arbitrators' determina-
20 tions shall be made and the parties notified of that
21 determination within thirty (30) days after the
22 appointment of the last arbitrator. Except as may
23 otherwise be provided in this subparagraph, such
24 arbitration proceedings shall be in accordance with the
25 provisions of Title 9 (Arbitration) of Part 3 of the
26 California Code of Civil Procedure.

27 **9. CONSTRUCTION OF IMPROVEMENTS**

28 9.1 As of the date this Lease is entered into,

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1 there exists on Parcels I and II of the Premises a
2 stacker, conveyor tunnel and conveyor equipment used for
3 receiving, transporting and conveying petroleum coke and
4 other bulk commodities ("facilities"). Upon the
5 commencement of the term hereof, Lessee may either
6 incorporate such facilities into the new improvements
7 described in subparagraph 9.2 including modifications
8 thereto approved by City, or may remove same in connection
9 with construction of said new improvements; provided,
10 however, that if the stacker is to be removed, it shall be
11 removed by City at City's cost. Lessee acknowledges that
12 the City has not made any representation as to condition
13 of the facilities and no warranty of fitness for any
14 purpose shall be implied. The facilities are being leased
15 to Lessee "as is-where is."

16
17 9.2 Upon the commencement of the term hereof,
18 Lessee shall diligently apply for and attempt to obtain
19 all necessary permits for, and shall thereafter construct
20 at its expense upon Parcels I and IA of the Premises a
21 building or other enclosed facility to contain petroleum
22 coke or related products with a storage capacity of at
23 least 80,000 metric tons or the equivalent thereof which
24 meets the requirements for permitting by all federal,
25 state, regional and local authorities having jurisdiction
26 over such building or structure. Additionally, Lessee
27 shall construct a truck dump and screening plant and such
28 conveying, stacking, sorting and other systems as are
necessary or convenient for the handling of petroleum coke

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1 and related products at the Premises. Lessee's
2 responsibilities hereunder shall include, but not be
3 limited to, treatment or removal and disposal of any
4 excavated material containing "hazardous waste" or
5 "extremely hazardous waste" as those terms have been or
6 are defined by the Administrator of the Environmental
7 Protection Agency, the California Department of Health
8 Services or any other person or agency having jurisdiction
9 of the management of hazardous material. Although the
10 precise nature and configuration of Lessee's improvements
11 is not presently known and cannot be determined until
12 permitting by all authorities having jurisdiction has been
13 completed, Lessee's improvements shall be of such quality
14 and magnitude that Lessee shall expend at least Four
15 Million Dollars (\$4,000,000.00) in the design engineering
16 and construction of same. City shall provide or pay for
17 the installation of electrical power service to Parcel I,
18 provided, however, if the cost of installing such
19 electrical power service exceeds Fifteen Thousand Dollars
20 (\$15,000.00), City's obligation shall not exceed such sum,
21 and the balance of the cost shall be paid by Lessee.

22 9.3 In addition to the improvements described in
23 subparagraph 9.2 above, Lessee may construct at its
24 expense upon Parcel III an aerial conveyor system,
25 together with the support structures therefor, for the
26 movement of petroleum coke and related products between
27 Parcel I and other facilities at 1235 Pier G Avenue
28 currently leased from City by Lessee by lease dated August

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1 10, 1989 (Harbor Department Document No. HD-4638).

2 9.4 Except as provided in subparagraph 29.3
3 hereof, if Lessee fails to commence construction of the
4 improvements described in subparagraph 9.2 and 9.3 above
5 prior to April 30, 1992, ^{AMENDED 7-26-92} or if Lessee commences
6 construction of said improvements prior to said date but
7 thereafter fails to diligently prosecute said construction
8 to completion and to obtain operating permits for said
9 improvements, such failure by Lessee shall constitute a
10 default by Lessee, and the provisions of paragraph 20
11 hereof shall apply.

12 9.5 Lessee, at its cost, may construct, erect
13 and install additional improvements upon the Premises, and
14 may make alterations thereto, provided that all such
15 additional improvements and alterations of any type must
16 be so constructed, erected and installed only in
17 accordance with the terms and conditions of a Harbor
18 Development Permit to be issued by the Board of Harbor
19 Commissioners, which shall not be unreasonably withheld.

20 **10. MAINTENANCE AND REPAIR**

21 10.1 Lessee, at its cost, shall keep and maintain
22 the Premises, and all buildings, structures and improve-
23 ments of any kind thereon including surface paving, in
24 good and substantial repair and condition and shall
25 perform all necessary maintenance.

26 10.2 Should Lessee fail to make any repairs or
27 perform the required maintenance within thirty (30) days
28 after receipt of notice from City to do so, City may, but

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1 shall not be obligated to, make and perform such repairs
2 or maintenance. Lessee agrees to reimburse City for
3 City's costs within thirty (30) days after receipt of
4 City's invoice therefor. Should Lessee commence to
5 prosecute and diligently make such repairs or begin to
6 perform the required maintenance within the thirty (30)
7 day period, City shall refrain from commencing to make any
8 repairs or required maintenance and from making demand for
9 such payment until the work has been completed by Lessee,
10 and then only for such portion thereof as shall have been
11 made or performed by City. The making of any inspection
12 or repair or the performance of any maintenance by City,
13 which repair or maintenance is the responsibility of
14 Lessee, shall in no event be construed as a waiver of the
15 duty or obligation of Lessee to make future repairs or
16 perform required maintenance as provided in this Lease.
17 "City's costs" shall include, but not be limited to, the
18 cost of maintenance or repair or replacement of property
19 neglected, damaged or destroyed, including direct and
20 allocated costs for labor, materials, supervision,
21 supplies, tools, taxes, transportation, administrative and
22 general expense and other indirect or overhead expenses.

23
24 10.3 Lessee, at its cost, shall provide proper
25 containers for trash and keep the Premises free and clear
26 of rubbish, debris and litter at all times. Lessee, at
27 its cost, further agrees to keep and maintain all of the
28 Premises in a safe and reasonably clean, wholesome and
sanitary condition under all applicable federal, state,

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1 local and other laws, rules, regulations and orders. No
2 offensive refuse, matter, nor any substance constituting
3 any unnecessary, unreasonable or unlawful fire hazard, nor
4 material detrimental to the public health shall be per-
5 mitted to be or remain on the Premises and Lessee shall
6 prevent such material or matter from being or accumulating
7 upon the Premises.

8 10.4 All fire protection sprinkler systems, fire
9 hydrant systems, standpipe systems, fire alarm systems,
10 portable fire extinguishers and other fire-protective or
11 extinguishing systems or appliances which may be installed
12 on the Premises shall be maintained by Lessee, at its
13 cost, in an operative condition at all times. All repairs
14 and servicing shall be made in accordance with the
15 provisions of the Long Beach Municipal Code, Chapter 18.48
16 and all revisions thereto.

17 10.5 Lessee shall provide personnel to accompany
18 City's representatives on periodic inspections of the
19 Premises to determine Lessee's compliance with the
20 provisions of this Lease to be performed by Lessee.

21 **11. PROPERTY AND CARGO UNDER LESSEE'S CONTROL**

22 As between City and Lessee, any property of any
23 kind belonging to or in the care, custody or control of Lessee
24 that may be on the Premises during the term of this Lease shall
25 be at the sole risk of Lessee and Lessee hereby waives all
26 claims against City with respect to such property; provided,
27 however, that Lessee does not waive claim for injury, loss or
28 damage to property or to any person on the Premises in case

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1 such injury or damage is caused by the active negligence of
2 City, its officers or employees.

3 **12. OBSERVE APPLICABLE LAWS**

4 Lessee shall at all times, in its use and
5 occupancy of the Premises and in the conduct of its operations
6 thereon, comply with all laws, ordinances and regulations
7 applicable thereto, enacted or adopted by federal, state,
8 municipal or other governmental bodies or departments or
9 officers thereof, including the City Charter and the Long Beach
10 Municipal Code. Lessee reserves the right to contest in
11 appropriate proceedings any change in laws, ordinances or
12 regulations which would be in derogation of Lessee's rights
13 hereunder.

14 **13. UTILITY CHARGES**

15 Except as provided in subparagraph 9.2 above,
16 Lessee shall make arrangements for and pay for all utilities
17 and services furnished to or used by it, including without
18 limitation gas, electricity, water, telephone service and trash
19 collection, and for all connection charges.

20 **14. TAXES**

21 Except where contested in good faith in a court
22 of appropriate jurisdiction, Lessee shall pay, prior to delin-
23 quency, all lawful taxes, assessments and other governmental or
24 district charges that may be levied upon its property and
25 improvements of any kind located on the Premises and upon the
26 interest granted under this Lease. Lessee recognizes and
27 understands that this Lease may create a possessory interest
28 subject to property taxation and that Lessee may be subject to

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1 the payment of property taxes and assessments levied on such
2 interest. Lessee agrees that payment of any such possessory
3 interest tax or assessment shall not reduce any compensation
4 due City hereunder.

5 **15. LIENS**

6 Except where contested in good faith in a court
7 of appropriate jurisdiction, and except for non-delinquent
8 liens arising from taxes or tax assessments, Lessee shall keep
9 the Premises free from liens of any kind or nature arising out
10 of its operations, including any liens arising out of any labor
11 performed for or materials furnished to or on behalf of Lessee
12 on the Premises. Lessee agrees that it will at all times save
13 City free and harmless and indemnify it against all claims for
14 labor or materials in connection with the construction,
15 erection or installation of Lessee's improvements made upon the
16 Premises, or from additions or alterations made thereto, or the
17 repair of the same, by or at the direction of Lessee, and the
18 costs of defending against any such claim, including reasonable
19 attorneys' fees.

20 **16. INDEMNIFICATION**

21 16.1 Lessee shall defend, indemnify, and save
22 harmless the City of Long Beach, its Board of Harbor
23 Commissioners (individually and collectively), and their
24 officers and employees ("indemnified parties") from and
25 against any and all actions, suits, proceedings claims and
26 demands, loss, liens, costs, expense and liability of any
27 kind and nature whatsoever ("claims"), for injury to or
28 death of persons, or damage to property, including

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1 property owned by City, brought, made, filed against,
2 imposed upon or sustained by the indemnified parties or
3 any of them, and arising from or attributable to or
4 caused, directly or indirectly, (i) by the use or
5 condition of the Premises or the facilities and
6 improvements located thereon, or from operations conducted
7 thereon by Lessee, its officers, agents, employees or
8 invitees or by any person or persons acting on behalf of
9 Lessee and with Lessee's knowledge and consent, express or
10 implied; or (ii) by reason of or arising out of the state
11 of repair and maintenance of the Premises or the
12 improvements and facilities located thereon, or the
13 construction, improvement or repair of improvements and
14 facilities on the Premises by Lessee, its officers,
15 agents, employees or invitees, or by any person or persons
16 acting on behalf of Lessee and with the knowledge and
17 consent, express or implied, of Lessee; or (iii) by reason
18 of injury to or death of employees of Lessee or others as
19 a result of Lessee's failure or refusal to comply with the
20 provisions of Section 6300 et seq. of the California Labor
21 Code or any federal, state or local regulations or laws
22 pertaining to the safety of the Premises or of
23 improvements or equipment located upon the Premises. This
24 paragraph applies regardless of whether any act or
25 omission of the indemnified parties or any of them
26 contributed thereto, but this paragraph does not apply to
27 any claim arising from or attributable to or caused,
28 directly or indirectly, from the sole active negligence or

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1 willful misconduct of the indemnified parties or any of
2 them.

3 16.2 With respect to any claim covered by
4 subparagraph 16.1, City shall notify Lessee thereof, shall
5 tender Lessee defense thereof, and shall assist Lessee as
6 may reasonably be requested in the defense thereof.
7 Lessee shall resist and defend such action, suit or
8 proceeding, or appropriately settle same, shall conduct or
9 have conducted the necessary investigations and adjusting
10 related thereto, and Lessee shall indemnify the
11 indemnified parties. Payment of a claim by an indemnified
12 party shall not be a condition precedent to recovery under
13 this indemnity.

14 **17. LIABILITY INSURANCE**

15 17.1 In partial performance of Lessee's
16 obligations of indemnity, Lessee, at its cost, shall
17 procure and maintain in full force and effect, while this
18 Lease shall remain in effect and at such other times as
19 may be required under "claims-made" insurance, a policy or
20 policies of general liability insurance or its equivalent
21 from a company or companies authorized to do business in
22 the State of California, with minimum coverage of
23 \$5,000,000.00 combined single limit and complying with the
24 following provisions:

25 17.1.1 The City of Long Beach, the Board of
26 Harbor Commissioners (individually and collectively),
27 and their officers and employees, while acting within
28 the scope of their authority, shall be included as

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1 additional insureds, such insurance to be primary and
2 any other insurance, deductible, retention or self
3 insurance maintained by the foregoing shall not
4 contribute with such primary insurance.

5 17.1.2 The policy shall cover each insured
6 against whom claim is or may be made, in the same
7 manner as if separate policies had been issued to
8 each named and additional insured, except that the
9 limits of insurance shall not be increased thereby.

10 17.1.3 Said policy or policies shall either
11 contain a blanket form of contractual liability
12 coverage or there shall be attached to said policy or
13 policies an endorsement, providing that such
14 insurance as is provided for therein shall apply to
15 the obligations of indemnity assumed by Lessee under
16 this Lease.

17 17.1.4 Said policy or policies shall not be
18 cancelled or coverage reduced until a thirty-day
19 written notice of cancellation has been served upon
20 the Executive Director by registered or certified
21 mail.

22 17.1.5 If any of the required insurance is
23 provided on a "claims-made" basis, any "prior acts"
24 coverage or "retroactive date" on such insurance and
25 all subsequent insurance shall be as of the first
26 date of the the "claims-made" coverage. Upon
27 expiration or termination of coverage of required
28 insurance, Lessee shall procure "tail" coverage or an

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1 extended reporting coverage period endorsement and
2 submit proof thereof in accordance with the pro-
3 visions of subparagraph 17.4.

4 17.1.6 Such insurance provided by Lessee may
5 provide for such deductibles or self-insured
6 retention as shall be acceptable to the Executive
7 Director in his reasonable discretion.

8 17.2 Lessee, at its cost, shall procure and
9 maintain in full force and effect while this Lease shall
10 remain in effect workers' compensation and longshoremen's
11 and harbor workers' compensation insurances to the extent
12 required by law. The provisions of subparagraph 17.4
13 shall be applicable to the insurances required by this
14 paragraph.

15 17.3 The City of Long Beach, the Board of Harbor
16 Commissioners, and their officers and employees shall not
17 be liable for the payment of any premiums or assessments
18 on any policy or policies required under this paragraph
19 17.

20 17.4 Lessee shall deliver said policy or policies
21 of insurance, or certified photostatic copies thereof, or
22 certificates of insurance identifying same, together with
23 an endorsement bearing original signatures to the general
24 liability policy or policies satisfying the above
25 requirements and in form approved by the Board of Harbor
26 Commissioners, to the Executive Director for approval as
27 to sufficiency and to the City Attorney for approval as to
28 form. At least fifteen (15) days prior to the expiration

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1 of any such policy, a certificate, showing that such
2 insurance coverage has been renewed or extended, shall be
3 filed with the Executive Director. If such coverage is
4 cancelled or reduced, Lessee shall, within ten (10) days
5 after receipt of written notice of such cancellation or
6 reduction of coverage, file with the Executive Director an
7 endorsement or certificate showing that the required
8 insurance has been reinstated or provided through another
9 insurance company or companies, and said policy shall be
10 submitted for approval as herein provided.

11 17.5 The procuring of such policy or policies of
12 insurance shall not be construed to be a limitation in any
13 respect upon Lessee's obligation or indemnity hereunder.

14 **18. ACCESS**

15 18.1 Lessee, its agents, employees, and third
16 persons using the Premises with the consent and approval
17 of Lessee, shall have access to the Premises over the
18 street system and other property owned or controlled by
19 City, but only in connection with the business operations
20 of Lessee on the Premises.

21 18.2 City's authorized representatives shall have
22 access to the Premises at any and all reasonable times,
23 for the purpose of determining whether or not Lessee is
24 complying with the terms and conditions hereof, for fire
25 and police purposes, or for any other purposes incidental
26 to the rights or duties of City. This right of inspection
27 reserved to City shall impose no obligation on City to
28 make inspections to ascertain the condition of the

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1 Premises and shall impose no liability upon City for
2 failure to make such inspection.

3 **19. SIGNS**

4 No signs or placards of any type or design,
5 except safety or regulatory signs prescribed by law, shall be
6 painted, inscribed or placed in or on the Premises or any
7 building or structure located thereon without the prior written
8 consent of the Executive Director, which consent shall not be
9 unreasonably withheld. Lessee, at its cost, agrees to remove
10 promptly and to the satisfaction of the Executive Director,
11 upon the expiration or termination of this Lease, any and all
12 signs and placards placed by it upon the Premises.

13 **20. DEFAULT**

14 20.1 If either party should fail to perform any
15 of its obligations hereunder (except when such failure
16 shall be excused under other provisions hereof), the
17 non-defaulting party may give written notice to the party
18 in default, stating specifically the default or breach
19 relied upon by the party giving the notice as justifying
20 termination hereof.

21 20.1.1 If the default or breach is not
22 remedied within thirty (30) days, if it can be
23 remedied within that period, or if the party in
24 default fails to commence promptly and attempt
25 diligently to remedy the same where the default or
26 breach is not remediable within thirty (30) days
27 after said written notice, the party not in default
28 shall have the right forthwith to terminate this

1 Lease.

2 20.1.2 If within the thirty (30) day period
3 the party in default does remedy or remove said
4 default or breach, or commences promptly and
5 continues diligently to attempt to remedy or remove
6 the same where not remediable within the thirty (30)
7 day period and agrees to fully indemnify the party
8 not in default from any and all loss and liability
9 resulting from such default or breach, the notice
10 shall be deemed withdrawn and this Lease shall
11 continue in full force and effect.

12 Upon any such termination by City, all improvements of
13 whatsoever character constructed, erected or installed
14 upon the Premises by Lessee shall, at City's option and
15 upon declaration of a forfeiture by City's Board,
16 immediately become the property of City as provided in
17 Subsection 1207(i) of the City Charter.

18 20.2 In the event of termination of this Lease by
19 City due to the default of Lessee, or in case of
20 abandonment or vacation of the Premises by Lessee, and if
21 City does not elect to invoke a forfeiture of this Lease,
22 Lessee hereby irrevocably appoints City as the agent of
23 Lessee to enter upon the Premises, to remove any and all
24 persons and/or property whatsoever situated upon the
25 Premises, and to place all or any portion of said property
26 (except such property as may be forfeited to City) in
27 storage for the account of, and at the expense of, Lessee.
28 In such case, City may assign or lease the Premises upon

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1 such terms as it deems proper. If a sufficient sum shall
2 not be thus realized after collecting compensation and
3 paying expenses of such assignment or lease to satisfy the
4 compensation and other sums to be paid by Lessee to City
5 hereunder, Lessee agrees to satisfy and pay any deficiency
6 and to pay expenses of such assignment or leasing and
7 collecting. Lessee agrees to save City harmless from any
8 cost, loss or damage arising out of or caused by any such
9 entry or re-entry upon the Premises and/or the removal of
10 persons and/or property and storage of such property by
11 City or its representative.

12 **21. FORCE MAJEURE:**

13 Neither City nor Lessee shall be deemed to be in
14 default in the performance of the terms, covenants or
15 conditions of this Lease if such party is prevented from
16 performing said terms, covenants or conditions by causes beyond
17 its control, including, without limiting the generality of such
18 causes, acts of God or the public enemy, failures due to
19 nonperformance or delay of performance by suppliers or
20 contractors, any order, directive or other interference by
21 municipal, state, federal or other governmental official or
22 agency, any catastrophe resulting from the elements, flood,
23 fire, explosion, or any other cause reasonably beyond the
24 control of the defaulting party, but excluding strikes or other
25 labor disputes, lockouts or work stoppages (the effects of
26 which events shall be determined in accordance with the
27 provisions of subparagraph 6.6 above), as the circumstances may
28 indicate. In the event of the happening of any of such

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1 contingencies, the party delayed by such force majeure shall as
2 soon as practicable give the other party written notice of such
3 contingency, specifying the cause for delay or failure, and
4 such notice from the party delayed shall be prima facie
5 evidence that the delay resulting from the causes specified in
6 the notice is excusable. The party delayed by force majeure
7 shall use reasonable diligence to remove the cause of delay,
8 and if and when the occurrence or condition which delayed or
9 prevented the performance of the party delayed shall cease or
10 be removed, the party delayed shall notify the other party
11 immediately, and the delayed party shall recommence its
12 performance of the terms, covenants and conditions of this
13 Lease.

14 **22. TERMINATION BY ACTIONS OF OTHERS**

15 22.1 In the event the United States of America,
16 the State of California, or any agency or instrumentality
17 of said governments (other than the City of Long Beach)
18 shall, by condemnation or otherwise, take title,
19 possession or the right to possession of the Premises or
20 any part thereof, City may, at its option, and, if the
21 taking has substantially impaired the utility of the
22 Premises to Lessee, Lessee may, at its option, terminate
23 this Lease as of the date of such taking, and all further
24 rights and obligations of the parties shall thereupon
25 terminate, except as to liabilities which shall have
26 accrued prior to the date of taking. The condemnation
27 proceeds related to the land and improvements constructed
28 by City shall belong to City, and the proceeds related to

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1 the improvements constructed by Lessee shall belong to
2 whichever party is the owner of said improvements as of
3 the date of taking.

4 22.2 In the event any court having jurisdiction
5 in the matter shall render a decision which has become
6 final and which will prevent the performance by City or
7 Lessee of any of its obligations hereunder, then either
8 party hereto may terminate this Lease by written notice
9 and all further rights and obligations of the parties
10 shall thereupon terminate, except as to liabilities which
11 shall have accrued prior to the date of termination.

12 **23. SURRENDER OF POSSESSION**

13 23.1 As used in this paragraph 23, "Lessee's
14 corporate predecessors" shall mean and include Continental
15 Coke Corporation, IMC Carbon Products, and Carbon Products
16 Division of International Minerals and Chemical
17 Corporation. The parties hereto agree that the products
18 handled by Lessee and its corporate predecessors on the
19 Premises up to the commencement date of this Lease have
20 been limited to petroleum coke and coal.

21 23.2 Upon the expiration or termination of this
22 Lease, and subject to the provisions of subparagraph 23.6
23 below, Lessee, at its cost, shall restore the Premises to
24 as good a state and condition as the same were in upon
25 taking possession thereof by Lessee's corporate
26 predecessors, excepting reasonable wear and tear and
27 damage by the elements and removal or modifications to the
28 facilities described in subparagraph 9.1 above which were

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Long Beach, California 90802
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1 authorized by City, and Lessee shall thereafter peaceably
2 surrender possession.

3 23.3 If Lessee or its corporate predecessors has
4 or have handled, stored, transported, transferred or
5 received any product on the Premises during the term of
6 this Lease or any prior lease which is classified by any
7 federal or state agency as an "extremely hazardous or
8 hazardous material" and such product has contaminated the
9 Premises or adjacent property (including structures, soil
10 or groundwater), Lessee, at its cost and to the
11 satisfaction of the City, shall remove from the Premises,
12 neutralize or dissipate on the Premises any such
13 contaminant or contaminants in accordance with a remedial
14 plan or plans approved by all governmental agencies having
15 jurisdiction. If removal shall be required by an approved
16 remedial plan, Lessee shall remove and properly dispose of
17 the contaminant in accordance with applicable governmental
18 rules, regulations, orders or guidelines and shall replace
19 such soil, material or groundwater with clean fill dirt,
20 material or water as directed by the City and in
21 conformance with such approved remedial plan.

22 23.4 If Lessee during its occupancy of the
23 Premises under this Lease contaminates the Premises or
24 adjacent property (including structures, soil or
25 groundwater) in any manner, Lessee shall promptly notify
26 the City and, at Lessee's cost, shall immediately take
27 steps to remove the contaminant to the City's satisfaction
28 and perform such soil and groundwater testing at a

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1 certified testing laboratory as City deems necessary.

2 23.5 Lessee understands and agrees it is
3 responsible for complete restoration of the Premises and
4 any area it or its corporate predecessors has or have
5 contaminated before the expiration of this Lease. If, for
6 any reason, such restoration is not completed before such
7 expiration, then Lessee is obligated to pay City
8 compensation during such restoration as determined by the
9 then fair market value of the land and the Harbor
10 Department's then established rate of return. If Lessee
11 disposes of any contaminated soil, material or
12 groundwater, Lessee shall provide City copies of all
13 records indicating the type of material being disposed of
14 as indicated on a uniform Hazardous Waste Manifest, the
15 method of transportation of the material to the disposal
16 site and the location of the disposal site.

17 23.6 Except as provided in subparagraph 9.2 in
18 connection with initial construction of improvements,
19 Lessee shall not be responsible for removal or treatment
20 of any contaminant determined to be present on the
21 Premises prior to occupancy of same by Lessee or its
22 corporate predecessors under this Lease or any prior
23 lease.

24 23.7 Except in case of termination by City due to
25 the default of Lessee, as provided in paragraph 20 above,
26 all improvements of any kind constructed, erected or
27 installed upon the Premises by Lessee during or prior to
28 the term of this Lease shall be and remain the property of

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1 Lessee until the expiration or termination of this Lease.
2 Upon such expiration or termination, unless City consents
3 to accept conveyance of all of Lessee's improvements
4 without payment of compensation therefor, Lessee shall
5 remove all of its improvements within sixty (60) days
6 after such expiration or termination, repair at its cost
7 any damage caused by such removal and leave the Premises
8 in a clear, level-graded condition. If Lessee shall not
9 remove its improvements and repair such damage, if any,
10 within said sixty (60) day period, City shall have the
11 right to remove and/or sell and/or destroy the same at the
12 expense of Lessee, and Lessee agrees to pay to City the
13 reasonable cost of any such removal, sale or destruction.
14 The obligations contained in this subparagraph shall
15 remain in full force and effect, notwithstanding the
16 expiration or termination of this Lease.

17 23.8 Any and all personal property used by Lessee
18 in its operations upon the Premises (whether or not such
19 property be owned by Lessee or by third parties other than
20 City), Lessee shall cause all such property to be removed
21 from the Premises on or before the date of expiration or
22 earlier termination and shall cause to be repaired any
23 damage occasioned by such removal. If such property is
24 not so removed from the Premises, City shall have the
25 right to remove and/or sell and/or destroy the same
26 (subject to the interest of any person other than Lessee
27 therein) at Lessee's expense, and Lessee agrees to pay the
28 reasonable cost of any such removal, sale or destruction.

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1 The obligations contained in this subparagraph shall
2 remain in full force and effect, notwithstanding the
3 expiration or termination of this Lease.

4 **24. HOLDING OVER:**

5 If Lessee shall hold over after the expiration of
6 the term of this Lease for any cause, such holding over shall
7 be deemed a tenancy from month to month only, and upon the same
8 terms, conditions and provisions of this Lease as are in effect
9 as of the date of expiration, except as to compensation, which
10 shall be established by the Executive Director at a level
11 consistent with other leases of similar facilities then in
12 effect.

13 **25. RELOCATION ASSISTANCE**

14 Nothing contained herein shall create any right
15 in Lessee for relocation assistance or payment from City upon
16 the expiration or termination of this Lease or upon the
17 termination of any holdover period. Lessee acknowledges and
18 agrees that it shall not be entitled to any relocation
19 assistance or payment from City pursuant to the provisions of
20 Title 1, Division 7, Chapter 16, of the Government code of the
21 State of California (Sections 7260 et seq.) with respect to any
22 relocation of its business or activities upon the expiration of
23 the term of this Lease or upon its earlier termination or upon
24 the termination of any holdover tenancy.

25 **26. ASSIGNMENT**

26 26.1 Except as otherwise provided herein Lessee
27 shall not assign or transfer this Lease or any interest
28 therein, nor its right to use the whole or any part of the

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1 Premises, nor shall this Lease or any interest thereunder
2 be assignable or transferable by operation of law or by
3 any process or proceeding of any court, or otherwise,
4 without the written consent of City first obtained. City
5 agrees that it will not unreasonably withhold such
6 consent. In the event City gives such written consent to
7 Lessee, a copy of the assignment agreement shall be
8 provided to City.

9 26.2 Notwithstanding the foregoing, Lessee,
10 without securing City's consent but after fifteen (15)
11 days' written notice to City, may assign this Lease or
12 sublet the Premises, in whole or in part, if (i) Lessee's
13 assignee or sublessee shall have a net worth, determined
14 in accordance with generally accepted accounting
15 principles, at least equal to the net worth similarly
16 determined of Lessee immediately prior to such assignment
17 or subletting, and if (ii) such assignment or subletting
18 occurs in connection with (a) the sale of substantially
19 all of Lessee's business, or (b) the sale of that portion
20 of Lessee's business conducted from the Premises and
21 portion of Lessee's business conducted from the Premises
22 and other locations in the greater Long Beach/Los Angeles
23 metropolitan area. No such assignment of subletting shall
24 relieve Lessee of its liabilities under the Lease. Lessee
25 may also assign the Lease for security purposes to
26 Lessee's principal lenders, but such lenders shall have no
27 right to receive notices of Lessee's default under the
28 Lease or to cure Lessee's default as a condition to City's

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1 exercise of its remedies. Any use and occupancy of the
2 Premises by an entity which controls, is controlled by, or
3 is under common control with Lessee shall be deemed a use
4 and occupancy of the Premises by Lessee and not be deemed
5 a subletting or assignment for which City's consent is
6 required.

7 **27. DAMAGE AND DESTRUCTION**

8 27.1 In addition to the insurance required under
9 paragraph 17, Lessee, at its cost, shall procure and
10 maintain in effect a policy or policies of insurance,
11 insuring Lessee to the extent of at least the full
12 replacement value of Lessee's improvements against loss by
13 reason of destruction or damage of said improvements from
14 fire and other hazards covered by a standard form of fire
15 insurance policy bearing an extended coverage endorsement.
16 The provisions of subparagraph 17.5 shall be applicable to
17 the insurance required by this paragraph.

18 27.2 In the event of partial destruction of or
19 damage to the building or other improvements owned by
20 Lessee during the term hereof, Lessee shall apply the
21 proceeds of said insurance policy or policies to the
22 repair or restoration of any damaged part or portion of
23 the Premises to a condition comparable to that existing
24 prior to such damage or destruction, provided that all
25 necessary permits required for such repair or restoration
26 can be obtained.

27 27.3 In the event of total destruction or such
28 substantial damage or destruction that the Premises and

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1 improvements are substantially unusable by Lessee in the
2 conduct of its operations, either party may terminate this
3 Lease by giving a thirty (30) day written notice of its
4 intention to so terminate to the other party.

5 **28. HAZARDOUS SUBSTANCES AND ACTIVITIES**

6 Lessee shall not handle any substances classified
7 as hazardous materials under any federal, state or local law
8 without the City's prior written consent. No goods,
9 merchandise or material shall be kept, stored or sold in or on
10 the Premises which are in any way explosive or hazardous
11 without complying with applicable federal, state and local
12 laws, rules, regulations, and orders. No offensive or
13 dangerous trade, business or occupation shall be conducted on
14 the Premises, and nothing shall be done therein or thereon,
15 other than as is provided for in paragraph 4 hereof, which will
16 increase the rate of suspend the insurance upon the Premises
17 hereby leased to Lessee or upon adjacent buildings or other
18 structures owned by the City. No machinery or apparatus shall
19 be used or operated on said premises which will in any way
20 injure the Premises or adjacent structures. However, nothing
21 contained in this paragraph shall preclude Lessee from
22 bringing, keeping or using, on or about said Premises and
23 structures, such materials, supplies, equipment and machinery
24 as are necessary or customary in carrying out the uses
25 specified in paragraph 4 hereof.

26 **29. MISCELLANEOUS PROVISIONS**

27 29.1 Any notice, demand, request, consent,
28 approval or communication that either party desires or is

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1 required to give to the other party or any other person
2 shall be in writing and either served personally or sent
3 by prepaid, first-class mail addressed as follows:

4 To City: Executive Director
5 Long Beach Harbor Department
6 P.O. Box 570
7 Long Beach, California 90801

8 To Lessee: Applied Industrial Materials
9 Corporation
10 100 First Stamford Place
11 Stamford, Connecticut 06904

12 with a copy to: Applied Industrial Materials
13 Corporation
14 1270 Pier G Avenue
15 Long Beach, California 90802

16 Either party may change its address by notifying the other
17 party of a change of address. Notice shall be deemed
18 communicated within forty-eight (48) hours from the time
19 of mailing if mailed as provided in this paragraph, and
20 upon receipt if personally served.

21 29.2 In the performance of this Lease, Lessee
22 shall not discriminate against any employee or applicant
23 for employment or any person using or desiring to use the
24 Premises because of age, sex, religion, race, color,
25 ancestry, national origin, handicapped condition or
26 because, in whole or in part, the person has AIDS or an
27 AIDS related condition. Lessee will take affirmative
28 action to ensure that applicants are employed, that
employees are treated during employment and that persons
desiring to use the Premises are treated without regard to
their age, sex, religion, race, color, ancestry, national
origin, handicapped condition or the fact that the person

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1 has AIDS or an AIDS related condition. Such action shall
2 include, without limitation, the following: employment,
3 promotion, demotion or transfer; recruitment or
4 recruitment advertising; layoff or termination; rates of
5 pay or other forms of compensation; selection for
6 training, including apprenticeship; and maintenance of the
7 Premises and facilities in a condition permitting
8 reasonable access thereto by handicapped persons. Lessee
9 shall post in conspicuous places notice setting forth the
10 provisions of this paragraph.

11 29.3 The parties acknowledge that there is now
12 pending in the United States District Court, Central
13 District of California, an action entitled "SSM Coal North
14 America, Inc., dba SSM Carbon, vs. City of Long Beach"
15 Case No. CV89 3366 RJK(B) ("Action") by which action the
16 plaintiff, among other things, is attempting to secure the
17 exclusive right to negotiate for Pad 14 on Pier G in the
18 Long Beach Harbor District. The parties hereto hereby
19 waive all claims against the other for damage or loss
20 caused by the Action or any other suit or proceeding,
21 directly or indirectly attacking the validity of this
22 Lease, or any part thereof, or by any judgment or award in
23 the Action or any other suit or proceeding declaring this
24 Lease null, void or voidable, or delaying the same, or any
25 part thereof, from being carried out, provided that Lessee
26 shall not be liable for payment of compensation hereunder
27 to the extent that, during any period, it is so prevented
28 from exercising its rights hereunder. Notwithstanding

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1 anything to the contrary contained herein, the dates set
2 forth in Paragraph 9 above shall be extended by one day
3 for each day after April 30, 1990 prior to the date that
4 final judgment is entered in the Action, with all appeals
5 having been exhausted and/or the time in which to file any
6 appeal having expired.

7 29.4 Except as may be determined in the Action
8 referred to and described in subparagraph 29.3, City
9 warrants and represents that it has full power and
10 authority and the unrestricted right to enter into,
11 execute and deliver this Lease. The execution and
12 delivery of this Lease will not violate any provision of
13 City's municipal charter, or any law, ordinance,
14 regulation, indenture, agreement or contract to which the
15 City is a party or by which it is bound.

16 29.5 City covenants that Lessee, after entry of a
17 final judgment in the Action referred to and described in
18 subparagraph 29.3 and upon performance of Lessee's
19 obligations hereunder, shall have quiet possession and
20 enjoyment of the Premises of the term hereof.

21 29.6 The use of paragraph headings or captions
22 herein is solely for the purpose of convenience, and the
23 same shall be entirely disregarded in construing any part
24 or portion hereof.

25 29.7 This Lease shall be governed by the laws of
26 the State of California, both as to interpretation and
27 performance.

28 29.8 No waiver by either party at any time of any

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1 of the terms, conditions, covenants or agreements
2 contained herein shall be deemed or taken as a waiver at
3 any time thereafter of the same or any other term,
4 condition, covenant or agreement contained herein nor of
5 the strict and prompt performance thereof by the party
6 obligated to perform. No delay, failure or omission of
7 either party to exercise any right, power, privilege or
8 option arising from any default nor subsequent acceptance
9 of compensation then or thereafter accrued shall impair
10 any such right, power, privilege or option or be construed
11 to be a waiver of any such default or relinquishment
12 thereof or acquiescence therein. No option, right, power,
13 remedy or privilege of either party hereto shall be
14 construed as being exhausted or discharged by the exercise
15 thereof in one or more instances. It is agreed that each
16 and all of the rights, powers, options or remedies given
17 to the parties by this Lease are cumulative, and no one of
18 them shall be exclusive of the other or exclusive of any
19 remedies provided by law, and that the exercise of one
20 right, power, option, or remedy by a party shall not
21 impair its rights to any other right, power, option or
22 remedy.

23 29.9 This Lease shall be binding upon and shall
24 enure to the benefit of the successors and assigns of City
25 and shall be binding upon and enure to the benefit of the
26 permitted successors and assigns of Lessee.

27 29.10 Should any of the covenants, conditions or
28 agreements contained herein be held by a court of

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1 competent jurisdiction to be illegal or in conflict with
2 any applicable law, or with any provision of the Charter
3 of the City of Long Beach, the validity of the remaining
4 portions or provisions shall not be affected thereby if
5 Lessee's use of the Premises is not substantially
6 impaired.

7
8 29.11 The parties hereto agree that this Lease may
9 be amended or terminated at any time by the mutual
10 agreement of the parties.

11 29.12 This document constitutes the whole
12 agreement between City and Lessee. There are no terms,
13 obligations or conditions other than those contained
14 herein. No modification or amendment hereof shall be
15 valid and effective, unless evidenced by an agreement in
16 writing and signed by the parties making specific
17 reference to this Lease.

18 **30. TERMINATION OF PRIOR LEASE**

19 This Lease is a successor to an existing lease
20 entered into on September 5, 1974 between City and Lessee's
21 predecessor in interest (Harbor Department Document No.
22 HD-2521, as amended). Upon the commencement of the term
23 hereof, said Document No. HD-2521 shall terminate and be of no
24 further force or effect, except as to rights and obligations of

25 /
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27 /
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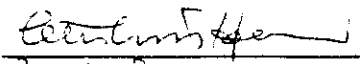
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Telephone (213) 590-6061

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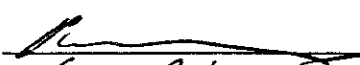
the parties arising prior to said date of termination.

APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation

Dated: May 17, 1990

By: 
Name: Peter Scott-Hansen
Title: V.P. Carlson Products Group


Dated: May 17, 1990

By: 
Name: Vincent P. Kennedy
Title: V.P. Carlson Products Group

LESSEE

CITY OF LONG BEACH, a municipal corporation, by and through its Board of Harbor Commissioners

Dated: 6-28-, 1990

By: 


Acting Executive Director
Long Beach Harbor Department

CITY

The foregoing Lease is hereby approved as to form.

JOHN R. CALHOUN, City Attorney

Date: May 31, 1990

By: 
Richard L. Landes, Deputy

RLl:mm
4/30/90
AIMCOR.2 (Hard Drive)

State of Connecticut

ss. Stamford, CT, 5/17/90

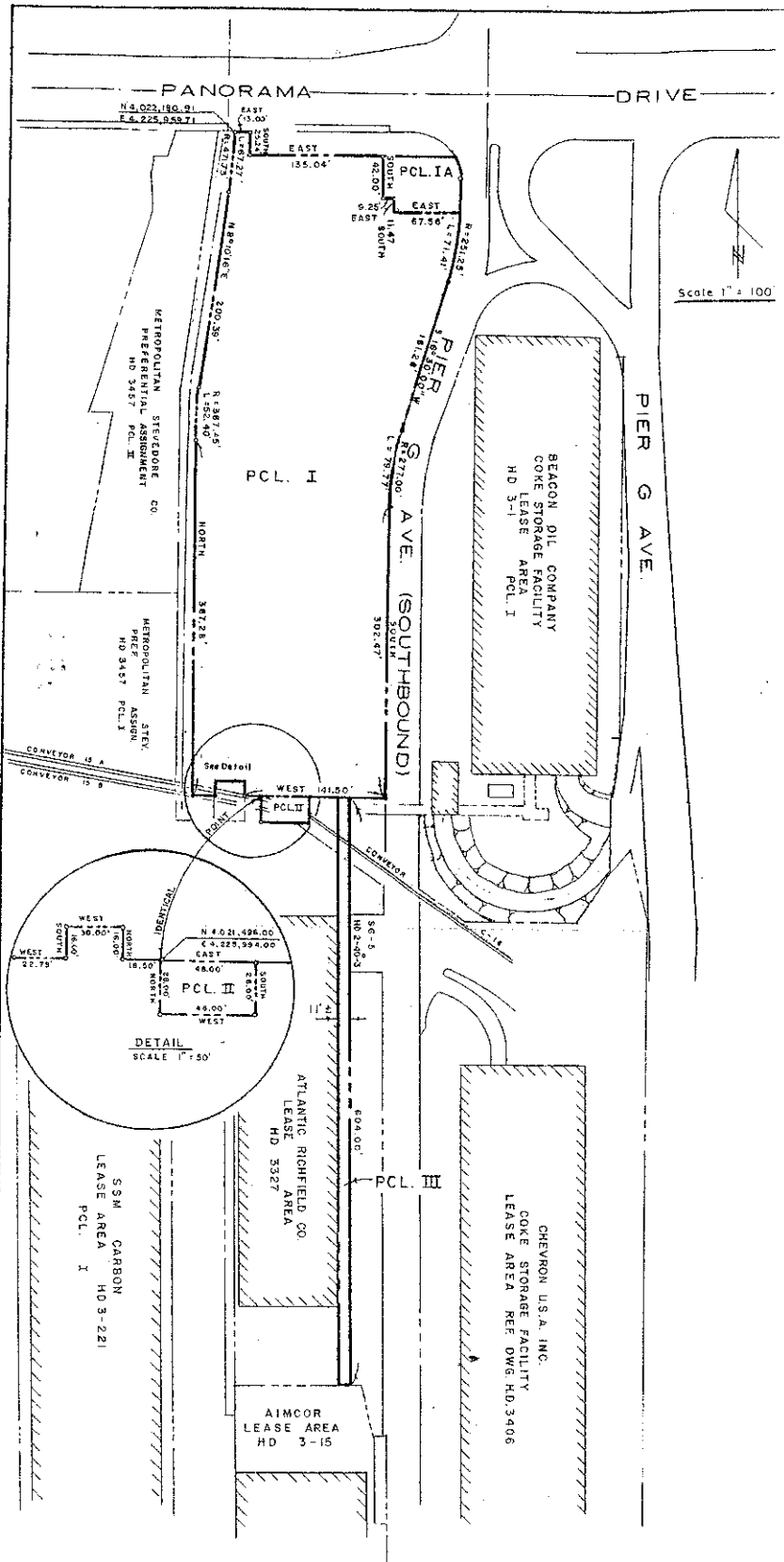
County of Fairfield

On this the 17th day of May, 1990, before me, Mary J. Appleman, the undersigned officer, personally appeared Peter Scott-Hansen and Vincent P. Kennedy of Applied Industrial Materials Corp., a corporation, and that they as President and Vice President respectively, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as President and Vice President.

In witness whereof I hereunto set my hand.

Mary J. Appleman

Date Commission Expires: 3/31/95



PCL. IA = 3,970 ± SQ. FT.
 PCL. I = 132,673 SQ. FT.
 PCL. II = 1,344 SQ. FT.
 PCL. III = 6,844 ± SQ. FT.
 TOTAL AREA = 144,631 ± SQ. FT.

EXHIBIT A

PORT OF LONG BEACH - CALIFORNIA
 OFFICE OF THE EXECUTIVE DIRECTOR
 SCALE 1" = 100' DATE 1-25-90
 DESIGNED _____
 DRAWN G.D.S. *G.D.S.*
 CHECKED N.L.A. *N.L.A.* LS 3881

PIER 6 1029 PIER 6 AVE.
 APPLIED INDUSTRIAL MATERIALS CORPORATION
 (AIMCOR)
 LEASE AREA HD 4-89

1 SECOND AMENDMENT TO LEASE

2
3 THIS SECOND AMENDMENT TO LEASE is made and entered into
4 as of the 23rd day of December, 1998, by and between CITY
5 OF LONG BEACH, a municipal corporation, acting by and through its
6 Board of Harbor Commissioners ("City"), pursuant to Ordinance No.
7 HD-1785, adopted by said Board at its meeting of November 23,
8 1998, and APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware
9 corporation ("Lessee").

10 1. RECITALS:

11 1.1 City and Lessee entered into a lease for certain
12 premises on Pier G on June 29, 1990 (HD-4757). The lease was
13 amended on February 29, 1996 (HD-4757A).

14 1.2 City and Lessee have now negotiated compensation
15 and insurance provisions for the third segment of the lease
16 and have agreed to extend the term of the lease by ten (10)
17 years.

18 2. TERM:

19 The term of the lease shall be for a period of
20 thirty-one (31) years and two (2) months commencing on May 1, 1990,
21 and ending on June 30, 2021. For purposes of renegotiation of
22 compensation, the remainder of said term shall be divided into four
23 (4) segments of five (5) years each and one (1) segment of two (2)
24 years.

25 3. GROUND RENT:

26 Pursuant to the provisions of paragraph 8 of the
27 lease, the parties have renegotiated the ground rent for that
28 portion of the term of the lease commencing July 1, 1999 and ending

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333 West Ocean Boulevard
Long Beach, California 90802-4664
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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 June 30, 2004.

2 For said five (5) year period, Lessee shall pay to
3 City as ground rent the sum of Two Hundred Fourteen Thousand Eight
4 Hundred Thirty Dollars (\$214,830.00) per year, payable in four (4)
5 equal quarterly installments on July 1, October 1, January 1 and
6 April 1 of each calendar year. Ground rent for any subsequent
7 segment of the term shall be subject to renegotiation and
8 arbitration in accordance with paragraph 8 of the lease.

9 4. OTHERWISE UNCHANGED:

10 Except as otherwise stated herein, all of the other
11 terms and conditions of the lease shall remain unchanged and in
12 full force and effect.

13 APPLIED INDUSTRIAL MATERIALS
14 CORPORATION, a Delaware corporation

15
16 Oct. 22, 1998

16 By: [Signature]
17 Name: FEYEL SCOTT HANSON
17 Title: CEO and President

18
19 Oct 22, 1998
20 Nancy J. Appelman
20 Deputy Public
20 Works Commissioner
21 April 30, 2000

19 By: [Signature]
20 Name: Walter P. Kennedy
20 Title: Vice President - President Carbon Group

21 LESSEE

22 CITY OF LONG BEACH, a municipal
23 corporation, acting by and through
24 its Board of Harbor Commissioners

25
26 12/23, 1998

26 By: [Signature]
27 for Richard D. Steinke,
27 Executive Director
27 Long Beach Harbor Department

28 CITY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Connecticut

County of Fairfield

On Oct. 22, 1998 before me, Mary J. Appleman, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Peter Scott-Hansen and Vincent P. Kennedy
Name(s) of Signer(s)

personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary J. Appleman
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Second Amendment to Lease

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

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The foregoing First Amendment to Lease is hereby approved
as to form.

ROBERT E. SHANNON, City Attorney

December 2, 1998

By: *Dominic Holzhaus*
Dominic T. Holzhaus, Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

DTH:dmp
9/18/98
A-4\APPLIED.1

BILL OF SALE

THIS IS A COPY
ORIGINAL FILED IN
THE RECORDS CENTER

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, OXBOW CARBON & MINERALS LLC, a Delaware limited liability company, as successor to APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation ("Lessee"), hereby sells, conveys, releases and quitclaims to the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), the Pad 14 Replacement Conveyors described in Exhibit "A" attached hereto ("Property").

This sale of property is pursuant to paragraph 9.6 of that certain lease for certain premises on Pier G on June 29, 1990 (HD-4757), as amended on February 29, 1996 (HD-4757A), December 23, 2003 (HD-4757B), and February 11, 2005 (HD-4757C). The lease as so amended is hereinafter referred to as the "Amended Lease." Lessee has received the reimbursement required to be paid by City under paragraph 9.6 of the Amended Lease.

Lessee represents and warrants as follows:

1. Lessee has full power and authority to execute and deliver this Bill of Sale conveying title to the Pad 14 Conveyors to City.
2. The Bill of Sale will convey to City good and marketable title to the Pad 14 Conveyors described herein, free and clear of any liens, charges and security interests.

Nothing in this Bill of Sale shall be deemed to waive or impair any rights of the City or any restrictions upon Lessee relating to or arising out of the Amended Lease with respect to the Property.

OXBOW CARBON & MINERALS LLC, a Delaware limited liability company, as successor to APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation

NOVEMBER 15, 2006

By: [Signature]
Name: JOSEPH LOMBARDI
Title: VP - WEST COAST BUSINESS

November 15, 2006

By: [Signature]
Name: ERU MYERS
Title: VP - WEST COAST TERMINALS

"Lessee"

CONVEYORS

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

On NOV. 15, 2006 before me, SHEILAH GRAGEDA, NOTARY PUBLIC

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JOSEPH LOMBARDI

Name(s) of Signer(s)

personally known to me

(or proved to me on the basis of satisfactory evidence)



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Sheilah Grageda
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: BILL OF SALE

Document Date: 11/15/2006 Number of Pages: 2

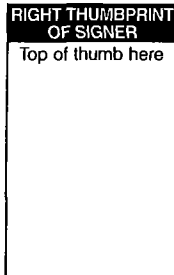
Signer(s) Other Than Named Above: ERV MYERS

Capacity(ies) Claimed by Signer(s)

Signer's Name: JOSEPH LOMBARDI

- Individual
- Corporate Officer — Title(s): VP
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

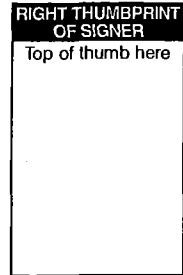
Signer Is Representing: _____



Signer's Name: ERV MYERS

- Individual
- Corporate Officer — Title(s): VP
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

On NOV. 15, 2006 before me, SHEILAH GRAGEDA, NOTARY PUBLIC

personally appeared ERV MYERS

personally known to me

(or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: BILL OF SALE

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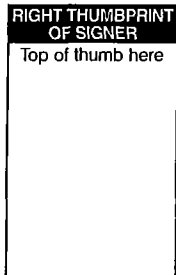
Signer(s) Other Than Named Above: JOSEPH LOMBARDI

Capacity(ies) Claimed by Signer(s)

Signer's Name: ERV MYERS

- Individual
- Corporate Officer — Title(s): VP
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Signer's Name: JOSEPH LOMBARDI

- Individual
- Corporate Officer — Title(s): VP
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

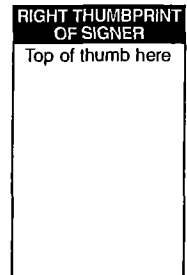


EXHIBIT "A"

Pad 14 Replacement Conveyors

Summary Scope of Work

The scope of work for the replacement of conveyors at Pad 14 includes the engineering, procurement, building permitting, fabrication, erection and commissioning of enclosed elevating conveyors C12 and C13, shuttle conveyor C13B, the enclosed Transfer Tower for transfer of material from C12 to C13, the rock ladders, foundations for all of the foregoing, C13B maintenance access and emergency egress platforms and ladders, a motor control center building, electrical feeders, motor control center, lighting, control hardware, dust suppression systems and associated utility services for all of the foregoing, including interfaces to existing Pad 14 systems.

Conveyors C12 and C13 are 48" wide belt conveyors, enclosed in steel tube structures, supported on steel bents set on concrete foundations. Shuttle conveyor C13B is a 48" wide reversing sliding shuttle conveyor, supported on the structure of the new Pad 14 Petcoke Enclosure, provided by others. The Transfer Tower supports the head end of C12, the tail end of C13 and houses the transfer chute and dust suppression equipment at the C12-C13 transfer point; the Transfer Tower is constructed of structural steel, partly enclosed with metal siding and set on a concrete foundation, probably including driven piling. The rock ladders are constructed of structural steel and are set on concrete foundations that straddle the existing reclaim tunnel. The electrical system includes a motor control center building with feeder from the existing main switchgear. The motor control center will include integral variable speed drive equipment and integral controls hardware for the new conveyors. The conveyor tubes, Transfer Tower and the C13B shuttle conveyor will be provided with lighting, power receptacles and controls ordinarily furnished as part of conveyor systems; all electrical systems will be classified Class 2, Division 1, Group F.

All of the facilities will be finished to a standard consistent with industrial bulk materials facilities located in a shoreline environment.

Engineering for the project includes the following elements that are not subject to competitive bidding requirements:

- Conveyor systems detail engineering including
- Site survey
- Geotechnical investigation
- Bid administration for construction bids

The construction of the conveyors, including procurement, building permitting, fabrication, erection and commissioning of the facilities described above will be awarded via competitive bidding.

1 Urban Consumers (base years 1982-84 = 100) for Los Angeles – Anaheim
2 – Riverside, published by the United States Department of Labor, Bureau
3 of Labor Statistics ('Index'), which is published for the month of January of
4 the then current year ('Current Index'), and with the Index published for
5 January 2009 ('Beginning Index'). The adjusted rent shall be determined
6 by multiplying the Fourth Amendment Base Rent by a fraction, the
7 numerator of which is the Current Index and the denominator of which is
8 the Beginning Index. Notwithstanding the foregoing, the adjusted rent
9 shall not be less than the Fourth Amendment Base Rent. Ground rent for
10 any segment of the term subsequent to June 30, 2014 shall be subject to
11 renegotiation and arbitration in accordance with paragraph 8 of the
12 Amended Lease."

13
14 3. Paragraph 17 of the Amended Lease is amended and restated in its
15 entirety as follows:

16
17 "17. INSURANCE. As a condition precedent to Lessee's
18 continued right to occupancy of the Premises, Lessee shall procure and
19 maintain in full force and effect during the term of the Lease, the following
20 policies of insurance.

21 "(a) Commercial General Liability Insurance which
22 affords coverage at least as broad as Insurance Services Office
23 'occurrence' form CG 00 01 with minimum limits of \$5,000,000 per
24 occurrence, and if written with an aggregate, the aggregate shall be
25 double the per occurrence limit required by this Lease. The policy
26 shall include coverage for (1) products - completed operations; (2)
27 contractual liability; (3) independent contractors; and (4) third party
28 action over claims. Defense costs shall be excess of limits.

1 “(b) Automobile Liability Insurance with coverage at
2 least as broad as Insurance Services Office Form CA 0001
3 covering ‘Any Auto’ (Symbol 1) with minimum limits of \$5,000,000
4 each accident.

5 “(c) Environmental Impairment Liability Insurance
6 to include onsite and offsite coverage for bodily injury (including
7 death and mental anguish), property damage, defense costs and
8 cleanup costs with minimum limits of \$5,000,000 per loss and
9 \$10,000,000 total all losses.

10 “(d) Workers’ Compensation Insurance, as required
11 by the State of California and Employer’s Liability Insurance with a
12 limit of not less than \$1,000,000 per accident for bodily injury and
13 disease, and any required coverage under the U.S.
14 Longshoremen’s and Harbor Workers’ Compensation Act (USL&H)
15 for employees performing services covered by said Act.

16 “(e) Property Insurance on an ‘All Risk’ basis equal
17 to the full replacement cost of the leasehold improvements with no
18 coinsurance clause.

19 “Insurance policies will not be in compliance with the Lease if
20 they include any limiting endorsement that have not been approved in
21 writing by City.

22 “The policy or policies of insurance for Commercial General
23 Liability, Automobile Liability and Environmental Impairment Liability shall
24 contain the following provisions or be endorsed to provide the following:

25 “(1) The Indemnified Parties shall be additional
26 insureds with regard to liability and defense of suits or claims
27 arising out of the Lease.

28 Additional insured endorsements shall not:

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- i. Be limited to ongoing operations;
- ii. Exclude contractual liability;
- iii. Restrict coverage to the sole liability of Lessee;
- iv. Contain any other exclusion contrary to the Lease.

“(2) This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the Indemnified Parties shall not contribute with this primary insurance.

“(3) The policy shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor Department except notice of ten (10) days shall be allowed for non-payment of premium.

“The policy or policies of insurance for Workers’ Compensation shall be endorsed, as follows:

“(1) A waiver of subrogation stating that the insurer waives all rights of subrogation against the Indemnified Parties.

“(2) The policy or policies shall not be canceled or coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor except notice of ten (10) days shall be allowed for non-payment of premium.

“The policy or policies of insurance for Property Insurance shall be endorsed, as follows:

“(1) A waiver of subrogation stating that the insurer waives all rights of subrogation against the Indemnified

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Parties.

“(2) The policy or policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor except notice of ten (10) days shall be allowed for non-payment of premium.

“(3) Losses payable under this policy shall be adjusted with the named insured and paid to City as its interests may appear.

“Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the Indemnified Parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

“Lessee shall deliver either certified copies of the required policies or endorsements on forms approved by the City (‘evidence of insurance’) to the Executive Director for approval as to sufficiency and as to form. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Executive Director. If such coverage is canceled or reduced, Lessee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Executive Director evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

“The coverage provided shall apply to the obligations assumed by the Lessee under the indemnity provisions of this Lease, but this insurance provision in no way limits the indemnity provisions and the

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indemnity provisions in no way limit this insurance provision.

“Lessee agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City. The City shall have the right to withhold any payment due Lessee until Lessee has fully complied with the insurance provisions of this Lease.

“Each such policy shall be from a company or companies with a current A.M. Best’s rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

“If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide with or precede the effective date of the Lease and continuous coverage shall be maintained or Lessee shall obtain and submit to City an extended reporting period endorsement for a period of at least three (3) years from termination or expiration of this Lease.

“Upon expiration or termination of coverage of required insurance, Lessee shall procure and submit to City evidence of ‘tail’ coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from termination or expiration of this Lease.”

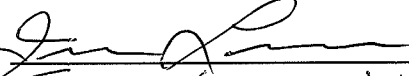
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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

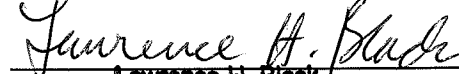
1 4. Except as otherwise stated in this Fourth Amendment, all of the other
2 terms and conditions of the Amended Lease shall remain unchanged and in full force and
3 effect.

OXBOW CARBON & MINERALS, LLC, a
Delaware limited liability company, as
successor to APPLIED INDUSTRIAL
MATERIALS CORPORATION, a
Delaware corporation

7 SEPTEMBER 24, 2009

By: 
Name: JOSEPH LOMBARDI
Title: VICED PRESIDENT BUSINESS


9 October 1, 2009

By: 
Name: Lawrence H. Black
Title: Executive Vice President

LESSEE

CITY OF LONG BEACH, a municipal
corporation, acting by and through its
Board of Harbor Commissioners

15 12-8, 2009

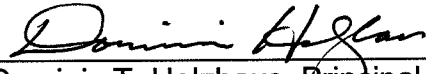
By: 
Richard D. Steinke
Executive Director
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

21 12/3, 2009

By: 
Dominic T. Holzhaus, Principal Deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On 9-24-09 before me, Nancy L. Mitchell, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Joseph Leonard Lombardi
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Nancy L. Mitchell
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Fourth Amendment to Lease

Document Date: _____ Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

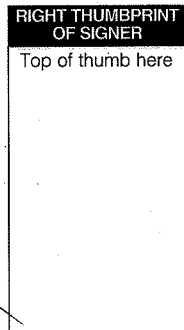
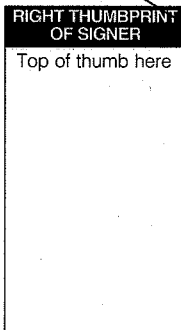
Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

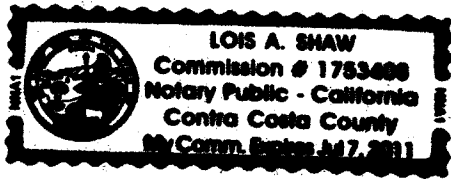
On 10-5-09 before me, Lois A. Shaw, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Lawrence H. Black
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: Lois A. Shaw
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Fourth Amendment to Lease

Document Date: 10-1-09 Number of Pages: 7

Signer(s) Other Than Named Above: Joseph Leonard Lombardi

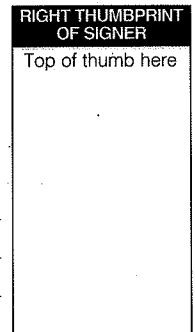
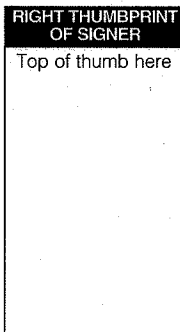
Capacity(ies) Claimed by Signer(s)

Signer's Name: Lawrence H. Black Signer's Name: _____

Corporate Officer — Title(s): EVP Corporate Officer — Title(s): _____

Individual Partner — Limited General Attorney in Fact Trustee Guardian or Conservator Other: _____

Signer Is Representing: _____



1 THIRD AMENDMENT TO LEASE

2

3 **THIS THIRD AMENDMENT TO LEASE** is made and entered into as

4 of the 11th day of February 2005, ~~2004~~, by and between **CITY OF**

5 **LONG BEACH**, a municipal corporation, acting by and through its

6 Board of Harbor Commissioners ("**City**"), pursuant to Ordinance No.

7 HD- 1925, adopted by said Board at its meeting of January 10, 2005

8 ~~2004~~, and **OXBOW CARBON & MINERALS LLC**, a Delaware limited liability

9 company, as successor to **APPLIED INDUSTRIAL MATERIALS CORPORATION**,

10 a Delaware corporation ("**Lessee**").

11 **1. RECITALS:**

12 1.1 City and Lessee entered into a lease for

13 certain premises on Pier G on June 29, 1990 (HD-4757).

14 The lease was amended on February 29, 1996 (HD-4757A) and

15 December 23, 2003 (HD-4757B). The lease, as so amended,

16 is hereinafter referred to as the "Amended Lease".

17 1.2 Lessee has requested rent relief from City,

18 due, in substantial part, to amended South Coast Air

19 Quality Management District Rule 1158 and AB 1775 which

20 prevented Lessee from using the premises for the

21 uncovered storage and handling of coke as of January 1,

22 2001.

23 1.3 Lessee has also requested to be reimbursed

24 for its construction of conveyors at Pad 14 and to

25 thereafter convey title to such conveyors to City.

26 1.4 City is willing to grant Lessee rent relief

27 and to reimburse Lessee for the construction of conveyors

28 on the terms and conditions set forth herein.

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 2. Paragraph 6.1.1 of the Amended Lease is amended and
2 restated in its entirety to read as follows:

3 "6.1.1 The word "lease year" as used herein shall
4 mean the twelve (12) consecutive month period commencing
5 on July 1 of each calendar year during the term hereof
6 and ending on the following June 30. Any period which is
7 less than a lease year shall be deemed and called a
8 "partial lease year." For any partial lease year, ground
9 rent (as defined in paragraph 6.2) and the Guaranteed
10 Minimum Annual Throughput (as defined in paragraph 6.4)
11 shall be prorated on the basis of a three hundred and
12 sixty-five (365) day year."

13 3. Paragraph 6.2 of the Amended Lease is amended and
14 restated in its entirety to read as follows:

15 "6.2(a) For the period commencing January 1, 2001
16 and ending upon December 31, 2004, Lessee shall pay to
17 City as ground rent the sum of Twenty-four Thousand
18 Dollars (\$24,000.00) per lease year, payable in advance
19 on each July 1st.

20 6.2(b) For the period commencing January 1, 2005
21 and ending upon the earlier of: (i) the date City accepts
22 ownership of the Pad 14 Conveyors (as described in
23 paragraph 9.6); or (ii) January 1, 2006, Lessee shall
24 pay to City as ground rent the sum of One Hundred Thirty-
25 eight Thousand Six Hundred Dollars (\$138,600.00) per
26 lease year, payable quarterly in advance on each July
27 1st, October 1st, January 1st, and April 1st.

28 6.2(c) For the period commencing with the earlier

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 of: (i) the date City accepts ownership of the Pad 14
2 conveyors (as described in paragraph 9.6); or (ii)
3 January 1, 2006, and ending on June 30, 2009, Lessee
4 shall pay to City as ground rent the sum of Two Hundred
5 Eighty-two Thousand Seven Hundred Forty-four Dollars
6 (\$282,744.00) per lease year, payable quarterly in
7 advance on each July 1st, October 1st, January 1st, and
8 April 1st; however, and notwithstanding any other
9 provision, the ground rent for the period specified in
10 this paragraph 6.2(c) shall be adjusted annually on July
11 1st of each lease year without further action of the
12 parties. Said adjustment shall be made by comparing the
13 Consumer Price Index for All Urban Consumers ((base years
14 1982-84 = 100) for Los Angeles - Anaheim - Riverside,
15 published by the United States Department of Labor,
16 Bureau of Labor Statistics ("Index"), which is published
17 for the month of January of the then current year
18 ("Current Index"), and with the Index published for
19 January 2005 ("Beginning Index"). The adjusted rent
20 shall be determined by multiplying the original rent by
21 a fraction, the numerator of which is the Current Index
22 and the denominator of which is the Beginning Index.
23 Notwithstanding the foregoing, the adjusted rent shall
24 not be less than the original rent.

25 6.2(d) Ground rent for any segment of the term
26 subsequent to June 30, 2009, shall be subject to
27 renegotiation and arbitration in accordance with
28 paragraph 8 of the Amended Lease.

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 6.2(e) Any overpayments of ground rent made by
2 Lessee prior to the execution of this Third Amendment as
3 regards the Amended Lease shall be applied to future
4 ground rent obligations under the Amended Lease or to
5 Lessee's financial obligations under the following other
6 leases that Lessee has with City - HD-4239, HD-6282, and
7 HD-4638 - but shall not be refunded."

8 4. Paragraph 6.4 of the Amended Lease is amended and
9 restated in its entirety to read as follows:

10 "6.4. For the period commencing with the earlier of
11 (i) the date City accepts ownership of the Pad 14
12 Conveyors (as described in paragraph 9.6); or (ii)
13 January 1, 2006, and ending on June 30, 2009, Lessee
14 guarantees that it will ship from the Premises or by
15 direct loading to vessel from truck or rail car five
16 hundred thousand (500,000) metric tons of petroleum coke
17 or other dry commodities ("product") per lease year
18 ("Guaranteed Minimum Annual Throughput" or "GMAT"). If
19 Lessee has not, by the end of each lease year, shipped
20 quantities of product from the Premises or by direct
21 loading to vessel from truck or rail car at least equal
22 to the GMAT, Lessee shall pay to City, within thirty (30)
23 days after the end of said lease year, a sum which shall
24 be calculated by multiplying the difference in quantity
25 between the GMAT and the actual quantity shipped (the
26 "throughput deficiency") times a rate calculated by
27 multiplying each of the wharfage and shiploader charges
28 established in City's Tariff No. 4, Items 356 and 515

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 which were in effect during said lease year times the
2 number of days each of said rates was in effect divided
3 by 365 (the "average Tariff rate"). If said sum is paid
4 within said thirty (30) days, Lessee's failure to ship
5 the specified minimum quantities of product from the
6 Premises or by direct loading to vessel from truck or
7 rail car shall not otherwise constitute a default of its
8 obligations hereunder. GMAT for the period commencing
9 January 1, 2001 through the earlier of: (i) the date City
10 accepts ownership of the Pad 14 Conveyors (as described
11 in Paragraph 9.6); or (ii) January 1, 2006, is waived.
12 GMAT for any segment of the term subsequent to June 30,
13 2009 is subject to renegotiation and arbitration in
14 accordance with paragraph 8."

15 5. Paragraph 9.6 of the Amended Lease is added and reads
16 as follows:

17 "9.6 Lessee shall construct Pad 14 Replacement
18 Conveyors ("Pad 14 Conveyors") as described in Exhibit
19 "B" attached hereto and incorporated herein by this
20 reference. The Pad 14 Conveyors shall be constructed in
21 accordance with plans and specifications approved in
22 writing by the Executive Director or his designee. The
23 review and any approval by the Executive Director or his
24 designee of such plans and specifications are solely for
25 the benefit of City and Lessee shall be solely
26 responsible for the design and construction of the Pad 14
27 Conveyors. The Pad 14 Conveyors shall be subject to such
28 conditions or limitations as may be set forth in a Harbor

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 Development Permit issued by the Board of Harbor
2 Commissioners in accordance ^{with the} provisions of Section 1215 of
3 the Long Beach City Charter. Construction of the Pad 14
4 Conveyors shall be accomplished in accordance with the
5 laws governing "public works." Lessee acknowledges that
6 the reimbursement provided by this paragraph 9.6 makes
7 this work paid for in whole or part out of Public funds
8 within the meaning of California Labor Code §1720. City
9 may provide information to Lessee regarding laws and
10 practice pertaining to "public works," but Lessee shall
11 remain solely responsible for compliance with laws
12 governing "public works." Upon Lessee's completion of
13 the construction of the Pad 14 Conveyors and City's
14 completion of its audit of Lessee's costs of such
15 construction, City shall reimburse Lessee for those third
16 party expenses reasonably incurred by Lessee in
17 constructing the Pad 14 Conveyors; however, and
18 notwithstanding any other provision, City's obligation
19 to reimburse Lessee for its third party expenses
20 reasonably incurred in constructing the Pad 14 Conveyors
21 shall not exceed Two Million Two Hundred Fifty-eight
22 Thousand Dollars (\$2,258,000). City agrees to complete
23 its audit within ninety (90) days after Lessee completes
24 construction of the Pad 14 Conveyors and submits all
25 appropriate documentation. Concurrent with City's
26 reimbursement to Lessee of Lessee's third party expenses
27 reasonably incurred in constructing Pad 14 Conveyors,
28 Lessee shall: (i) convey title to the Pad 14 Conveyors to

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 City pursuant to a Bill of Sale, the form of which is
2 attached hereto as Exhibit "C" and incorporated herein by
3 this reference: (ii) provide City with "as-built"
4 drawings of the Pad 14 Conveyors signed by a California
5 licensed professional engineer; and (iii) provide City
6 with copies of operation and maintenance manuals for the
7 Pad 14 Conveyors. During construction of the Pad 14
8 Conveyors, Lessee, at its cost, shall procure and
9 maintain Builder's Risk Insurance to cover "all risk" of
10 physical loss to the Pad 14 Conveyors providing coverage
11 for loss or damage from collapse including collapse
12 resulting from design error. The value insured shall
13 cover one hundred percent (100%) of the completed
14 contract cost and shall be maintained until Lessee
15 conveys title to the Pad 14 Conveyors to City. In
16 addition, during the term of the Amended Lease, as
17 amended from time to time, Lessee, at its cost shall
18 procure and maintain property insurance on an "All Risk"
19 basis equal to the full replacement cost of the Pad 14
20 Conveyors with no coinsurance clause. The policy or
21 policies of insurance required by this paragraph 9.6
22 shall be endorsed, as follows:

23 (a) Waiver of Subrogation: A waiver of
24 subrogation stating that the insurer waives
25 all rights of subrogation against City and its
26 commissioners, employees, and agents.

27 (b) Cancellation: The policy or policies
28 shall not be cancelled or the coverage reduced

1 terms and conditions of the Amended Lease shall remain unchanged
2 and in full force and effect.

3 OXBOW CARBON & MINERALS LLC, a
4 Delaware limited liability company,
5 as successor to APPLIED INDUSTRIAL
6 MATERIALS CORPORATION, a Delaware
7 corporation

8 December 15, 2004

9 By: [Signature]
10 Name: JOSEPH LOMBARDI
11 Title: VICE-PRES - WEST COAST BUSINESS

12 _____, 2004

13 By: [Signature]
14 Name: FRANK C. MYERS
15 Title: Vice Pres. - West Coast Ter.

16 "Lessee"

17 CITY OF LONG BEACH, a municipal
18 corporation, acting by and through
19 its Board of Harbor Commissioners

20 2-11, 2004

21 By: [Signature]
22 Richard D. Steinke
23 Executive Director
24 Long Beach Harbor Department

25 "City"

26 The foregoing Third Amendment to Lease is hereby approved
27 as to form.

28 2-7, 2004

By: [Signature]
ROBERT E. SHANNON, City Attorney
Charles M. Gale, Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

CMG:rmb
A-4\12-15-04 (APPLIEDTHIRDAMD.WPD) 03-01630
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

} ss.

On 12/15/2004, before me, SHEILAH GRAGEDA, NOTARY PUBLIC

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

JOSEPH LOMBARDI

Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Sheilah Grageda
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: THIRD AMENDMENT TO LEASE

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

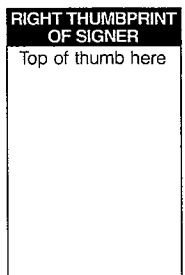
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES } ss.

On 12/16/2004, before me, STACEY A. REBAZA, NOTARY PUBLIC,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared ERVIN CLINTON MYERS,
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Stacey A. Rebaza
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

EXHIBIT "A" TO BILL OF SALE

Pad 14 Replacement Conveyors

Summary Scope of Work

The scope of work for the replacement of conveyors at Pad 14 includes the engineering, procurement, building permitting, fabrication, erection and commissioning of enclosed elevating conveyors C12 and C13, shuttle conveyor C13B, the enclosed Transfer Tower for transfer of material from C12 to C13, the rock ladders, foundations for all of the foregoing, C13B maintenance access and emergency egress platforms and ladders, a motor control center building, electrical feeders, motor control center, lighting, control hardware, dust suppression systems and associated utility services for all of the foregoing, including interfaces to existing Pad 14 systems.

Conveyors C12 and C13 are 48" wide belt conveyors, enclosed in steel tube structures, supported on steel bents set on concrete foundations. Shuttle conveyor C13B is a 48" wide reversing sliding shuttle conveyor, supported on the structure of the new Pad 14 Petcoke Enclosure, provided by others. The Transfer Tower supports the head end of C12, the tail end of C13 and houses the transfer chute and dust suppression equipment at the C12-C13 transfer point; the Transfer Tower is constructed of structural steel, partly enclosed with metal siding and set on a concrete foundation, probably including driven piling. The rock ladders are constructed of structural steel and are set on concrete foundations that straddle the existing reclaim tunnel. The electrical system includes a motor control center building with feeder from the existing main switchgear. The motor control center will include integral variable speed drive equipment and integral controls hardware for the new conveyors. The conveyor tubes, Transfer Tower and the C13B shuttle conveyor will be provided with lighting, power receptacles and controls ordinarily furnished as part of conveyor systems; all electrical systems will be classified Class 2, Division 1, Group F.

All of the facilities will be finished to a standard consistent with industrial bulk materials facilities located in a shoreline environment.

Engineering for the project includes the following elements that are not subject to competitive bidding requirements:

- Conveyor systems detail engineering including
- Site survey
- Geotechnical investigation
- Bid administration for construction bids

The construction of the conveyors, including procurement, building permitting, fabrication, erection and commissioning of the facilities described above will be awarded via competitive bidding.

EXHIBIT "B"

Pad 14 Replacement Conveyors

Summary Scope of Work

The scope of work for the replacement of conveyors at Pad 14 includes the engineering, procurement, building permitting, fabrication, erection and commissioning of enclosed elevating conveyors C12 and C13, shuttle conveyor C13B, the enclosed Transfer Tower for transfer of material from C12 to C13, the rock ladders, foundations for all of the foregoing, C13B maintenance access and emergency egress platforms and ladders, a motor control center building, electrical feeders, motor control center, lighting, control hardware, dust suppression systems and associated utility services for all of the foregoing, including interfaces to existing Pad 14 systems.

Conveyors C12 and C13 are 48" wide belt conveyors, enclosed in steel tube structures, supported on steel bents set on concrete foundations. Shuttle conveyor C13B is a 48" wide reversing sliding shuttle conveyor, supported on the structure of the new Pad 14 Petcoke Enclosure, provided by others. The Transfer Tower supports the head end of C12, the tail end of C13 and houses the transfer chute and dust suppression equipment at the C12-C13 transfer point; the Transfer Tower is constructed of structural steel, partly enclosed with metal siding and set on a concrete foundation, probably including driven piling. The rock ladders are constructed of structural steel and are set on concrete foundations that straddle the existing reclaim tunnel. The electrical system includes a motor control center building with feeder from the existing main switchgear. The motor control center will include integral variable speed drive equipment and integral controls hardware for the new conveyors. The conveyor tubes, Transfer Tower and the C13B shuttle conveyor will be provided with lighting, power receptacles and controls ordinarily furnished as part of conveyor systems; all electrical systems will be classified Class 2, Division 1, Group F.

All of the facilities will be finished to a standard consistent with industrial bulk materials facilities located in a shoreline environment.

Engineering for the project includes the following elements that are not subject to competitive bidding requirements:

- Conveyor systems detail engineering including
- Site survey
- Geotechnical investigation
- Bid administration for construction bids

The construction of the conveyors, including procurement, building permitting, fabrication, erection and commissioning of the facilities described above will be awarded via competitive bidding.

BILL OF SALE

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, OXBOW CARBON & MINERALS LLC, a Delaware limited liability company, as successor to APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation ("Lessee"), hereby sells, conveys, releases and quitclaims to the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), the Pad 14 Replacement Conveyors described in Exhibit "A" attached hereto ("Property").

This sale of property is pursuant to paragraph 9.6 of that certain lease for certain premises on Pier G on June 29, 1990 (HD-4757), as amended on February 29, 1996 (HD-4757A), December 23, 2003 (HD-4757B), and _____, 200_ (HD-4757C). The lease as so amended is hereinafter referred to as the "Amended Lease." Lessee has received the reimbursement required to be paid by City under paragraph 9.6 of the Amended Lease.

Lessee represents and warrants as follows:

1. Lessee has full power and authority to execute and deliver this Bill of Sale conveying title to the Pad 14 Conveyors to City.
2. The Bill of Sale will convey to City good and marketable title to the Pad 14 Conveyors described herein, free and clear of any liens, charges and security interests.

Nothing in this Bill of Sale shall be deemed to waive or impair any rights of the City or any restrictions upon Lessee relating to or arising out of the Amended Lease with respect to the Property.

OXBOW CARBON & MINERALS LLC, a
Delaware limited liability company, as successor
to APPLIED INDUSTRIAL MATERIALS
CORPORATION, a Delaware corporation

_____, 2004

By: _____
Name: _____
Title: _____

_____, 2004

By: _____
Name: _____
Title: _____

"Lessee"

1 **FIFTH AMENDMENT TO LEASE**

2
3 **THIS FIFTH AMENDMENT TO LEASE** ("Fifth Amendment") is made and
4 entered into as of March 21, 2012, by and between the CITY OF LONG
5 BEACH, a municipal corporation, acting by and through its Board of Harbor
6 Commissioners ("City"), pursuant to Ordinance No. HD-2118 adopted by the Board at its
7 meeting of February 6, 2012, and ULTRAMAR INC., a Nevada corporation
8 ("Lessee").

9 1. This Fifth Amendment is made with reference to the following facts
10 and objectives:

11 1.1 In a Lease dated December 1, 2000 (Harbor Document No.
12 HD-6406), City leased the Premises located on Pier G in the Harbor District of the
13 City of Long Beach for use as a petroleum coke storage facility. The Lease was
14 amended on May 2, 2003 (HD-6406A), June 10, 2004 (HD-6406B), May 14, 2007
15 (HD-6406C) and July 16, 2008 (HD-6406D) (collectively, the "Amended Lease").

16 1.2 The parties intend by this Fifth Amendment to acknowledge
17 the exercise by Lessee of the first of two Option Periods under the Lease,
18 commencing January 1, 2011 and ending December 31, 2015 ("first Option
19 Period"), and to set forth their agreement regarding compensation and insurance
20 provisions for such first Option Period.

21 1.3 Terms used and not otherwise defined in this Fifth
22 Amendment shall have the meanings given thereto in the Amended Lease.

23 2. On May 24, 2010, Lessee exercised the first Option Period,
24 extending the Lease to December 31, 2015.

25 3. Effective January 1, 2011, paragraph 5 of the Amended Lease is
26 hereby amended to read, in its entirety, as follows:

27
28 "5. COMPENSATION: As compensation for use of the

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Premises, Lessee shall pay to City, without deduction, setoff, prior notice
2 or demand: (i) monthly land rent; plus (ii) one hundred percent (100%) of
3 all charges set forth in City's Port of Long Beach Tariff No. 4, as said Tariff
4 now exists or may in the future be amended ('Tariff'), which are applicable
5 to the storage and movement of bulk commodities through the Premises,
6 subject to a guaranteed minimum annual throughput. For the first Option
7 Period (January 1, 2011 through December 31, 2015), the monthly land
8 rent shall be \$20,502 (subject to paragraph 5.1) and the guaranteed
9 minimum annual throughput ('GMAT') for each year of the first Option
10 Period shall not be less than ninety percent (90%) of Lessee's coke
11 production at its Wilmington refinery, subject to the throughput capacity of
12 the Premises, but in no event less than 450,000 metric tons per year.
13 Lessee shall provide or cause to be provided, whether through sublessee
14 or otherwise, within ten (10) days following the end of each month: (i)
15 written reports to City's Finance Division verifying the throughput
16 applicable to the storage and movements of bulk commodities through the
17 Premises; and (ii) confirmation of Lessee's coke production at its
18 Wilmington refinery.

19 "If the actual throughput for any year is less than the GMAT,
20 Lessee shall pay to City, within thirty (30) days after the end of said year,
21 without deduction, setoff, prior notice or demand, a sum calculated by
22 multiplying the difference between the GMAT and the actual throughput
23 times the sum of the then-current applicable wharfage and shiploader
24 charges established in City's Tariff No. 4, Items 356 and 515.

25 "5.1 An annual adjustment ('adjustment' or 'CPI
26 Adjustment') shall be made to the monthly land rent as of each
27 anniversary of January 1, 2011 ("Adjustment Date"). Said
28 adjustment shall be made by comparing the Consumer Price Index

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 for All Urban Consumers (base year 1982=100) for Los Angeles-
2 Riverside-Orange County, California, published by the United
3 States Department of Labor, Bureau of Labor Statistics ('Index'),
4 which is published for the date nearest the Adjustment Date
5 ('Current Index'), with the Index published for the date nearest
6 January 1, 2011 ('Beginning Index'). If the Current Index has
7 increased over the Beginning Index, the monthly land rent effective
8 for the then-current lease year shall be set by multiplying the
9 monthly land rent set forth above by a fraction, the numerator or
10 which is the Current Index and the denominator of which is the
11 Beginning Index; provided, in no event shall the monthly land rent
12 adjusted to reflect such CPI Adjustment be less than the monthly
13 land rent for the previous year. If the Index is discontinued or
14 revised during the term, such other government index or
15 computation shall be used in order to obtain substantially the same
16 result as if the Index had not been discontinued.

17 "5.2 All delinquent installments of rent and other
18 payments due the City shall bear interest at the rate then in effect in
19 Tariff No. 4 for delinquent payments and shall be subject to the
20 penalty provisions of Tariff No. 4. Rent payments are delinquent if
21 remaining unpaid on the tenth calendar day of the month for which
22 due. Tariff charges are due as accrued, and any deficiency in the
23 GMAT is due within thirty days after the conclusion of the period to
24 which it is applicable. With the exception of rent payments, all
25 invoices issued by City are due and payable upon presentation,
26 and any such invoice remaining unpaid the thirtieth day after the
27 date of issue shall be considered delinquent."

28 4. Effective upon execution of this Fifth Amendment, paragraph 14 of

1 the Amended Lease is hereby amended to read, in its entirety, as follows:
2

3 "14. As a condition precedent to the effectiveness of the
4 Lease, Lessee shall procure and maintain in full force and effect during the
5 term of the Lease, the following policies of insurance.

6 (a) Commercial General Liability Insurance which
7 affords coverage at least as broad as Insurance Services Office
8 'occurrence' form CG 00 01 with minimum limits of \$5,000,000 per
9 occurrence, and if written with an aggregate, the aggregate shall be
10 double the per occurrence limit required by this Lease. The policy
11 shall include coverage for (1) products - completed operations; (2)
12 contractual liability; (3) independent contractors; (4) third party action
13 over claims; and (5) explosion, collapse or underground hazard
14 (XCU). Defense costs shall be excess of limits.

15 (b) Automobile Liability Insurance with coverage at
16 least as broad as Insurance Services Office Form CA 0001 covering
17 'Any Auto' (Symbol 1) with minimum limits of \$1,000,000 each
18 accident.

19 (c) Environmental Impairment Liability Insurance to
20 include onsite and offsite coverage for bodily injury (including death
21 and mental anguish), property damage, defense costs and cleanup
22 costs with minimum limits of \$5,000,000 per loss and \$10,000,000
23 total all losses. A time element provision is acceptable for this
24 coverage. Non-owned disposal site coverage shall be provided if
25 handling, storing or generating hazardous materials or any
26 material/substance otherwise regulated under environmental
27 laws/regulations.

28 (d) Workers' Compensation Insurance, as required

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by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease, and any required coverage under the U.S. Longshoremen's and Harbor Workers' Compensation Act (USL&H) for employees performing services covered by said Act.

"Insurance policies will not be in compliance with the Lease if they include any limiting endorsement that have not been approved in writing by City.

"The policy or policies of insurance for Commercial General Liability, Automobile Liability and Environmental Impairment Liability shall contain the following provisions or be endorsed to provide the following:

(1) The Indemnified Parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the Lease.

Additional insured endorsements shall not:

- i. Be limited to ongoing operations;
- ii. Exclude contractual liability;
- iii. Restrict coverage to the sole liability of Lessee;
- iv. Contain any other exclusion contrary to the Lease.

(2) This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the Indemnified Parties shall not contribute with this primary insurance.

(3) The policy shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor Department except notice of ten (10) days shall be allowed for non-payment of premium.

1 "The policy or policies of insurance for Workers'
2 Compensation shall be endorsed, as follows:

3 (1) A waiver of subrogation stating that the insurer
4 waives all rights of subrogation against the Indemnified Parties.

5 (2) The policy or policies shall not be canceled or
6 coverage reduced until a thirty (30) day written notice of cancellation
7 has been served upon the Executive Director of the Harbor except
8 notice of ten (10) days shall be allowed for non-payment of premium.

9 "Any deductible or self-insured retention must be approved in
10 writing by the Executive Director and shall protect the Indemnified Parties in
11 the same manner and to the same extent as they would have been
12 protected had the policy or policies not contained a deductible or
13 self-insured retention.

14 "Lessee shall deliver either certified copies of the required
15 policies or endorsements on forms approved by the City ('evidence of
16 insurance') to the Executive Director for approval as to sufficiency and as to
17 form. At least fifteen (15) days prior to the expiration of any such policy,
18 evidence of insurance showing that such insurance coverage has been
19 renewed or extended shall be filed with the Executive Director. If such
20 coverage is canceled or reduced, Lessee shall, within ten (10) days after
21 receipt of written notice of such cancellation or reduction of coverage, file
22 with the Executive Director evidence of insurance showing that the required
23 insurance has been reinstated or has been provided through another
24 insurance company or companies.

25 "The coverage provided shall apply to the obligations
26 assumed by the Lessee under the indemnity provisions of this Lease, but
27 this insurance provision in no way limits the indemnity provisions and the
28 indemnity provisions in no way limit this insurance provision.

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"Lessee agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City. The City shall have the right to withhold any payment due Lessee until Lessee has fully complied with the insurance provisions of this Lease.

"Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

"If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide with or precede the effective date of the Lease and continuous coverage shall be maintained or Lessee shall obtain and submit to City an extended reporting period endorsement for a period of at least three (3) years from termination or expiration of this Lease.

"Upon expiration or termination of coverage of required insurance, Lessee shall procure and submit to City evidence of 'tail' coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from termination or expiration of this Lease."

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California Texas }
 County of Bexar }
 On 12-9-11 before me, _____
Date Here Insert Name and Title of the Officer
 personally appeared Joseph Border
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal
 Signature: [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ _____ Signer Is Representing: _____	<p style="text-align: center; font-weight: bold; font-size: small;">RIGHT THUMBPRINT OF SIGNER</p> <p style="text-align: center; font-size: x-small;">Top of thumb here</p>	Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ _____ Signer Is Representing: _____	<p style="text-align: center; font-weight: bold; font-size: small;">RIGHT THUMBPRINT OF SIGNER</p> <p style="text-align: center; font-size: x-small;">Top of thumb here</p>
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of ~~California~~ Texas

County of Bexar

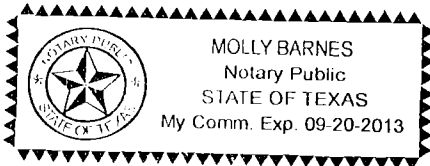
On December 12, 2011 before me, Molly Barnes, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Jay D. Browning
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: Molly Barnes
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Partner — Limited General Attorney in Fact Trustee Guardian or Conservator Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer Is Representing: _____

1 FIRST AMENDMENT TO LEASE

2
3 THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made
4 and entered into as of May 2, 2003, by and between the
5 CITY OF LONG BEACH, a municipal corporation, acting by and through
6 its Board of Harbor Commissioners ("City"), pursuant to Ordinance
7 No. HD-1880 adopted by said Board at its meeting of March 31,
8 2003, and ULTRAMAR INC., a Nevada corporation ("Lessee").

9 1. This First Amendment is made and entered into with
10 reference to the following facts and objectives:

11 1.1. In a Lease dated December 1, 2000 (Harbor
12 Department Document No. HD-6406), City leased the
13 Premises located on Pier G in the Harbor District of the
14 City of Long Beach for use as a petroleum coke storage
15 facility.

16 1.2. The parties intend by this First Amendment to
17 Lease to amend paragraph 7 relating to the commencement
18 and completion dates of the replacement of the coke
19 storage building and appurtenances.

20 2. The second sentence of paragraph 7 of said Lease is
21 hereby amended to read, in its entirety as follows:

22
23 "Lessee shall use best commercial efforts to obtain all
24 necessary permits and to complete such removal and new
25 construction on or before December 31, 2003."

26
27 //

28 //

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 3. Except as expressly provided in this First
2 Amendment the terms and conditions of the Lease shall remain
3 unchanged and in full force and effect.

4
5 ULTRAMAR INC.,
6 a Nevada corporation

7 March 10, 2003

8 By: Mary L. Arthur, Jr
9 Name: Gary L. Arthur, Jr
10 Title: Chief Executive Officer and President

11 March 10, 2003

12 By: William R. Klesse
13 Name: William R. Klesse
14 Title: Executive Vice President

15 LESSEE

APPROVED
LEG
PR
mm

16 CITY OF LONG BEACH, a municipal
17 corporation, by and through its
18 Board of Harbor Commissioners

19 5-2, 2003

20 By: Richard D. Steinke
21 Richard D. Steinke,
22 Executive Director
23 Long Beach Harbor Department

24 CITY

25 This document is hereby approved as to form.

26 ROBERT E. SHANNON, City Attorney

27 April 30, 2003

28 By: Charles M. Gale
 Charles M. Gale, Deputy

CMG: rmb : dmp

2-07-03

U-3\ULTRAMAR.1\01-01247

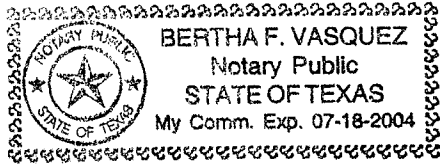
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Texas
County of Bexar } ss.

On March 10, 2003 before me, Bertha F. Vasquez, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)
personally appeared Gary H. Arthur, Jr.
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Bertha F Vasquez
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: First Amendment to Lease

Document Date: _____ Number of Pages: _____

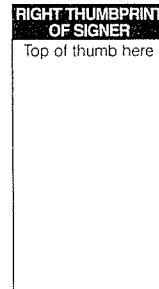
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



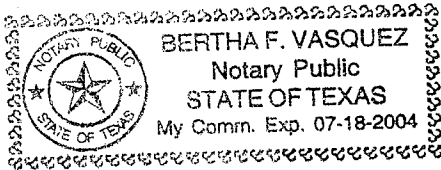
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Texas
County of Brewer } ss.

On March 10, 2003 before me, Bertha F. Vasquez, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William R. Klesse
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Bertha F. Vasquez
Signature of Notary Public

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- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



1 structural issues did not arise until construction was near completion.

2 1.5 Further, Lessee did not generate any throughput during
3 construction at the facility described in paragraph 1.3, contrary to the parties'
4 expectations of 300,000 metric tons during construction. See Memorandum to
5 Board of Harbor Commissioners dated October 16, 2000.

6 1.6 Based on the foregoing, the parties intend by this Fourth
7 Amendment to Lease to amend the compensation provisions of the Amended
8 Lease for the period January 1, 2001 through December 31, 2005.

9 2. For the period January 1, 2001 through and including
10 December 31, 2005, paragraph 5 of the Amended Lease is hereby amended to read, in
11 its entirety, as follows:

12
13 "5. COMPENSATION: As compensation for use of the
14 Premises, Lessee shall pay to City: (i) monthly land rent; plus (ii) one
15 hundred percent (100%) of all charges set forth in City's Port of Long
16 Beach Tariff No. 4 ('Tariff'), as said Tariff now exists or may in the future
17 be amended, which are applicable to the storage and movement of bulk
18 commodities through the Premises, subject to a guaranteed minimum.
19 For the first five-year segment of the term, the base monthly land rent
20 shall be \$15,594 and the guaranteed minimum aggregate throughput for
21 such five years shall be equal to wharfage charges on 1,358,044 metric
22 tons of cargo.

23 "5.1 The land rent shall be adjusted for each year of
24 the term and for each year of each Option Period, if exercised.
25 Said adjustment shall be made by comparing the Consumer Price
26 Index for All Urban Consumers (base year 1982=100) for
27 Los Angeles-Riverside-Orange County, published by the United
28 States Department of Labor, Bureau of Labor Statistics ('Index'),

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which is published for the date nearest the beginning of the new segment of the term ('Current Index'), with the Index published nearest the date of commencement of the original lease term ('Beginning Index'). If the Current Index has increased over the Beginning Index, the monthly rental payments for the years in the then-current segment of the term shall be set by multiplying the monthly rental set forth above by a fraction, the numerator of which is the Current Index and the denominator of which is the Beginning Index; provided, in no event shall the monthly rental be less than the original monthly rental. If the Index is discontinued or revised during the term, such other government index or computation shall be used in order to obtain substantially the same result as if the Index had not been discontinued.

“5.2 All delinquent installments of rent and other payments due the City shall bear interest at the maximum rate allowed by law. Rent payments are delinquent if remaining unpaid on the tenth calendar day of the month for which due. Tariff charges are due as accrued, and any deficiency in the guaranteed minimum aggregate throughput, which the parties have calculated to be \$1,233,839 for the five (5) year period of January 1, 2001 through December 31, 2005, is due within fifteen (15) days after the execution of the Fourth Amendment to Lease. Upon City's receipt of said \$1,233,839 within such period, no further compensation for either monthly land rent or for charges set forth in the Tariff which are applicable to the storage and movement of bulk commodities through the Premises shall be due from Lessee to city for the period of January 1, 2001 through and including December 31, 2005.”

1 3. Except as expressly provided in this Fourth Amendment, the terms
2 and conditions of the Amended Lease remain unchanged and in full force and effect.
3 Without limiting the generality of the foregoing, paragraphs 2 and 3 of the Third
4 Amendment to Lease (HD-6406C) are not changed by this Fourth Amendment.

5
6 ULTRAMAR, INC., a Nevada corporation

7 April 30, 2008

By: [Signature]
Name: Jason W Fraser
Title: Vice President

8
9 April 30, 2008

By: [Signature]
Name: Jay Browning
Title: Senior Vice President & Secretary

11 LESSEE

12 CITY OF LONG BEACH, a municipal
13 corporation, acting by and through its
14 Board of Harbor Commissioners

15 7-16, 2008

By: [Signature]
Richard D. Steinke
Executive Director
Long Beach Harbor Department

17 CITY

18 The foregoing document is hereby approved as to form.

19
20 [Signature] ⁷⁻¹⁰
21 _____, 2008

By: [Signature]
ROBERT E. SHANNON, City Attorney
Charles M. Gale, Deputy

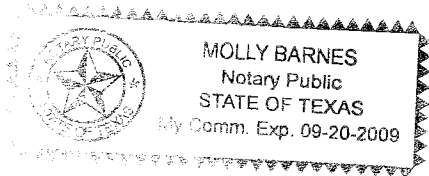
OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Brewer }
 On April 30, 2008 before me, Molly Barnes Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared Jon D. Brown, Smith Vice President and Secretary of UFTM, Inc.
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Place Notary Seal Above

Signature Molly Barnes
Signature of Notary Public

OPTIONAL

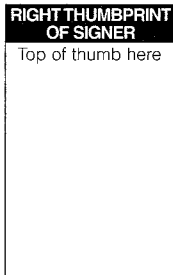
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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

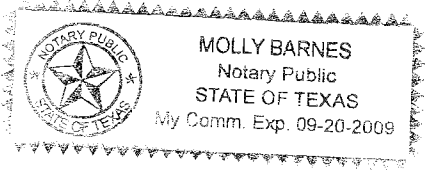
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Berkeley }
On April 30, 2008 before me, Molly Barnes Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Jason W. Frasier Vice President of
WILSON INC.
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Molly Barnes
Signature of Notary Public

OPTIONAL

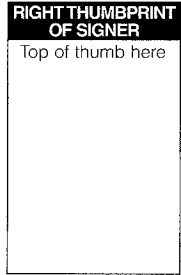
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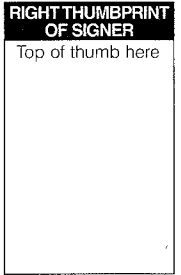
Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

LEASE
between
CITY OF LONG BEACH
and
ULTRAMAR INC.

Document No. HD-6406

LEASE
between
CITY OF LONG BEACH
and
ULTRAMAR INC.

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Attachment

Harbor Department Drawing

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 2.1 There are excepted and reserved from the
2 Premises all minerals and mineral rights of every kind and
3 character now known to exist or hereafter discovered,
4 including, without limitation, oil, gas and water rights,
5 together with the full, exclusive and perpetual rights to
6 explore for, remove and dispose of said minerals from the
7 Premises without, however, the right of surface entry upon
8 the Premises for such purposes.

9 2.2 This Lease, and all rights granted to Lessee
10 hereunder, are subject to restrictions, reservations,
11 conditions and encumbrances of record, including, without
12 limitation, the trusts and limitations set forth in Chapter
13 676, Statutes of 1911; Chapter 102, Statutes of 1925;
14 Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956,
15 First Extraordinary Session; Chapter 138, Statutes of 1964,
16 First Extraordinary Session; and the Federal navigational
17 servitude.

18 2.3 The Premises shall be subject to rights of way
19 for such sewers, storm drains, pipelines, conduits and for
20 such telephone, telegraph, light, heat, power or water lines
21 as may from time to time be determined by the Board of
22 Harbor Commissioners.

23 **3. TERM:** The term of this Lease shall be for a period
24 of ten (10) years commencing on the first day of the calendar
25 month following the date this Lease is executed by the Executive
26 Director of the Long Beach Harbor Department ("Executive
27 Director"). For purposes of renegotiation of compensation, the
28 term shall be divided into two five-year segments. Lessee shall

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Long Beach, California 90802-4664
Telephone (562) 570-2200

1 have the right to extend the term for up to two (2) additional
2 terms of five (5) years each ("Option Periods") upon the same
3 terms and conditions except for compensation and minimum limits
4 of insurance.

5 **4. USE OF PREMISES:** Lessee is authorized to use the
6 Premises solely for operation of a handling and storage facility
7 for petroleum coke. The Premises shall not be used for any other
8 purpose without the prior consent in writing of the Executive
9 Director of the Long Beach Harbor Department ("Executive
10 Director"). The Premises shall not be used for any purpose which
11 shall interfere with commerce, navigation or fisheries or be
12 inconsistent with the trusts and limitations upon which the
13 Premises are now or may hereafter be held by the City of Long
14 Beach.

15 4.1 Lessee shall not do, bring or keep anything in
16 or about the Premises that will cause a cancellation of or
17 increase the rate of any insurance covering the Premises.

18 4.2 Lessee shall not use the Premises in any
19 manner that will constitute waste or nuisance.

20 4.3 The limitation on use set forth in subpara-
21 graphs 4.1 and 4.2 shall not prevent Lessee from bringing,
22 keeping or using, on or about the Premises such materials,
23 supplies, equipment and machinery as are necessary or
24 customary in the operation of the permitted uses; provided
25 however Lessee, in handling hazardous substances or wastes,
26 shall fully comply with all laws, rules, regulations and
27 orders of governmental agencies having jurisdiction.

28 **5. COMPENSATION:** As compensation for use of the

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Telephone (562) 570-2200

1 Premises, Lessee shall pay to City: (i) monthly land rent; plus
2 (ii) one hundred percent (100%) of all charges set forth in
3 City's Port of Long Beach Tariff No. 4 ("Tariff"), as said Tariff
4 now exists or may in the future be amended, which are applicable
5 to the storage and movement of bulk commodities through the
6 Premises, subject to a guaranteed minimum. For the first five-
7 year segment of the term, the base monthly land rent shall be
8 \$15,594 and the guaranteed minimum aggregate throughput for such
9 five years shall be equal to wharfage charges on 1,875,000 metric
10 tons of cargo.

11 5.1 The land rent shall be adjusted for each year
12 of the term and for each year of each Option Period, if
13 exercised. Said adjustment shall be made by comparing the
14 Consumer Price Index for All Urban Consumers (base year
15 1982=100) for Los Angeles-Riverside-Orange County, published
16 by the United States Department of Labor, Bureau of Labor
17 Statistics ("Index"), which is published for the date
18 nearest the beginning of the new segment of the term
19 ("Current Index"), with the Index published nearest the date
20 of commencement of the original lease term ("Beginning
21 Index"). If the Current Index has increased over the
22 Beginning Index, the monthly rental payments for the years
23 in the then-current segment of the term shall be set by
24 multiplying the monthly rental set forth above by a
25 fraction, the numerator of which is the Current Index and
26 the denominator of which is the Beginning Index; provided,
27 in no event shall the monthly rental be less than the
28 original monthly rental. If the Index is discontinued or

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City Attorney of Long Beach
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1 revised during the term, such other government index or
2 computation shall be used in order to obtain substantially
3 the same result as if the Index had not been discontinued.

4 5.3 All delinquent installments of rent and other
5 payments due the City shall bear interest at the maximum
6 rate allowed by law. Rent payments are delinquent if
7 remaining unpaid on the tenth calendar day of the month for
8 which due. Tariff charges are due as accrued, and any
9 deficiency in the initial guaranteed minimum throughput or
10 the GMAT is due within thirty days after the conclusion of
11 the period to which it is applicable. With the exception of
12 rent payments, all invoices issued by City are due and
13 payable upon presentation, and any such invoice remaining
14 unpaid the thirtieth day after the date of issue shall be
15 considered delinquent. .

16 **6. COMPENSATION AND INSURANCE RENEGOTIATION:** As
17 required by the provisions of Long Beach City Charter Section
18 1207(d), and in addition to the annual CPI adjustments to be made
19 for each year during each five-year segment of the term or Option
20 Period, the parties agree to renegotiate the base monthly land
21 rent and guaranteed minimum throughput, and the insurance
22 coverages and limits to be provided pursuant to paragraph 14,
23 for the second five-year segment of the term and for each Option
24 Period, if exercised. The parties shall commence such
25 negotiations at least one hundred eighty (180) days prior to the
26 beginning of each succeeding five-year segment. The adjusted
27 compensation (whether negotiated or determined by arbitration)
28 shall be effective as of the beginning of the five-year segment

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Long Beach, California 90802-4664
Telephone (562) 570-2200

1 of the term regardless of when determined. If the adjusted
2 compensation is not determined prior to the commencement of a
3 five-year segment, Assignee shall continue to pay compensation in
4 accordance with the compensation provisions in force during the
5 preceding five-year segment. Upon determination of the adjusted
6 compensation, Assignee shall promptly pay any difference due City
7 with interest at a rate then in effect in Tariff No. 4 for
8 delinquent payments.

9 6.1 In the negotiations to establish the compen-
10 sation, the parties shall take into consideration the
11 character of the Premises, their value, the fair rental
12 value of similar premises and facilities within the Long
13 Beach Harbor District devoted to similar use, the terms,
14 conditions and restrictions of this Agreement, the terms,
15 conditions and restrictions of agreements for similar
16 premises and facilities within the Long Beach Harbor
17 District, the quantity of cargo handled at, on or from the
18 Premises, the return on investment to City, maintenance
19 costs, insurance, taxes, and any other facts and data
20 necessary for the proper determination of such compensation.

21 6.2 As a component of the renegotiated compen-
22 sation, the guaranteed minimum throughput for the second
23 segment of the term and for each Option Period, if
24 exercised, shall be established on an annual (not a five-
25 year aggregate) basis for each such five-year segment or
26 Option Period ("Guaranteed Minimum Annual Throughput" or
27 "GMAT"). Such GMAT shall be not less than ninety percent
28 (90%) of Lessee's coke production at its Wilmington

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 refinery, subject to the throughput capacity of the
2 Premises, and in no event shall be less than 450,000 metric
3 tons per year.

4 6.3 If the parties cannot reach agreement with
5 respect to the compensation at least ninety (90) days prior
6 to the beginning of the next five-year segment of the term
7 or Option Period, the matter may, at the election of either
8 party, be submitted to binding arbitration. Each party, at
9 its cost, shall appoint a real estate appraiser with at
10 least five (5) years' full time commercial and/or industrial
11 appraisal experience in the Long Beach and Los Angeles
12 harbor areas and qualified as a member of the Appraisal
13 Institute. If a party does not appoint an appraiser within
14 ten (10) calendar days after the other party has given
15 notice of the name of its appraiser, the single appraiser
16 appointed shall be the sole appraiser and shall determine
17 the compensation within forty-five (45) days after his or
18 her appointment. If two (2) appraisers are appointed, each
19 within forty-five (45) days after the selection of the
20 second appraiser shall state his or her opinion as to the
21 compensation payable by Assignee to City.

22 6.3.1 In forming an opinion of the compen-
23 sation payable by Assignee, the appraiser or appraisers
24 shall consider only comparable marine terminals within
25 the Harbor District of the City of Long Beach and the
26 provisions of those terminal agreements for such
27 comparable premises and facilities.

28 6.3.2 On or before the expiration of the

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 forty-five (45) day period, the appraiser or appraisers
2 shall prepare and furnish the party who appointed the
3 appraiser with a report setting forth the appraiser's
4 opinion of amount of compensation to be payable by
5 Assignee with supporting data and his or her reasons
6 supporting the conclusions. The parties shall promptly
7 exchange reports and shall have ten (10) business days
8 after the exchange of the reports to further negotiate
9 the amount of compensation payable by Assignee.

10 6.3.3 If the parties cannot agree as to the
11 compensation payable by Assignee, City and Assignee
12 shall promptly notify their designated appraiser of
13 that fact and the two appraisers shall promptly select
14 a third appraiser meeting the qualifications stated in
15 subparagraph 6.3. If they are unable to agree on the
16 third appraiser, either of the parties, by giving ten
17 (10) days' notice to the other party may apply to the
18 Presiding Judge or Assistant Presiding Judge of the
19 Superior Court of the County of Los Angeles, or the
20 Presiding Judge of the South District of said Court,
21 who shall select and appoint the third appraiser. Each
22 of the parties shall bear one-half of the cost of
23 appointing the third appraiser and of paying the third
24 appraiser's fee. The third appraiser shall (i)
25 promptly meet and confer with the two appraisers
26 appointed by the parties; (ii) review the reports of
27 the two appraisers and the supporting data and reasons
28 supporting the respective conclusions; (iii) determine

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 the compensation payable by Assignee; and (iv) notify
2 the parties of his or her determination within ten (10)
3 business days after his or her appointment; provided
4 however that said determination shall not result in
5 Assignee paying compensation for the use of the
6 Premises in an amount lower than nor higher than the
7 determinations of the two appraisers appointed by the
8 parties.

9 6.4 After the adjusted land rent and GMAT has been
10 determined (whether by negotiation or arbitration), the
11 parties shall promptly execute a memorandum setting forth
12 the adjusted compensation. If either party fails or refuses
13 to execute the memorandum after the compensation has been
14 determined, the other party shall execute the memorandum on
15 behalf of the party refusing as that party's special
16 attorney-in-fact.

17 6.5 For adjustment of insurance coverages and
18 limits and any other matter which may be submitted for
19 determination by arbitration, the arbitration shall be
20 conducted in accordance with the provisions of Title 9
21 (Arbitration) of Part 3 of California Code of Civil
22 Procedure except as otherwise provided in this subparagraph
23 or by written agreement of the parties.

24 6.5.1 Selection of Arbitrators. The party
25 desiring arbitration shall select an arbitrator and
26 give written notice to the other party, who shall
27 select an arbitrator within ten (10) business days
28 after receipt of such notice. If the other party fails

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1 to name such second arbitrator within said ten (10)
2 business days, the arbitrator named by the first party
3 shall decide the matter. The two (2) arbitrators
4 chosen shall, within ten (10) business days after the
5 appointment of the second, select a third. If the two
6 (2) cannot agree upon a third, the third appraiser
7 shall be appointed by the Presiding Judge or Assistant
8 Presiding Judge of the Superior Court of the County of
9 Los Angeles, or the Presiding Judge of the South
10 District of said Court, upon application made therefor
11 by either party, upon ten (10) days' written notice to
12 the other which notice shall be given in accordance
13 with the provisions of subparagraph 23.1 of this
14 Agreement. The parties shall each pay one-half (1/2)
15 of the costs of appointment of the third arbitrator and
16 of his or her fees and expenses. Upon their
17 appointment, the three (3) arbitrators shall enter
18 immediately upon the discharge of their duties. In
19 doing so, the arbitrator or arbitrators shall consider,
20 as to insurance coverages and limits, the risks
21 inherent in Assignee's operations, the number and type
22 of claims made during the preceding five (5) year
23 period and the disposition of such claims, and such
24 other data as may be deemed relevant. If another
25 subject matter is submitted to arbitration, the
26 arbitrators shall consider the criteria normally
27 considered in commercial negotiations relative to the
28 submitted issue except to the extent the criteria are

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1 specifically stated by City and Assignee. The
2 arbitrators' determination shall be made and the
3 parties notified of that determination within thirty
4 (30) days after the appointment of the last
5 arbitrator. Such determination shall be binding upon
6 City and Assignee.

7 **7. CONSTRUCTION OF IMPROVEMENTS AND ALTERATIONS:**

8 Lessee shall remove the existing coke storage building and
9 appurtenances and shall construct a new, fully enclosed coke
10 handling and storage facility of not less than 50,000 metric tons
11 capacity. Lessee shall use best commercial efforts to obtain all
12 necessary permits and to complete such removal and new
13 construction within eighteen (18) months after commencement of
14 the Lease term. Such new facility shall be designed and
15 constructed to fully comply with all then-current laws, rules and
16 regulations, including, without limitation, revised Rule 1158 of
17 the South Coast Air Quality Management District. Lessee shall
18 not construct or make any additional improvements or alterations
19 to the Premises without City's prior consent. The new facility
20 and any additional improvement or alteration shall be
21 constructed, erected and installed in accordance with plans and
22 specifications approved in writing by the Executive Director or
23 his designee and shall be subject to such conditions and
24 limitations as may be set forth in a Harbor Development Permit
25 issued by the Board of Harbor Commissioners in accordance with
26 provisions of Section 1215 of the Long Beach City Charter.

27 **8. MAINTENANCE AND REPAIR:** Lessee, at its cost, shall
28 keep and maintain the Premises, including without limitation all

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1 buildings, structures, fixed operating equipment, other improve-
2 ents and surface paving, in good and substantial repair and
3 condition and shall perform all necessary maintenance.

4 8.1 Should Lessee fail to make any repairs or
5 perform required maintenance within thirty (30) days after
6 receipt of notice from City to do so, City may, but shall
7 not be obligated to, make such repairs or perform such
8 maintenance. Lessee agrees to reimburse City for the cost
9 thereof within thirty (30) days after receipt of City's
10 invoice therefor. City's cost shall include, but not be
11 limited to, the cost of maintenance or repair or replacement
12 of property neglected, damaged or destroyed, including
13 direct and allocated costs for labor, materials,
14 supervision, supplies, tools, taxes, transportation,
15 administrative and general expense and other indirect or
16 overhead expenses. In the event Lessee shall commence to
17 prosecute and diligently make such repairs or shall begin to
18 perform the required maintenance within the thirty (30) day
19 period, City shall refrain from making such repairs or
20 performing required maintenance and from making demand for
21 such payment until the work has been completed by Lessee,
22 and then only for such portion thereof as shall have been
23 made or performed by City. The making of any repair or the
24 performance or maintenance by City, which repair or
25 maintenance is the responsibility of Lessee, shall in no
26 event be construed as a waiver of Lessee's duty or
27 obligation to make future repairs or perform required
28 maintenance as provided in this Lease.

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1 8.2 Lessee, at its cost, shall provide proper
2 containers for trash and keep the Premises free and clear of
3 rubbish, debris and litter at all times. Lessee, at its
4 cost, further agrees to keep and maintain all of the
5 Premises in a safe, clean, wholesome and sanitary condition
6 under all applicable federal, state, local and other laws,
7 rules, regulations and orders. No offensive refuse, matter,
8 nor any substance constituting any unnecessary, unreasonable
9 or unlawful fire hazard, nor material detrimental to the
10 public health shall be permitted to be or remain on the
11 Premises and Lessee shall prevent such material or matter
12 from being or accumulating upon the Premises.

13 8.3 All fire protection sprinkler systems,
14 standpipe systems, fire alarm systems, portable fire
15 extinguishers and other fire-protective or extinguishing
16 systems or appliances which may be installed on the Premises
17 shall be maintained by Lessee, at its cost, in an operative
18 condition at all times. All repairs and servicing shall be
19 made in accordance with the provisions of the Long Beach
20 Municipal Code, Chapter 18.48 and all revisions thereto.

21 8.4 Lessee shall promptly notify the Executive
22 Director of the release of any hazardous materials onto the
23 Premises. Lessee, at its cost, shall promptly remove and/or
24 treat and dispose of all such hazardous materials in
25 accordance with regulations and orders of governmental
26 agencies having jurisdiction and restore the Premises to the
27 condition they were in prior to the release of the hazardous
28 materials. Lessee shall furnish the Executive Director with

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1 copies of all waste manifests. As used herein, the term
2 "hazardous materials" shall also include "hazardous wastes"
3 and "extremely hazardous wastes" as those terms have been
4 defined by the Administrator of the U.S. Environmental
5 Protection Agency, the California Department of Toxic
6 Substances Control, or any other person or agency having
7 jurisdiction of the management of hazardous materials.

8 8.5 Lessee shall provide personnel to accompany
9 City's representatives on periodic inspections of the
10 Premises to determine Lessee's compliance with the
11 provisions of this Lease.

12 9. **OBSERVE APPLICABLE LAWS:** At all times in its use
13 and occupancy of the Premises and in the conduct of its
14 operations thereon, Lessee, at its cost, shall comply with all
15 applicable federal, state, regional and municipal laws,
16 ordinances and regulations (including but not limited to the City
17 Charter, the Long Beach Municipal Code and Tariff No. 4) and
18 obtain all requisite permits for the construction of improvements
19 on the Premises and for the conduct of its operations thereon.

20 9.1 Without limiting the foregoing, Lessee shall
21 ensure that the Premises, and Lessee's operations on the
22 Premises, fully comply with Rule 1158 of the South Coast Air
23 Quality Management District, as such rule now exists or may
24 in the future be amended, or any similar rule relating to
25 control of petroleum coke dust emissions which may supersede
26 said Rule 1158.

27 9.2 Without limiting the foregoing, Lessee shall
28 comply with applicable provisions of the Americans with

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1 Disabilities Act (42 USCS Sections 12101, et seq.) ("Act")
2 and regulations promulgated pursuant thereto in Lessee's use
3 of the Premises and operations conducted thereon. Addi-
4 tionally, as between City and Lessee, Lessee shall be solely
5 responsible for assuring that the Premises are in compliance
6 with applicable provisions of said Act and related
7 regulations and shall hold City harmless from and against
8 any claims of failure of the Premises to comply with the Act
9 and/or related regulations.

10 **10. UTILITY CHARGES:** Lessee, at its cost, shall make
11 arrangements for and pay for all utility installations and
12 services furnished to or used by it, including without limitation
13 gas, electricity, water, telephone service and trash collection
14 and for all connection charges.

15 **11. TAXES:** Except where contested in good faith in a
16 court of appropriate jurisdiction, Lessee shall pay, prior to
17 delinquency, all lawful taxes, assessments and other governmental
18 or district charges that may be levied upon its property and
19 improvements of any kind located on the Premises and upon the
20 interest granted under this Lease. Lessee recognizes and
21 understands that this Lease may create a possessory interest
22 subject to property taxation and that Lessee may be subject to
23 the payment of property taxes and assessments levied on such
24 interest. Payment of any such possessory interest tax or
25 assessment shall not reduce any compensation due City hereunder.

26 **12. MECHANICS' LIENS:** Lessee shall pay all costs for
27 construction done by it or caused by it to be done on the
28 Premises. Lessee shall keep the Premises free and clear of all

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1 mechanics' liens resulting from construction done by or for
2 Lessee. Lessee shall have the right to contest the correctness
3 or the validity of any such lien if, immediately on demand by
4 City, Lessee procures and records a lien release bond issued by a
5 corporation authorized to issue surety bonds in California in an
6 amount equal to one and one-half times the amount of the claim of
7 lien. The bond shall meet the requirements of Civil Code Section
8 3143 and shall provide for the payment of any sum that the
9 claimant may recover on the claim (together with costs of suit,
10 if claimant recovers in the action). Lessee agrees that it will
11 at all times save City free and harmless and indemnify City
12 against all claims for labor or materials in connection with the
13 construction, erection or installation of Lessee's improvements
14 made upon the Premises, or from additions or alterations made
15 thereto, or the repair of the same, by or for Lessee, and the
16 costs of defending against any such claim, including reasonable
17 attorneys' fees.

18 **13. INDEMNIFICATION:** Lessee shall defend and indemnify
19 the City of Long Beach, the Board of Harbor Commissioners
20 (individually and collectively) and their officers and employees
21 ("Indemnified Parties") harmless from and against any and all
22 actions, suits, proceedings, claims and demands, loss, liens,
23 costs, fees, expenses and liability (collectively "claims") for
24 injury to or death of persons, or damage to property, including
25 property owned by City, brought, made, filed against, imposed
26 upon or sustained by the Indemnified Parties, or any of them, and
27 arising from or attributable to or caused, directly or
28 indirectly, by:

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1 (i) the use of the Premises or any equipment or
2 materials located thereon, or from operations conducted
3 thereon by Lessee, its agents, employees or invitees, or by
4 any other person or persons acting on behalf of Lessee and
5 with Lessee's knowledge and consent, express or implied of
6 Lessee;

7 (ii) the condition or state of repair and
8 maintenance of the Premises or any improvements thereon;

9 (iii) the construction, improvement, maintenance or
10 repair of the improvements and facilities on the Premises by
11 Lessee, its officers, employees, contractors, agents or
12 invitees, or by any other person or persons acting on behalf
13 of Lessee with knowledge and consent, express or implied, of
14 Lessee; or

15 (iv) injury to or death of employees of Lessee or
16 others as a result of Lessee's failure or refusal to comply
17 with the provisions of Section 6300 et seq. of the
18 California Labor Code or any federal, state or local
19 regulations or laws pertaining to the safety of the Premises
20 or of equipment located upon the Premises,
21 and regardless of whether any act or omission of the Indemnified
22 Parties, or any of them contributed thereto, unless such
23 contributory act or omission constitutes gross negligence or
24 wilful misconduct by an Indemnified Party.

25 As part of its obligations of indemnity, Lessee
26 shall have sole responsibility for ensuring that the Premises and
27 the improvements thereon comply with the Americans with
28 Disabilities Act ("ADA"). Lessee shall defend, indemnify and

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1 hold the Indemnified Parties harmless from and against any and
2 all claims or liability under the ADA.

3 With respect to any claims, City shall notify
4 Lessee thereof, shall tender Lessee defense thereof, and shall
5 assist Lessee as may reasonably be requested in the defense
6 thereof. Lessee shall resist and defend such action, suit or
7 proceeding with counsel reasonably acceptable to City, shall
8 conduct or have conducted, the necessary investigations and
9 adjusting related thereto, and Lessee shall indemnify the
10 indemnified parties. Payment of a claim by an indemnified party
11 shall not be a condition precedent to recovery under this
12 indemnity.

13 **14. LIABILITY INSURANCE:** As a condition precedent to
14 the effectiveness of this Lease, and in partial performance of
15 Lessee's obligations of indemnity, Lessee, at its cost, shall
16 procure and maintain in full force and effect while this Lease
17 shall remain in effect: (i) commercial general liability
18 insurance or its equivalent with minimum limits of at least Five
19 Million Dollars (\$5,000,000.00) combined single limit; (ii) fire
20 legal liability insurance with a minimum limit of One Million
21 Dollars (\$1,000,000.00), and pollution liability insurance,
22 including coverage for clean-up costs, with a minimum limit of
23 Five Million Dollars (\$5,000,000.00). Each such policy shall be
24 issued by an insurance company with an AM Best rating of A.VII or
25 better insuring against liability of Lessee, its agents and
26 employees. Such insurance may contain deductibles or self-insured
27 provisions as shall be acceptable to the Executive Director. The
28 minimum limits of such policies shall be subject to review for

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1 the second five-year segment of the term and for each Option
2 Period.

3 14.1 The policy or policies shall provide:

4 14.1.1 That the Indemnified Parties, while
5 acting within the scope of their authority, shall be
6 additional insureds, such insurance to be primary and
7 any other insurance, deductible, retention or self
8 insurance maintained by an Indemnified Party or any of
9 them shall not contribute with such primary insurance.

10 14.1.2 That in the event of one insured
11 (whether named or additional) incurring liability to
12 any other of the insureds (whether named or addi-
13 tional), the policy shall cover the insured against
14 whom claim is or may be made, in the same manner as if
15 separate policies had been issued to each insured,
16 except that the limits of insurance shall not be
17 increased thereby.

18 14.1.3 That the same shall not be canceled or
19 coverage reduced until a thirty (30) day written notice
20 of cancellation has been served upon the Executive
21 Director by certified mail.

22 Each such policy shall either contain a blanket form of
23 contractual liability coverage or there shall be attached an
24 endorsement providing that such insurance that is provided
25 shall apply to the obligations assumed by Lessee under this
26 Lease.

27 14.2 In addition to the liability insurance
28 specified above, Lessee shall provide evidence of workers'

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1 compensation and employer's liability insurance with minimum
2 limits of One Million Dollars (\$1,000,000.00), or a
3 Certificate of Consent to Insure, and U.S. Longshore and
4 Harbor Workers' coverage satisfying all statutory
5 requirements. Such insurance shall provide as follows:

6 14.2.1 That the same shall not be canceled or
7 coverage materially reduced until a thirty (30) day
8 written notice of cancellation has been served on the
9 Executive Director by registered or certified mail.

10 14.2.2 That the insurer agrees to waive all
11 rights of subordination against the City of Long Beach,
12 its Board of Harbor Commissioners, individually and
13 collectively, and their officers and employees for any
14 amounts paid under the terms of the policy.

15 14.3 Lessee shall deliver certified copies of the
16 policy or policies of insurance or an endorsement or
17 endorsements on forms approved by the City ("evidence of
18 insurance") to the Executive Director for approval as to
19 sufficiency and to the City Attorney for approval as to
20 form. At least fifteen (15) days prior to the expiration of
21 any such policy, evidence of insurance showing that such
22 insurance coverage has been renewed or extended shall be
23 filed with the Executive Director. If such coverage is
24 canceled or reduced, Lessee shall, within ten (10) days
25 after receipt of written notice of such cancellation or
26 reduction of coverage, file with the Executive Director
27 evidence of insurance showing that the required insurance
28 has been reinstated or provided through another insurance

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1 company or companies, and evidence of such reinstated or new
2 insurance shall be submitted for approval as herein
3 provided. Lessee agrees to suspend and cease all operations
4 on the Premises during any periods of time for which
5 evidence of insurance coverage has not been furnished to the
6 City.

7 14.4 Neither the City nor any of the other
8 Indemnified Parties shall be liable for the payment of any
9 premiums or assessments on the policies required by the
10 provisions of this paragraph 14 to be provided by Lessee.

11 14.5 The procuring of insurance shall not be
12 construed to be a limitation in any respect upon Lessee's
13 obligations of indemnity hereunder.

14 **15. SIGNS:** No signs or placards of any type or design,
15 except safety or regulatory signs prescribed by law, shall be
16 painted, inscribed or placed in or on the Premises without the
17 prior written consent of the Executive Director, which consent
18 shall not be unreasonably withheld. Upon the expiration or
19 termination of this Lease, Lessee, at its cost, shall remove
20 promptly and to the satisfaction of the Executive Director any
21 and all signs and placards placed by it upon the Premises.

22 **16. DEFAULT:** The occurrence of any of the following
23 shall constitute a default:

24 (i) Failure by Lessee to pay rent when due, if the
25 failure continues for ten (10) days after notice has been
26 given by City to Lessee;

27 (ii) Failure by either party to perform any other
28 provision of this Lease if the failure to perform is not

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1 cured within thirty (30) days after notice has been given by
2 the other party; provided, if the default cannot reasonably
3 be cured within thirty (30) days, the party obligated to
4 perform shall not be in default if such party commences to
5 cure the default within the thirty (30) day period and
6 diligently and in good faith continues to cure the default.

7 16.1 Notices given under this paragraph shall
8 specify the alleged default and the applicable Lease
9 provisions and shall demand that the defaulting party
10 perform the provisions of this Lease or pay the rent that is
11 in arrears, as the case may be, within the applicable period
12 of time or, in the case of a default by Lessee, that Lessee
13 quit the Premises. No such notice shall be deemed a
14 forfeiture or a termination of this Lease unless City so
15 elects in its notice to Lessee.

16 16.2 Upon any such termination by City, all
17 improvements of whatsoever character constructed, erected or
18 installed upon the Premises by Lessee shall, at City's
19 option, and upon City's declaring a forfeiture, immediately
20 become the property of City as provided in Subsection
21 1207(i) of the City Charter.

22 16.3 The remedies of each party shall be cumulative
23 and in addition to any other remedies available.

24 16.4 For the purpose of this paragraph, each of the
25 covenants, conditions and agreements imposed upon or to be
26 performed by one party shall, at the option of the other
27 party, be deemed to be either covenants or conditions,
28 regardless of how designated in this Lease.

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1 **17. FORCE MAJEURE:** Neither party to this Lease shall
2 be deemed to be in default in the performance of the terms,
3 covenants or conditions of this Lease, if such party is prevented
4 from performing said terms, covenants or conditions hereunder by
5 causes beyond its control, including, without limitation,
6 earthquake, flood, fire, explosion or similar catastrophe, war,
7 insurrection, riot or other civil disturbance, failure or delay
8 in performance by suppliers or contractors, or any other cause
9 reasonably beyond the control of the defaulting party, but
10 excluding strikes or other labor disputes, lockouts or work
11 stoppages. In the event of the happening of any of such
12 contingencies, the party delayed from performance shall
13 immediately give the other party written notice of such
14 contingency, specifying the cause for delay or failure, and such
15 notice from the party delayed shall be prima facie evidence that
16 the delay resulting from the cause or causes specified in the
17 notice is excusable. The party so delayed shall use reasonable
18 diligence to remove the cause of delay, and if and when the
19 occurrence or condition which delayed or prevented the per-
20 formance shall cease or be removed, the party delayed shall
21 notify the other party immediately, and the delayed party shall
22 recommence its performance of the terms, covenants and conditions
23 of this Lease.

24 17.1 If the Premises are not reasonably useable in
25 whole or in part for the uses delineated in paragraph 4 by
26 reason of any cause contemplated by this paragraph, for a
27 period of six (6) months or longer, Lessee shall have the
28 option of terminating this Lease in its entirety by giving

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1 City written notice.

2 17.2 During any period in which the Premises are
3 not reasonably useable in whole or in part for the uses
4 delineated in paragraph 4 by reason of any cause contem-
5 plated by this paragraph, Lessee shall not be relieved of
6 its obligation to pay any sum already due to City at the
7 time of the occurrence.

8 17.3 Notwithstanding the foregoing, the occurrence
9 of any cause contemplated by this paragraph shall not excuse
10 or otherwise delay performance by Lessee of its obligation
11 to obtain all required permits, licenses, approvals and
12 consents from governmental agencies having jurisdiction for
13 the operation and conduct of permitted activities.

14 **18. TERMINATION BY ACTION OF OTHERS:** In the event the
15 United States of America, the State of California, or any agency
16 or instrumentality of said governments other than the City of
17 Long Beach shall, by condemnation or otherwise, take title,
18 possession or the right to possession of the Premises, or any
19 part thereof, or deny Lessee the right to use the Premises as
20 contemplated by this Lease, or if any court shall render a
21 decision which has become final and which will prevent the
22 performance by City of any of its obligations under this Lease,
23 and if such taking, denial or decision substantially impairs the
24 utility of the Premises to Lessee, then either party may, at its
25 option, terminate this Lease as of the date of such taking,
26 denial or decision, and all further obligations of the parties
27 shall end, except as to:

28 (i) any award to which Lessee may be entitled from

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1 the condemning authority for loss or damage suffered by
2 Lessee, including but not limited to relocation benefits and
3 Lessee's interest in its building, improvements, trade
4 fixtures and removable personal property;

5 (ii) obligations of indemnity which arise under the
6 provisions of paragraph 13; or

7 (iii) any obligations or liabilities which shall
8 have accrued prior to the date of taking.

9 **19. SURRENDER OF POSSESSION:** Upon the termination of
10 this Lease (whether by lapse of time or otherwise), Lessee, at
11 its cost, shall restore the Premises to as good a state and
12 condition as the same were upon the date Lessee originally took
13 possession thereof, reasonable wear and tear and damage by the
14 elements excepted, and shall thereafter peaceably surrender
15 possession.

16 19.1 All improvements of any kind constructed,
17 erected or installed upon the Premises by Lessee shall be
18 and remain the property of Lessee during the term of this
19 Lease. Prior to termination, Lessee shall remove all of its
20 improvements and, at its cost, shall repair any damage
21 caused by such removal; provided, the City, at its option,
22 may elect to take title to said improvements in lieu of
23 requiring Lessee to remove the same and restore the
24 Premises. The obligations contained in this paragraph shall
25 remain in full force and effect, notwithstanding the
26 expiration or termination of this Lease.

27 19.2 Except as to property owned by City, or
28 property in which City may have an interest, upon

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1 termination of this Lease (whether by lapse of time or
2 otherwise) Lessee shall cause all other property upon the
3 Premises, whether or not such property be owned by Lessee or
4 by third parties, to be removed from the Premises prior to
5 the termination date and shall cause to be repaired any
6 damage occasioned by such removal; provided, however, that
7 if any of such property is not with due diligence
8 susceptible of removal prior to the termination date,
9 Lessee's obligation hereunder shall be to remove it in the
10 most expeditious manner and as rapidly as possible following
11 the termination date. If the property is not so removed
12 from the Premises, City shall have the right to remove
13 and/or sell and/or destroy the same (subject to the interest
14 of any person other than Lessee therein) at Lessee's
15 expense, and Lessee agrees to pay the reasonable cost of any
16 such removal, sale, or destruction.

17 **20. RELOCATION ASSISTANCE:** Lessee understands and
18 agrees that nothing contained in this Lease shall create any
19 right in Lessee for relocation assistance or payment from City
20 upon the termination of this Lease or upon the termination of any
21 holdover period. Lessee acknowledges and agrees that it shall
22 not be entitled to any relocation assistance or payment pursuant
23 to the provisions of Title 1, Division 7, Chapter 16, of the
24 Government Code of the State of California (Sections 7260 et
25 seq.) with respect to any relocation of its business or
26 activities upon the termination of this Lease as a result of the
27 lapse of time or Lessee's default or upon the termination of any
28 hold over period.

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1 prepaid, first-class mail. The addresses of the parties are
2 as follows:

3 To City: Executive Director
4 Long Beach Harbor Department
5 P.O. Box 570
6 Long Beach, California 90801
7 Fax: (562) 901-1733

8 To Lessee: Manager of Property
9 Ultramar Inc.
10 2402 East Anaheim Street
11 Wilmington, California 90744
12 Fax: (562) 495-5421

13 with copy to: Refinery Counsel
14 Ultramar Diamond Shamrock Corp.
15 6000 North Loop 1604 West
16 San Antonio, Texas 78249-1112
17 Fax: (210) 592-2202

18 Either party may change its address by notifying the other
19 party in writing of such change. Notice shall be deemed
20 communicated within forty-eight (48) hours from the time of
21 mailing if mailed and as of the time of receipt if sent by
22 facsimile or personally served.

23 23.2 Lessee agrees, subject to applicable laws,
24 rules and regulations, that no person shall be subject to
25 discrimination in the performance of this Lease on the basis
26 of race, color, ancestry, national origin, religion, sex,
27 sexual orientation, AIDS, HIV status, age, disability,
28 handicap, or military status. Lessee shall take affirmative
action to ensure that applicants are employed and that
employees are treated during employment without regard to
any of these bases, including but not limited to employment,
promotion, demotion, transfer, recruitment, recruitment
advertising, layoff, termination, rates of pay or other
forms of compensation, and selection for training, including

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1 apprenticeship. Lessee agrees to post in conspicuous places
2 available to employees and applicants for employment notices
3 to be provided by the City setting out the provisions of
4 this nondiscrimination clause. Lessee shall in all
5 solicitations or advertisements for employees state that all
6 qualified applicants will receive consideration for
7 employment without regard to these bases.

8 23.3 The parties hereby waive all claims against
9 the other for damage or loss caused by any suit or
10 proceeding commenced by a third party, directly or
11 indirectly attacking the validity of this Lease, or any part
12 thereof, or by any judgment or award in any suit or
13 proceeding declaring this Lease null, void or voidable, or
14 delaying the same, or any part thereof, from being carried
15 out, provided that Lessee shall not be liable for payment of
16 compensation hereunder to the extent that, during any
17 period, it is so prevented from exercising its rights
18 hereunder.

19 23.4 The use of paragraph headings or captions in
20 this Lease is solely for the purpose of convenience, and the
21 same shall be entirely disregarded in construing any part or
22 portion of this Lease.

23 23.5 This Lease shall be governed by the laws of
24 the State of California, both as to interpretation and
25 performance.

26 23.6 No waiver by either party at any time of any
27 of the terms, conditions, covenants or agreements of this
28 Lease shall be deemed or taken as a waiver at any time

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 thereafter of the same or any other term, condition,
2 covenant or agreement herein contained nor of the strict and
3 prompt performance thereof by the party obligated to
4 perform. No delay, failure or omission of either party to
5 exercise any right, power, privilege or option arising from
6 any default nor subsequent acceptance of compensation then
7 or thereafter accrued shall impair any such right, power,
8 privilege or option or be construed to be a waiver of any
9 such default or relinquishment thereof or acquiescence
10 therein. No option, right, power, remedy or privilege of
11 either party hereto shall be construed as being exhausted or
12 discharged by the exercise thereof in one or more instances.
13 It is agreed that each and all of the rights, powers,
14 options or remedies given to the parties by this Lease are
15 cumulative, and no one of them shall be exclusive of the
16 other or exclusive of any remedies provided by law, and that
17 the exercise of one right, power, option, or remedy by a
18 party shall not impair its rights to any other right, power,
19 option or remedy.

20 23.7 This Lease shall be binding upon and shall
21 inure to the benefit of the successors and assigns of City
22 and shall be binding upon and inure to the benefit of the
23 permitted successors and assigns of Lessee.

24 23.8 Should any of the covenants, conditions or
25 agreements of this Lease be held by a court of competent
26 jurisdiction to be illegal or in conflict with any
27 applicable law, or with any provision of the Charter of the
28 City of Long Beach, the validity of the remaining portions

Robert E. Shannon
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Long Beach, California 90802-4664
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or provisions shall not be affected thereby.

23.9 If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

23.10 This Lease may be amended or terminated at any time by the written mutual agreement of the parties.

23.11 All provisions, whether covenants or conditions on the part of Lessee, shall be deemed to be both covenants and conditions.

23.12 This document constitutes the whole agreement between City and Lessee. There are no terms, obligations or conditions other than those contained herein. No modification or amendment of this Lease shall be valid and effective, unless evidenced by a written agreement signed by the parties which makes specific reference to this Lease.

ULTRAMAR INC.,
a Nevada corporation

September 29, 2000

By: William R. Klesse
Name: William R. Klesse
Title: Executive Vice President

September 29, 2000

By: Tom Coyne
Name: Tom Coyne
Title: Plant Manager

LESSEE

/

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

LOS ANGELES

} ss.

On

9/29/00

Date

, before me,

CHRISTINE C. CIASCA, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

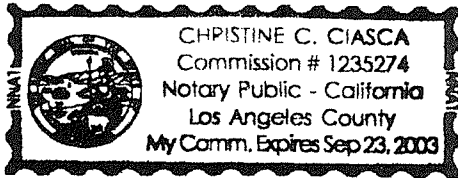
personally appeared

TOM BIPE

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Christine C. Ciasca

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LEASE BETWEEN CITY OF LONG BEACH + ULTRAMAR INC.

Document Date: SEPTEMBER 29 2000

Number of Pages: 32

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: PLANT MANAGER

Signer Is Representing: ULTRAMAR INC

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

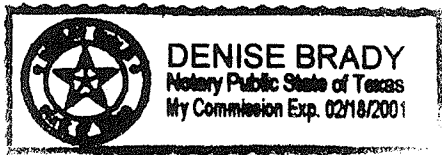
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Texas }
~~California~~ } ss.
County of Bexar

On 9/29/00, before me, William R. Klesse, db Denise Brady, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William R. Klesse,
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Denise Brady
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lease between City of Long Beach and Ultramar Inc.

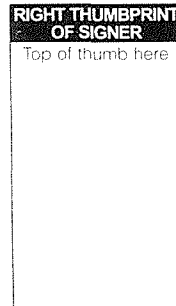
Document Date: 9-29-00 Number of Pages: 32

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: William R. Klesse
- Individual
 - Corporate Officer — Title(s): Executive Vice President
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: Ultramar Inc.

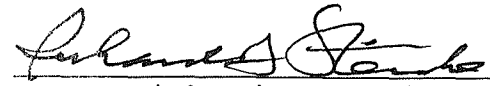


Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

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CITY OF LONG BEACH, a municipal corporation, by and through its Board of Harbor Commissioners

Dec 1, 2000

By: 
Richard D. Steinke,
Executive Director
Long Beach Harbor Department

CITY

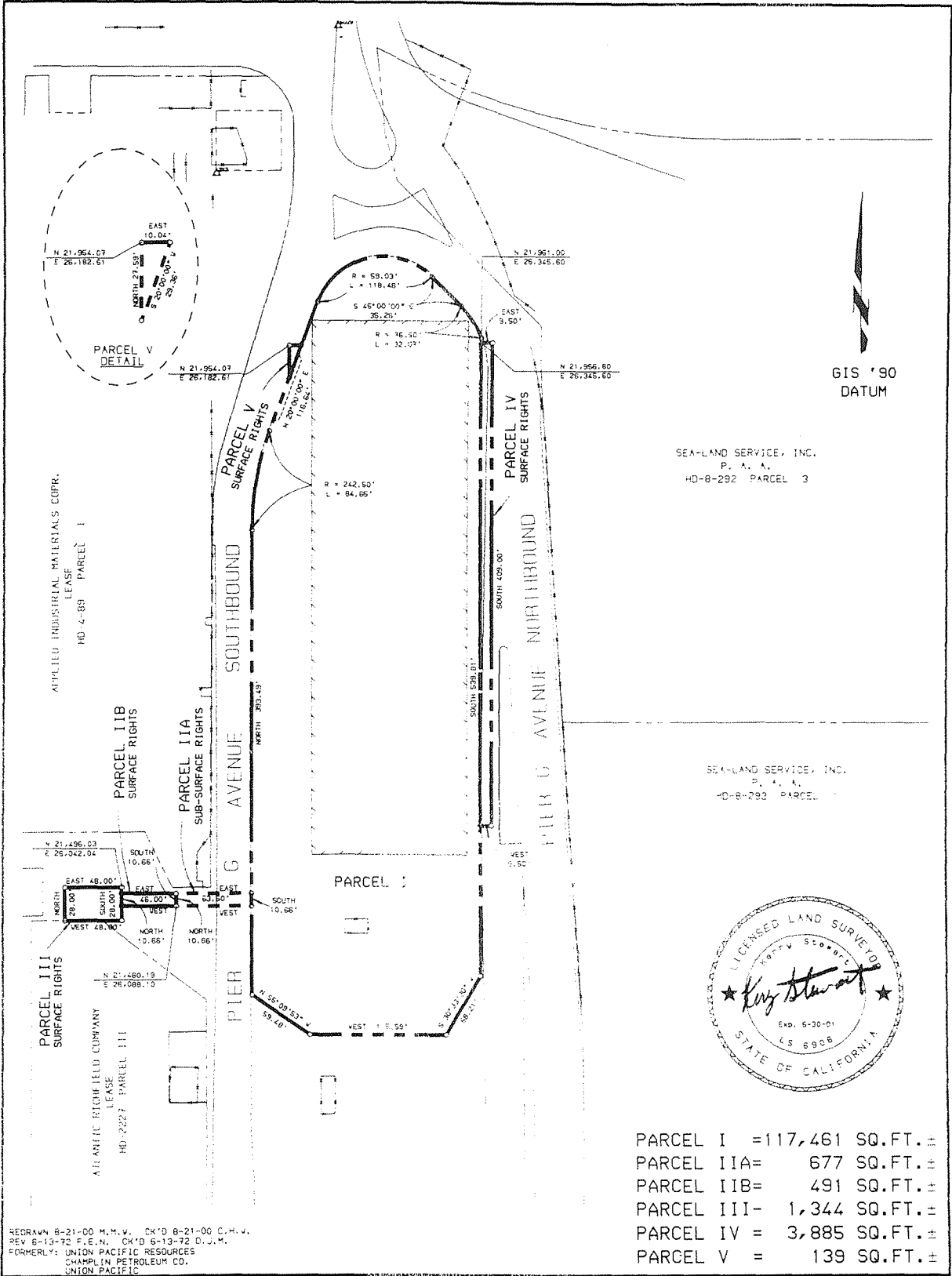
The foregoing Lease is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

11-02-, 2000

By: 
Richard L. Landes,
Principal Deputy

RLL:dmp
9/22/00
U-3\ULTRAMAR.2\00-00207



- PARCEL I = 117,461 SQ.FT. ±
- PARCEL IIA = 677 SQ.FT. ±
- PARCEL IIB = 491 SQ.FT. ±
- PARCEL III = 1,344 SQ.FT. ±
- PARCEL IV = 3,885 SQ.FT. ±
- PARCEL V = 139 SQ.FT. ±



PORT OF LONG BEACH - CALIFORNIA
OFFICE OF THE EXECUTIVE DIRECTOR

SCALE 1" = 100'
DESIGNED _____
REDRAWN F.E.N.
CHECKED J.H.F.

DATE 08-04-00
L.S. 6905

1090 PIER G AVENUE
ULTRAMAR, INC.
COKE STORAGE FACILITY
LEASE AREA HD3-1

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 CONSENT TO SUBLEASE BY ULTRAMAR INC. TO
2 OXBOW CARBON & MINERAL HOLDINGS, INC.,
3 ASSIGNMENT BY OXBOW CARBON & MINERAL
4 HOLDINGS, INC. TO AND ASSUMPTION BY OXBOW
5 CARBON & MINERALS LLC OF THE RIGHTS AND
6 OBLIGATIONS OF OXBOW CARBON & MINERAL
7 HOLDINGS, INC. UNDER THE SUBLEASE BETWEEN
8 ULTRAMAR INC. AND OXBOW CARBON & MINERALS
9 HOLDINGS, INC., CONSENT TO SUCH ASSIGNMENT AND
10 ASSUMPTION, AND SECOND AMENDMENT TO LEASE

11
12 THIS CONSENT TO SUBLEASE BY ULTRAMAR INC. TO OXBOW
13 CARBON & MINERAL HOLDINGS, INC., ASSIGNMENT BY OXBOW CARBON &
14 MINERAL HOLDINGS, INC. TO AND ASSUMPTION BY OXBOW CARBON & MINERALS
15 LLC OF THE RIGHTS AND OBLIGATIONS OF OXBOW CARBON & MINERAL
16 HOLDINGS, INC. UNDER THE SUBLEASE BETWEEN ULTRAMAR INC. AND OXBOW
17 CARBON & MINERALS HOLDINGS, INC., CONSENT TO SUCH ASSIGNMENT AND
18 ASSUMPTION, AND SECOND AMENDMENT TO LEASE is made and entered into, in
19 quadruplicate, as of the date executed by the Executive Director of the Long Beach Harbor
20 Department ("Executive Director"), by and among the CITY OF LONG BEACH, a
21 municipal corporation, acting by and through its Board of Harbor Commissioners ("City")
22 pursuant to authority granted by said board at its meeting of May 10 , 2004;
23 ULTRAMAR INC., a Nevada corporation ("Ultramar"); OXBOW CARBON & MINERAL
24 HOLDINGS, INC., a Delaware corporation ("Holdings"), and OXBOW CARBON &
25 MINERALS LLC, a Delaware limited liability company ("LLC").

26 This Consent, Assignment, Assumption, Consent, and Amendment is made
27 with reference to the following facts and objectives:

28 1.1 City and Ultramar entered into a Lease on December 1, 2000

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 (Harbor Department Document No. HD-6406). The Lease was amended on
2 May 2, 2003 (HD-6406A). The Lease as so amended is the Amended
3 Lease.

4 1.2 On July 1, 2001, Ultramar and Holdings entered into a Sublease
5 with respect to the premises which are the subject of the Lease. On or about
6 October 13, 2003, Ultramar provided a copy of the Sublease to City and
7 Ultramar requested the City's consent to such Sublease. City is willing to
8 consent to such Sublease.

9 1.3 Holdings desires to assign to LLC and LLC desires to assume the
10 rights and obligations of Holdings relating to or arising out of the Sublease.
11 LLC is a wholly-owned subsidiary of Holdings. City and Ultramar are willing
12 to consent to such assignment and assumption.

13 1.4 City and Ultramar desire to amend the Amended Lease. Holdings
14 and LLC agree that the Sublease is subject to such amendment and all
15 further amendments to the Lease agreed to by and between City and
16 Ultramar.

17 2. City consents to the Sublease between Ultramar and Holdings upon the
18 express condition that any and all rights of the parties to said Sublease shall be and remain
19 subject and subordinate to the Amended Lease, as amended herein and as amended from
20 time to time.

21 3. Holdings hereby assigns all of its right, title and interest in the Sublease
22 to LLC and agrees to this Second Amendment. LLC accepts the assignment from
23 Holdings, assumes all of the obligations under the Sublease, and agrees to this Second
24 Amendment. City and Ultramar hereby consent to the foregoing assignment and
25 assumption and agree to this Second Amendment. The City's consent to this assignment
26 will not waive any restriction or requirement in the Lease relating to any further assignment.

27 4. The second sentence of paragraph 7 of the Amended Lease is hereby
28 amended to read, in its entirety, as follows:

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 "Lessee shall use its best commercial efforts to obtain all necessary
2 permits and to complete such removal and new construction on or before
3 December 31, 2004."

4 5. Except as herein specifically amended, all terms and conditions of the
5 Amended Lease shall remain in full force and effect.

6 ULTRAMAR INC., a Nevada corporation

7 March 22 2004

By: [Signature]
Name: Gray L. Arthur Jr.
Title: CEO + President

9 March 22 2004

By: [Signature]
Name: William R. Kase
Title: Executive Vice President

"Ultramar" *me*

13 OXBOW CARBON & MINERAL HOLDINGS,
14 INC., a Delaware corporation

15 April 8, 2004

By: [Signature]
Name: Brian L. Acton
Title: President & COO

17 April 8, 2004

By: [Signature]
Name: James R. Kahlhoff
Title: Executive Vice President

"Holdings"

21 OXBOW CARBON & MINERALS LLC, a
22 Delaware limited liability company

23 April 8, 2004

By: [Signature]
Name: Brian L. Acton
Title: President & COO

25 April 8, 2004

By: [Signature]
Name: James R. Kahlhoff
Title: Executive Vice President

"LLC"

27 ///
28 ///

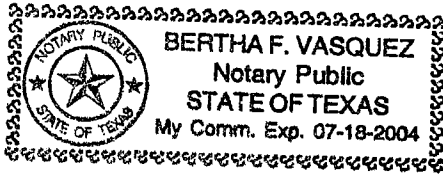
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Texas }
County of Brewer } ss.

On March 22, 2004 before me, Bertha F. Vasquez, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe/Notary Public")
personally appeared Gary h. Arthur, Jr.
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Bertha F. Vasquez
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Carroll Settlement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

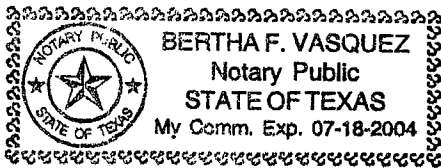
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Texas }
 County of Brewer } ss.

On March 22, 2004 before me, Bertha J. Vasquez, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)
 personally appeared William R. Klesse
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Bertha J. Vasquez
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Casualty Sales

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here


CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Florida
County of Palm Beach } ss.

On April 8, 2004 before me, Janice C. Patten
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Brian L. Acton
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

 Janice C Patten
My Commission DD198502
Expires June 21, 2007

WITNESS my hand and official seal.
Janice C. Patten
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

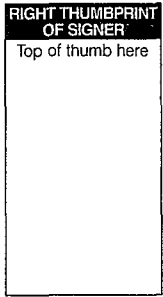
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



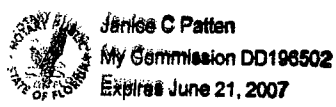
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Florida
County of Palm Beach } ss.

On April 8, 2004, before me, Janice C. Patten
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared James R. Kohlhoff
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Janice C. Patten
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

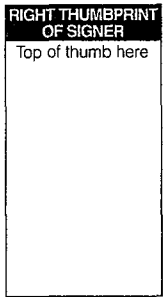
Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney-in-Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: _____




CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Florida }
County of Palm Beach } ss.

On April 8, 2004 before me, Janice C. Patten
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Brian L. Acton
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

 Janice C Patten
My Commission DD196502
Expires June 21, 2007

WITNESS my hand and official seal.

Janice C. Patten
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Florida
County of Palm Beach } ss.

On April 8, 2004 before me, Janice C. Patten
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared James R. Kohlhoff
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Janice C Patten
My Commission DD196502
Expires June 21, 2007

WITNESS my hand and official seal.

Janice C. Patten
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

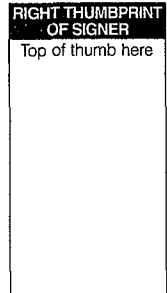
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

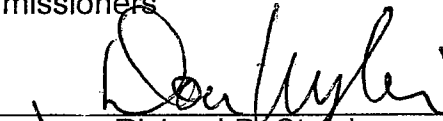


Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

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6/10, 2004


CITY OF LONG BEACH, a municipal corporation,
acting by and through its Board of Harbor
Commissioners

By: 
Richard D. Steinke
Executive Director
Long Beach Harbor Department

"City"

This document is hereby approved as to form.

June 9, 2004

ROBERT E. SHANNON, City Attorney
By: 
Charles M. Gale, Deputy

CMG:rm
U-2/1-28-04(ULTRAMARCONSENT.SUB)00-00207
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SUBLEASE

This Sublease effective as of the 1st day of July, 2001, entered into by and between Ultramar Inc. ("Ultramar"), a Nevada corporation, and Oxbow Carbon & Minerals Holdings, Inc., a Delaware corporation ("Oxbow").

Recitals

A. The City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), and Ultramar entered into a Lease Agreement dated December 1, 2000, pursuant to Ordinance No. HD-1829 and Harbor Department Document No. HD-6406, adopted by the Board of Harbor Commissioners of the City of Long Beach, as amended, whereby Ultramar was granted a lease of certain premises in the Harbor District of the City upon which premises is constructed certain bulk commodity stockpiling and storage facilities (referred to herein as amended as the "Lease").

B. Ultramar and Oxbow have concurrently with this Sublease entered into an agreement with respect to the purchase by Oxbow of petroleum coke produced by Ultramar's Wilmington, California, refinery which agreement is referred to herein as the "Coke Sales Agreement"; and

C. To facilitate the delivery, storage, and shipment of petroleum coke purchased by Oxbow from Ultramar, Oxbow and Ultramar are entering into this Sublease for the premises described in the Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Ultramar and Oxbow hereby agree as follows:

1. Description of Premises. Ultramar subleases to Oxbow, and Oxbow subleases from Ultramar on the terms and conditions herein set forth, that certain real property and improvements, more particularly described in Section 2 of the Lease, together with all easements, licenses and appurtenant rights of Ultramar in, to, under or pursuant to the Lease, and all coke handling equipment or related improvements of Ultramar located thereon (collectively, the "Premises"). Ultramar is aware of no material impediments as to the Premises' suitability to the commercial transaction contemplated in the Coke Sales Agreement and Sublease.

2. Master Lease.

A. This Sublease is expressly subject to all of the terms of the Lease. The Lease, including all amendments thereto, is incorporated herein in its entirety by this reference, and is attached to this Sublease as Exhibit A. During the term hereof, Oxbow hereby expressly assumes and shall perform each and all of the covenants and obligations of the Lease to be performed by Ultramar thereunder, except that Ultramar retains the obligation to pay the base monthly land rent as set forth in Section 5 of the Lease.

Ultramar extends to Oxbow only the rights granted to Ultramar under the Lease, to the extent those rights change or are terminated, Oxbow's rights shall so change or terminate.

B. In the event there are amendments or potential amendments to the Lease during the effective term of this Sublease, Ultramar shall notify Oxbow as soon as practicable. If such amendments are executed by Ultramar and not suitable to Oxbow, Oxbow may terminate this Sublease with 90 days prior written notice.

C. Ultramar has no actual notice or actual knowledge that it is in default of or is aware of the existence of a potential default under the Lease, as of the effective date of this Sublease.

3. Term.

A. Subject to subsections B. and C. of this Section 3., the term of this Sublease shall be for a period of five years, commencing July 1, 2001, and terminating on June 30, 2006, unless extended as described in Section 5 of this Sublease.

B. The commencement of the effectiveness of the term of this Sublease is subject to approval by City. In the event City declines or fails to approve this Sublease, this Sublease shall have no force or effect. Oxbow shall have no legal recourse if Ultramar pursues other sublessees or potential sublessees for the coke barn.

C. If the Coke Sales Agreement is terminated then this Sublease shall also terminate.

4. Obligation to Throughput. Oxbow assumes and agrees to comply with and meet the throughput requirements set forth in the Lease. Oxbow assumes the obligation to pay the tariff and other wharfage charges under the Lease (including the guaranteed minimum aggregate throughput), with these amounts to be reimbursed by Ultramar, provided, however, that if the guaranteed minimum aggregate throughput under the Lease is not met, then Ultramar will not reimburse such amounts. Should Ultramar not produce sufficient coke to meet the guaranteed minimum aggregate throughput, then any costs associated with the failure to meet the guaranteed minimum aggregate throughput will be for Ultramar's account.

5. Alterations and Additions.

A. Construction of New Coke Barn.

(1) Construction Standards. Oxbow agrees to build a new coke barn (the "New Barn") on the Premises in accordance with the Project Description attached as Exhibit B to this Sublease and in accordance with the requirements set forth in the Lease. Oxbow expressly assumes lessee's obligations under Section 7 of the Lease regarding the construction of the New Barn. Construction of the New Barn will be in accordance with (a) plans and specifications previously submitted to and approved in writing by Ultramar

and the City, (b) the covenants and conditions of the Lease, and (c) all necessary permits required by law, Ultramar and/or the City. Oxbow and Ultramar shall mutually agree in writing on a budget and timeline for construction of the New Barn, which shall address the process for handling change orders required by Ultramar or the City. The parties agree to amend this Sublease once such budget and timeline has been agreed to so that such budget and timeline is included as Exhibit D to this Sublease.

(2) Potential Extensions of Agreements. If the total construction cost of the New Barn ("Construction Cost") is at or below the agreed upon budgeted amount for construction (plus the amount, if any, of any change orders required by Ultramar or the City), then, at Oxbow's request, Ultramar will enter into amendments extending this Sublease and the Coke Sales Agreement on the same terms and conditions for an additional 12 months. If the construction of the New Barn is complete by the deadline set forth in the agreed upon construction timeline (as adjusted to provide for change orders required by Ultramar or the City and any event of Force Majeure), then, at Oxbow's request, Ultramar will enter into amendments extending this Sublease and the Coke Sales Agreement on the same terms and conditions for an additional 12 months. Subject to Oxbow's satisfaction of the above requirements, Oxbow will be entitled, pursuant to this section, to a 24-month extension if both of the above requirements are met, a 12-month extension if one of the above requirements is met, or no extension if neither requirement is met.

(3) Payment of Construction Costs. Oxbow will pay all construction and related costs in connection with the New Barn. Construction Cost minus \$1.5 million is referred to as the "Ultramar Cost." The Ultramar Cost plus 8.5% annual interest will be amortized over the then-remaining term of the Sublease in equal monthly payments and will be calculated ("Monthly Amortization Amount") as shown on Exhibit C. The parties will agree in writing on the amount of the Ultramar Cost and the amortization schedule thereof. Beginning with commencement of commercial operations of the New Barn, the Monthly Amortization Amount will be credited each month against the amount payable by Oxbow for purchases of coke under the Coke Sales Agreement. If this Sublease is terminated before the Ultramar Cost has been fully credited as described above, Ultramar will pay to Oxbow the remaining unamortized balance of the Ultramar Cost. Upon completion, the New Barn and all associated equipment will become the property of Ultramar.

B. Subject to the terms and provisions of the Lease, Oxbow may, at its sole cost and expense, construct, erect, and install additional improvements and may make alterations to the improvements presently located on the Premises provided, however, that no such alteration, addition, or improvement shall be installed, erected, constructed or made except in accordance with (a) plans and specifications previously submitted to Ultramar and thereafter approved in writing by the City and Ultramar prior to the undertaking of the alteration, addition, or improvement, and (b) the covenants and conditions of the Lease and this Sublease, and (c) all necessary permits required by law, Ultramar and/or the City. The right of approval of any such alteration, addition, or improvement shall be within Ultramar's and the City's sole independent discretion.

6. Maintenance and Repairs. At the onset of this Sublease, Oxbow has inspected the Premises and during the term shall be responsible for, subject to reimbursement as set forth below, and pay for all costs associated with the Premises, including, but not limited to, the cost of normal repair and maintenance of the coke storage facilities and the coke handling equipment, all electrical power and utilities, and any and all permit fees. Oxbow shall keep and maintain the Premises and all improvements of any kind whatsoever thereon in as good repair and condition as when received and shall make all necessary repairs and alterations thereto and perform all necessary maintenance thereof. All maintenance and repairs will be made upon consultation and approval by Ultramar, and will be for account of Ultramar. During the term of this Sublease, Oxbow shall invoice Ultramar for reimbursement of charges set forth in the section. Ultramar shall also bear the cost for parts, whether for gear boxes, major electrical motors, belts or other parts, stevedore labor charges for repair of belts, cleanup, routine equipment servicing and routine maintenance. Notwithstanding the foregoing, Oxbow will assign to Ultramar all warranties it receives for the improvements and equipment it installs.

In the event Oxbow fails to make any repair or perform any maintenance required hereunder, Ultramar, after ten (10) days written notice, may make such repairs or perform such maintenance as it deems necessary and such failure may be deemed a default under this Sublease. For repair or maintenance necessary for the immediate continued operation of the coke barn, the notice period above shall be shortened to 24 hours.

7. Liability Insurance. Oxbow shall procure and maintain, while this Sublease is in effect, a policy or policies of insurance complying with the requirements set forth in paragraph 14 of the Lease. Additionally, the specified policy or policies shall provide that Ultramar, its affiliates, and each of their officers, directors, and employees shall be named additional insureds, will include a waiver of subrogation in favor of such named additional insureds, and will be primary to any other insurance carried by Ultramar. Oxbow shall deliver a certificate evidencing the above insurance to Ultramar within 5 days from the date Oxbow executes this Sublease, and thereafter prior to the expiration of any existing certificate. Oxbow shall require its insurance carriers to provide to Ultramar 30 days prior written notice of cancellation or termination of such insurance. The procuring of such policy or policies of insurance shall not be construed as a limitation in any respect of Oxbow's obligations under paragraph 13 or any other provision of the Lease, or any provisions of this Sublease.

8. Damage or Destruction

A. In the event of the destruction or substantial damage to the Premises or to any of the improvements installed upon the Premises which are required and necessary for coke handling and storage, then to the extent that the coke barn is unusable for acceptance, storage or removal of coke and such destruction or damage results from acts or omissions solely on the part of Ultramar, its employees, agents or workers, then Ultramar shall be responsible for any charges for guaranteed minimum aggregate

throughput under the Lease to the extent so related. In the event such destruction or substantial damage results from any act other than the sole acts or omissions of Ultramar, its employees, agents or workers, Oxbow shall be responsible for such minimum throughput charges without reimbursement from Ultramar. Repair or replacement costs shall be borne by Oxbow with reimbursement from Ultramar, except, however, for damage or destruction for which Ultramar is entitled to indemnification from Oxbow pursuant to this Sublease.

B. Ultramar, at its sole reasonable discretion, may participate in any construction of, improvement to, or repair of the Premises. All repair or replacement work shall be completed as expeditiously as possible with consideration to economic expenditures.

9. Condemnation. Ultramar shall be solely entitled to any condemnation award or sum paid in lieu thereof for any taking of the Premises by eminent domain proceedings except such awards which are separately stated as due solely to Oxbow. Provided, however, that to the extent an award to Ultramar contains a component as compensation for the value of the New Barn and if any separate award to Oxbow does not reimburse Oxbow for the cost to construct the New Barn, then Ultramar shall reimburse to Oxbow any remaining unamortized Ultramar Cost at the time of the award. In the event the United States Government, the State of California, the City, or any agency or instrumentality of said governments, shall by condemnation or otherwise, take title to or possession of the Premises or a substantial part thereof, thereby substantially impairing the use of the Premises, either party at its option may terminate this Sublease as of the date of such taking, and all further obligations of the parties shall end, except as to liabilities which shall theretofore have accrued.

10. Indemnity. Oxbow shall indemnify and hold harmless Ultramar from and against any and all claims for injury or death to persons or damage to property arising from the conduct of Oxbow's business or from any activity, work or things done, permitted or suffered in or about the Premises, or arising from any acts or omissions of Oxbow, or any of Oxbow's agents, contractors, employees, assignees, sublessees, licensees or permittees, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in the defense of any such claim or action or proceeding brought thereon. Notwithstanding anything contained herein to the contrary, Oxbow shall have no obligation to indemnify Ultramar for injury, death or damages arising from the sole acts or omissions of Ultramar, its agents, servants, or employees. Ultramar shall indemnify and hold harmless Oxbow for its claims, damages, personal injury or property damage arising from the sole acts or omissions of Ultramar. Oxbow, as a material part of the consideration to Ultramar, hereby assumes all risk of damage to the property of Oxbow or injury to its employees in, upon or about the Premises arising from any cause except from the sole acts or omissions of Ultramar, its agents, servants, or employees, and Oxbow hereby waives all claims in respect thereof against Ultramar except as herein provided.

11. Assignment and Subletting. Oxbow shall not, voluntarily or by operation of law, assign, transfer, mortgage, sublet or license this Sublease without the prior independent written consent of the City and Ultramar; provided, however, that Oxbow may assign this Sublease to its wholly owned subsidiary, Oxbow Carbon & Minerals LLC, without Ultramar's prior written consent by providing Ultramar with written notice of such assignment; provided further, however, an assignment of this Sublease by Oxbow shall not relieve Oxbow from liability to the non-assigning party for any non-performance hereunder; provided, further still, any such assignment, shall not be effective without the prior written consent of the City. Any attempted assignment, transfer, mortgage, encumbrance, subletting, licensing, or permitting without such consent shall be void, and shall constitute a breach of this Sublease. Neither this Sublease nor any interest herein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Oxbow, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership, taken by or against Oxbow or by a process of law, and possession of the whole or any part of the Premises shall not be divested from Oxbow in such proceedings or by any process of law without the written consent of the City and Ultramar. Any breach of the provisions of this Section shall cause this Sublease to terminate immediately at the option of Ultramar. The acceptance of rent by Ultramar from any purported assignee shall not be deemed to be a waiver by Ultramar of any provision hereof. Consent to one assignment, subletting, or other transfer shall not be deemed to be consent to any subsequent transfer.

12. Environmental Compliance. Oxbow, at its sole expense, agrees to comply with all federal, state and local laws, rules and regulations covering Oxbow's handling, transportation, storage, discharge, or sale of coke from or upon the Premises, or Oxbow's other use of the Premises subject to this Sublease, including, without limitation, laws governing air, water, environmental and health quality or protection, and product labeling requirements (herein referred to in their entirety as "environmental regulations"). Ultramar shall not be responsible for any failure of Oxbow to comply with such environmental regulations or for any losses, damages, fines or expenses arising as a result of breach of or failure to comply with the environmental regulations or the requirements of this Section unless such was caused by the acts of Ultramar or Ultramar's omissions to act when it had a contractual or legal obligation to act. Each party further agrees to indemnify and hold harmless the other from any such losses, damages, fines, or expenses, including any reasonable attorneys' fees arising as a result of the responsibilities set forth herein. Oxbow shall be responsible and liable under this paragraph only with respect to the time period in which Oxbow occupied, operated or subleased the Premises. Oxbow shall not have any responsibility or liability for the acts or omissions of predecessor Sublessees or parties or for the contributory negligence, omissions or acts of Ultramar with respect to the matters addressed in this Section.

13. Remedies In Case Of Default

A. If, during the term of this Sublease, any one or more of the following acts or occurrences (each an "Event of Default") shall happen:

(1) Oxbow shall default in making any of the payments due under this Sublease and such default shall continue for a period of fifteen (15) days after written notice from Ultramar that such payment is due and unpaid;

(2) Ultramar or Oxbow shall default in the performance of or compliance with any of the other covenants, agreements, terms or conditions of this Sublease to be performed by either party, and such default shall continue for a period of fifteen (15) days after written notice thereof from the non-defaulting party, or, in the case of a default which cannot with due diligence be cured within fifteen (15) days, the defaulting party shall fail to proceed promptly (except for unavoidable delays) after the giving of such notice and with all due diligence to cure such default and thereafter to prosecute the curing thereof with all due diligence (it being intended that as to a default not susceptible of being cured with due diligence within fifteen (15) days, the time within which such default may be cured shall be extended for such period as may be reasonably necessary to permit the same to be cured with all due diligence, but not to exceed six months);

(3) A petition in bankruptcy, whether voluntary or involuntary, is filed as to Oxbow or Oxbow is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, composition, readjustment or similar relief under any present or future bankruptcy or other applicable law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, or liquidator of Oxbow or any guarantor of this Sublease or of all or any substantial part of its properties or of all or any part of the Premises; or

(4) The Premises shall be abandoned by Oxbow for a period of thirty (30) days or more;

Then and during the continuance thereof, the nondefaulting party may, at its option, enforce this Sublease, or while any such Event or Default shall continue, and notwithstanding the fact that the nondefaulting party may have any other remedy hereunder or at law or in equity, by written notice to the defaulting party, designate a date not less than ten (10) days after the giving of such notice on which this Sublease shall terminate; and thereupon, on such date the term of this Sublease and the estate hereby granted shall expire and terminate upon the date specified in such notice with the same force and effect as if the date specified in such notice were the date hereinbefore fixed for the expiration of the Term of this Sublease, and all rights of the defaulting party hereunder, shall expire and terminate, but the defaulting party shall remain liable as hereinafter provided.

Upon termination of this Sublease, Ultramar at its option shall, notwithstanding any other provision of the Sublease, be entitled to recover from Oxbow monetary damages as applicable to this Sublease and Coke Sales Agreement. If this Sublease is terminated by Oxbow for default by Ultramar, Oxbow shall be entitled to damages applicable to this Sublease and the Coke Sales Agreement.

B. A material default under the Coke Sales Agreement shall for all purposes be deemed to be a material default under this Sublease. Provided, however, that if the default remains uncured after the expiration of any applicable cure period under the Coke Sales Agreement, this Sublease and the Coke Sales Agreement shall be terminable immediately by the non-defaulting party based on such Coke Sales Agreement default without application of any additional cure period set forth in this Sublease.

D. If the Coke Sales Agreement is terminated then this Sublease shall also terminate as of the same day.

C. Oxbow shall be liable to and shall pay Ultramar for reasonable attorneys' fees, costs and expenses incurred by Ultramar in regaining possession of the Premises, in repairing or putting the Premises in rentable condition, and in renting the Premises. Ultramar shall be liable for reasonable attorneys' fees incurred by Oxbow due to default as described in this Section 13.

14. Surrender on Expiration or Termination. Upon termination or expiration of this Sublease for any reason: (i) Oxbow shall peaceably quit and surrender the Premises to Ultramar, and Ultramar may, without further notice, enter upon, re-enter, possess, and repossess the same and again have and enjoy the Premises as if this Sublease had not been made; (ii) notwithstanding any provision herein to the contrary, but except as provided in (iii) below, Oxbow shall leave (or restore, as necessary) the Premises in as good a state and condition as the Premises were found as of the first day of this Sublease, exclusive of normal wear and tear; (iii) regarding all improvements made to the Premises during the term by Oxbow, Oxbow shall leave the improvements in place; and (iv) Oxbow shall cause the Premises to be free of all petroleum coke owned by Oxbow and Ultramar shall, at its election, thereafter take title to any petroleum coke remaining on the Premises. If Oxbow fails to perform as requested, Ultramar shall have the right to perform in its place and Oxbow agrees to pay the reasonable costs associated with such performance. Ultramar shall mitigate damages or expenses regarding coke remaining on the Premises to the extent that all proceeds received from the sale of such coke repossessed by Ultramar shall be applied to Oxbow's account balance (after recovery of applicable expenses).

15. Notices. All documents to be delivered and all notices which any party hereto desires to give to another party shall be in writing and shall be given by personal delivery, by facsimile with proof of transmission, by e-mail or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

Ultramar:	Ultramar Inc. 2402 E. Anaheim Street Wilmington, CA 90744 Attn: Refinery Manager Fax: 562-495-5412 E-mail: tom_gipe@udscorp.com Phone: 562-491-6637
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with a copy to: Valero Companies
Attn: Mr. Mark Williams
Marketing Director – Specialty Products
One Valero Place
San Antonio, TX 78212-3186
Fax: 210-370-2853
E-mail: Mark.Williams@valero.com
Phone: 210-370-2774

Oxbow: Oxbow Carbon & Minerals Holdings, Inc.
3478 Buskirk Ave., Suite 346
Pleasant Hill, CA 94523-4342
Attn: Executive Vice President
Fax: 925-932-8920
E-mail: larry_black@plhill.oxbow.com
Phone: 925-932-0878

with a copy to: J. Michael Smith, Esq.
Oxbow Corporation
1601 Forum Place, P-2
West Palm Beach, FL 33401
Fax: 561-640-8812
E-mail: mike_smith@oxbow.com
Phone: 561-640-8800

Notice shall be effective the immediate next working day following facsimile transmission or hand delivery and five calendar days after registered or certified mail or, in any event, upon receipt, whichever occurs first.

16. Miscellaneous

A. California Law to Apply. This Sublease shall be governed by and construed in accordance with the laws of the State of California. The parties agree that the courts located in California (state or federal, as applicable) shall have exclusive jurisdiction over any dispute arising between the parties.

B. Waiver. Any waiver, express or implied, of any breach of this Sublease shall not be considered a waiver of any subsequent breach.

C. Time of Essence. Time is of the essence of this Sublease and every provision thereof.

D. Attorneys' Fees. If a party hereto commences an action against another to enforce any of the terms of this Sublease, upon entering of final judgment the prevailing party or parties shall be entitled to payment from the other party to this Agreement for

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by duly authorized company representatives, on the date and year first above written.

ULTRAMAR INC.

By: William R. Klesse

William R. Klesse
Executive Vice President

APPROVED
LEGAL
AVT

OXBOW CARBON & MINERALS HOLDINGS, INC.

By: Brian Acton

Name: BRIAN Acton

Title: PRESIDENT AND
CHIEF OPERATING OFFICER

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1 charges set forth in City's Port of Long Beach Tariff No.
2 4 ('Tariff'), as said Tariff now exists or may in the
3 future be amended, which are applicable to the storage
4 and movement of bulk commodities through the Premises,
5 subject to a guaranteed minimum annual throughput. For
6 the Second five-year segment of the term (January 1, 2006
7 through December 31, 2010), the monthly land rent shall
8 be \$18,693 (subject to paragraph 5.1) and the guaranteed
9 minimum annual throughput ('GMAT') for each year of the
10 second five-year segment shall not be less than ninety
11 percent (90%) of Lessee's coke production at its
12 Wilmington refinery, subject to the throughput capacity
13 of the Premises, but in no event less than 450,000 metric
14 tons per year. Lessee shall provide or cause to be
15 provided, whether through sublessee or otherwise, within
16 ten (10) days following the end of each month: (i)
17 written reports to City's Finance Division verifying the
18 throughput applicable to the storage and movements of
19 bulk commodities through the Premises; and (ii)
20 confirmation of Lessee's coke production at its
21 Wilmington refinery. Further, on or before
22 November 30, 2006, Lessee shall provide City with written
23 reports verifying throughput and production (as described
24 in the previous sentence) for the period January 1, 2001
25 through December 31, 2005.

26 "If the actual throughput for any year is less
27 than the GMAT, Lessee shall pay to City, within thirty
28 (30) days after the end of said year, without deduction,

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1 setoff, prior notice or demand, a sum calculated by
2 multiplying the difference between the GMAT and the
3 actual throughput times the sum of the then-current
4 applicable wharfage and shiploader charges established in
5 City's Tariff No. 4, Items 356 and 515.

6 "5.1 The monthly land rent shall be
7 adjusted for each year of the term and for each
8 year of each Option Period, if exercised. Said
9 adjustment shall be made by comparing the Consumer
10 Price Index for All Urban Consumers (base year
11 1982=100) for Los Angeles-Riverside-Orange County,
12 published by the United States Department of Labor,
13 Bureau of Labor Statistics ('Index'), which is
14 published for the date nearest the beginning of the
15 new segment of the term ('Current Index'), with the
16 Index published nearest the date of commencement of
17 the original lease term ('Beginning Index'). If
18 the Current Index has increased over the Beginning
19 Index, the monthly land rent for the years in the
20 then-current segment of the term shall be set by
21 multiplying the monthly land rent set forth above
22 by a fraction, the numerator of which is the
23 Current Index and the denominator of which is the
24 Beginning Index; provided, in no event shall the
25 monthly land rent be less than the monthly land
26 rent for the previous year. If the Index is
27 discontinued or revised during the term, such other
28 government index or computation shall be used in

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1 order to obtain substantially the same result as if
2 the Index had not been discontinued.

3 "5.2 All delinquent installments of rent
4 and other payments due the City shall bear interest
5 at the rate then in effect in Tariff No. 4 for
6 delinquent payments and shall be subject to the
7 penalty provisions of Tariff No. 4. Rent payments
8 are delinquent if remaining unpaid on the tenth
9 calendar day of the month for which due. Tariff
10 charges are due as accrued, and any deficiency in
11 the GMAT is due within thirty days after the
12 conclusion of the period to which it is applicable.
13 With the exception of rent payments, all invoices
14 issued by City are due and payable upon
15 presentation, and any such invoice remaining unpaid
16 the thirtieth day after the date of issue shall be
17 considered delinquent."

18
19 3. Effective upon execution of this Third Amendment,
20 paragraph 14 of the Amended Lease is hereby amended to read, in its
21 entirety, as follows:

22
23 "14. As a condition precedent to the
24 effectiveness of the Lease, Lessee shall procure and
25 maintain in full force and effect during the term of the
26 Lease, the following policies of insurance.

27 (a) Commercial General Liability
28 Insurance which affords coverage at least as broad

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1 as Insurance Services Office 'occurrence' from
2 CG 00 01 with minimum limits of \$5,000,000 per
3 occurrence, and if written with an aggregate, the
4 aggregate shall be double the per occurrence limit.
5 The policy shall contain no provisions or
6 endorsements limiting coverage for (1) products -
7 completed operations; (2) contractual liability;
8 (3) independent contractors; (4) third party action
9 over claims; (5) explosion, collapse or underground
10 hazard (XCU), if there is exposure; and (6) defense
11 costs shall be excess of limits.

12 (b) Automobile Liability Insurance with
13 coverage at least as broad as Insurance Services
14 Office Form CA 0001 covering 'Any Auto' (Symbol 1)
15 with minimum limits of \$1,000,000 each accident.

16 (c) Sudden and accidental pollution
17 liability insurance, including coverage for
18 clean-up costs, with a minimum limit of \$5,000,000
19 and \$10,000,000 total all losses.

20 (d) Workers' Compensation Insurance, as
21 required by the State of California and Employer's
22 Liability Insurance with a limit of not less than
23 \$1,000,000 per accident for bodily injury and
24 disease, and any required coverage under the U.S.
25 Longshoremen's and Harbor Workers' Act (USL&H),
26 Federal Employers Liability Act and Jones Act for
27 employees performing services covered by said Acts.

28 "Insurance policies will not be in compliance

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1 with the Lease if they include any limiting endorsement
2 that have not been approved in writing by City.

3 "The policy or policies of insurance for
4 Commercial General Liability, Automobile Liability
5 Insurance and Sudden and Accidental Pollution Liability
6 shall contain the following provisions or be endorsed to
7 provide the following:

8 (1) The Indemnified Parties shall be
9 additional insureds with regard to
10 liability and defense of suits or claims
11 arising out of the Lease.

12 Additional insured endorsements shall not:

- 13 (1) Be limited to ongoing operations;
14 (2) Exclude contractual liability;
15 (3) Restrict coverage to the sole
16 liability of Lessee;
17 (4) Contain any other exclusion contrary
18 to the Lease.

19 (2) This insurance shall be primary and any
20 other insurance, deductible, or
21 self-insurance maintained by the
22 Indemnified Parties shall not contribute
23 with this primary insurance.

24 (3) The policy shall not be canceled or the
25 coverage reduced until a thirty (30) day
26 written notice of cancellation has been
27 served upon the Executive Director of the
28 Harbor Department except notice of ten

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(10) days shall be allowed for non-payment of premium.

"The policy or policies of insurance for Workers' Compensation shall be endorsed, as follows:

(1) A waiver of subrogation stating that the insurer waives all rights of subrogation against the Indemnified Parties.

(2) The policy or policies shall not be canceled or coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor except notice of ten (10) days shall be allowed for non-payment of premium.

"Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the Indemnified Parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. Any deductible or self-insured retention must be approved in writing in accordance with the Harbor Insurance Guide.

"Lessee shall deliver either certified copies of the required policies or endorsements on forms approved by the City ('evidence of insurance') to the Executive Director for approval as to sufficiency and as to form. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance

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1 showing that such insurance coverage has been renewed or
2 extended shall be filed with the Executive Director. If
3 such coverage is canceled or reduced, Lessee shall,
4 within ten (10) days after receipt of written notice of
5 such cancellation or reduction of coverage, file with the
6 Executive Director evidence of insurance showing that the
7 required insurance has been reinstated or has been
8 provided through another insurance company or companies.

9 "The coverage provided shall apply to the
10 obligations assumed by the Lessee under the indemnity
11 provisions of this Lease, but this insurance provision in
12 no way limits the indemnity provisions and the indemnity
13 provisions in no way limit this insurance provision.

14 "Lessee agrees to suspend and cease all
15 operations hereunder during such period of time as the
16 required insurance coverage is not in effect and evidence
17 of insurance has not been approved by the City. The City
18 shall have the right to withhold any payment due Lessee
19 until Lessee has fully complied with the insurance
20 provisions of this Lease.

21 "Each such policy shall be from a company or
22 companies with a current A.M. Best's rating of no less
23 than A:VII and authorized to do business in the State of
24 California, or otherwise allowed to place insurance
25 through surplus line brokers under applicable provisions
26 of the California Insurance Code or any federal law. Any
27 other rating must be approved in writing in accordance
28 with the Harbor Insurance Guide.

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1 "If coverage is written on a claims-made basis,
2 the retroactive date on such insurance and all subsequent
3 insurance shall coincide with or precede the effective
4 date of the Lease and continuous coverage shall be
5 maintained or Lessee shall obtain and submit to City an
6 extended reporting period endorsement for a period of at
7 least three (3) years from termination or expiration of
8 this Lease.

9 "Upon expiration or termination of coverage of
10 required insurance, Contractor shall procure and submit
11 to City evidence of 'tail' coverage or an extended
12 reporting coverage period endorsement for the period of
13 at least three (3) years from termination or expiration
14 of this Lease.

15 "In addition to procuring the above insurance,
16 Lessee shall be responsible for causing sublessees to
17 purchase insurance specified in (a), (b) (c) and (d)
18 above in compliance with the terms of the Lease. If
19 Lessee does not obtain evidence of the required
20 insurance, Lessee's required limits of Liability shall be
21 increased by 50%."

22
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1 4. Except as expressly provided in this Third
2 Amendment, the terms and conditions of the Amended Lease remain
3 unchanged and in full force and effect.

4 ULTRAMAR INC., a Nevada corporation

5 March 2, 2006 By: [Signature]
6 _____ Name: James [unclear]
7 _____ Title: Vice President

8 March 2, 2006 By: [Signature]
9 _____ Name: Jay Browning
10 _____ Title: Senior Vice President and Secretary

11 LESSEE

12 CITY OF LONG BEACH, a municipal
13 corporation, acting by and through
14 its Board of Harbor Commissioners

15 May 14, 2006 By: [Signature]
16 _____ Name: Richard D. Steinke,
17 _____ Title: Executive Director
18 _____ Department: Long Beach Harbor Department

19 CITY

20 The foregoing document is hereby approved as to form.

21 ROBERT E. SHANNON, City Attorney

22 5-11, 2006 By: [Signature]
23 _____ Name: Charles M. Gale, Deputy

24 CMG:rjr 11/08/06 #06-05687

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27 THIRD AMENDMENT TO LEASE [11/08/06]

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Texas
~~California~~

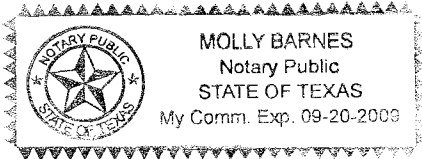
County of Bexar

On March 2, 2007 before me, Molly Barnes, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jay D. Browning, Senior Vice President
and Secretary of Ultramar Inc.
Name(s) of Signer(s)

- personally known to me
- (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Molly Barnes
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

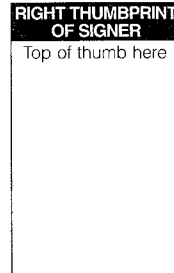
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Texas

County of Bexar

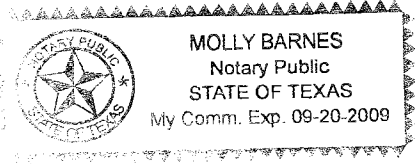
On March 2, 2007 before me, Molly Barnes, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jason W. Frasen
Name(s) of Signer(s)

personally known to me

(or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Molly Barnes
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

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LEASE

Between

CITY OF LONG BEACH

And

APPLIED INDUSTRIAL MATERIALS CORPORATION

Document No. HD- 6282

**THIS IS A COPY
ORIGINAL FILED IN
THE RECORDS CENTER**

Robert E. Shannon
City Attorney of Long Beach
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Long Beach, California 90802-4664
Telephone (562) 570-2200

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Exhibits

- Exhibit A - Premises
- Exhibit B - Improvements Purchased by Lessee
- Exhibit C - Bill of Sale
- Exhibit D - Lessee Improvements

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THIS LEASE ("Lease") is made and entered into as of the 4th day of November, 1999, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to Ordinance No. HD-1804, adopted by the Board at its meeting of October 4, 1999, and APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation ("Lessee").

1. RECITALS

1.1 As a result of negotiations, Lessee has agreed to lease from City certain improved real property commonly known as 1140 Pier G Avenue in the Harbor District of the City of Long Beach and purchase the coke shed located thereon.

1.2 The parties intend by this Lease to set forth the terms, covenants and conditions of the Lease.

2. PREMISES

2.1 Lease of Premises. City leases to Lessee and Lessee accepts a lease of the premises ("Premises") described in Exhibit "A" attached hereto and incorporated herein by this reference. The Premises consists of approximately 177,820 square feet of land. The Premises are leased to Lessee on an "as is" basis.

2.1.1 There are excepted and reserved from the Premises all minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limitation, oil, gas and water rights, together with the full, exclusive and perpetual rights to

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1 explore for, remove and dispose of said minerals from the
2 Premises without, however, the right of surface entry
3 upon the Premises for such purposes.

4 2.1.2 This Lease, and all rights granted to
5 Lessee hereunder, are subject to restrictions,
6 reservations, conditions and encumbrances of record,
7 including, without limitation, the trusts and limitations
8 set forth in Chapter 676, Statutes of 1911; Chapter 102,
9 Statutes of 1925; Chapter 158, Statutes of 1935; Chapter
10 29, Statutes of 1956, First Extraordinary Session;
11 Chapter 138, Statutes of 1964, First Extraordinary
12 Session; and the Federal navigational servitude.

13 2.1.3 The Premises shall be subject to rights of
14 way for such sewers, storm drains, pipelines, conduits
15 and for such telephone, telegraph, light, heat, power or
16 water lines as may from time to time be determined by the
17 Board of Harbor Commissioners.

18 2.2 Purchase of Improvements. City sells to Lessee and
19 Lessee purchases, on an "as is" basis, the improvements
20 situated on the Premises ("Improvements") as listed and
21 described in Exhibit "B" attached hereto and incorporated
22 herein by this reference. The purchase price for the
23 Improvements is One Dollar (\$1.00) payable in full upon
24 execution of this Lease. Title to the Improvements will be
25 transferred from City to Lessee by bill of sale in the form of
26 Exhibit "C" attached hereto.

27 3. TERM

28 The term of this Lease shall be for a period of twenty

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1 (20) years commencing on the effective date as defined in paragraph
2 23.13 below.

3 4. USE OF PREMISES

4 4.1 The Premises shall be used for the operation of a
5 proprietary facility for the receipt, handling, loading,
6 unloading, storage, transporting, marketing and other
7 disposition of coke or other dry bulk commodities derived from
8 petroleum or other hydrocarbon substances ("Commodities").

9 4.2 The Premises shall not be used for purposes other
10 than those expressly permitted in this paragraph 4 without the
11 prior written consent of the Executive Director of the Long
12 Beach Harbor Department ("Executive Director"). In no event
13 shall the Premises be used for any purpose which shall
14 interfere with commerce, navigation or fisheries or be
15 inconsistent with the trusts and limitations now or hereafter
16 imposed upon City and the Premises or in a manner which
17 results in hazardous waste (as now or hereafter defined by the
18 Administrator of the Environmental Protection Agency, the
19 California Department of Health Services or such other persons
20 or agencies responsible for the management of hazardous
21 wastes) being deposited upon the Premises and entering the
22 soil and water table underlying the Premises.

23 5. RENTAL

24 5.1 The Rent for the Premises shall be as follows:

25 5.1.1 For ten (10) months immediately following the
26 effective date of this Lease ("Construction Grace
27 Period") or completion of construction of the Lessee
28 Improvements, whichever occurs first ("Rent Commencement

1 Date"), Lessee shall pay the sum of One Thousand Dollars
2 (\$1,000.00) per month ("Construction Period Rent") in
3 advance of the first day of each month without deduction
4 setoff, prior notice or demand. If the effective date is
5 a day other than the first day of a month then
6 Construction Period Rent shall be prorated on the basis
7 of a thirty (30) day month. For purposes of this
8 subparagraph 5.1.1, construction of the Lessee
9 Improvements shall be deemed completed when the Building
10 Bureau of the City's Planning and Building Department
11 issues a Certificate of Occupancy in accordance with the
12 provisions of Chapter 18.16, Section 18.16.150 of the
13 Long Beach Municipal Code.

14 5.1.2 Subject to the provisions of subparagraph
15 5.2, Lessee shall pay to City, as rental for the use of
16 the Premises, without deduction, setoff, prior notice or
17 demand, the sum of Twenty-Two Thousand Nine Hundred
18 Sixty-Eight Dollars and 00/100 (\$22,968.00) per month
19 ("Monthly Rent") payable in advance on the first day of
20 each month commencing on the Rent Commencement Date
21 whether or not construction of the Lessee Improvements
22 has been completed. If the Rent Commencement Date is a
23 day other than the first day of a month then Monthly Rent
24 shall be prorated on the basis of a thirty (30) day
25 month.

26 5.2 The Monthly Rent shall be adjusted annually on each
27 anniversary of the effective date during the term ("adjustment
28 date") without further action of the parties. Said adjustment

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1 shall be made by comparing the Consumer Price Index for All
2 Urban Consumers (base year 1967=100) for Los Angeles-Long
3 Beach-Anaheim, published by the United States Department of
4 Labor, Bureau of Labor Statistics ("Index"), which is
5 published for the date nearest the adjustment date ("Current
6 Index"), with the Index published nearest March 1, 1999
7 ("Beginning Index"). If the Current Index has increased over
8 the Beginning Index, the Monthly Rent for the then-current
9 lease year shall be set by multiplying the Monthly Rent set
10 forth above by a fraction, the numerator of which is the
11 Current Index and the denominator of which is the Beginning
12 Index; provided, in no event shall the Monthly Rent be less
13 than the Monthly Rent in effect immediately preceding the
14 adjustment date. The term "lease year" shall mean the twelve
15 (12) consecutive calendar month period commencing on the
16 adjustment date. If the Index is discontinued or revised
17 during the term, such other government Index or computation
18 shall be used in order to obtain substantially the same result
19 as if the Index had not been discontinued.

20 5.3 The Monthly Rent shall be adjusted by negotiations
21 on each five (5) year anniversary of the effective date during
22 the term ("FMV adjustment date"). When the process is
23 utilized, it establishes the rental ("Adjusted Rent") for the
24 Premises for the sixth (6th) year until the end of the tenth
25 (10th) year, when the parties shall again invoke this
26 adjustment process.

27 5.3.1 In determining the Adjusted Rent, the parties
28 shall take into consideration the character of the

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1 Premises, the value thereof, the fair rental value of
2 similar premises devoted to a similar use, the terms,
3 conditions and restrictions of this Lease, the tonnage
4 handled at the Premises, the return to the City and any
5 other facts and data necessary for a proper determination
6 of said Adjusted Rent. In the event the parties cannot
7 agree upon the Adjusted Rent, said adjusted rent shall be
8 determined as provided in paragraph 5.3.2.

9 5.3.2 Each party, at its cost, shall appoint a real
10 estate appraiser with at least five (5) years' full time
11 commercial appraisal experience in the area in which the
12 premises are located and qualified as a member of M.A.I.
13 to determine the minimum monthly rent for the lease year
14 commencing on the FMV adjustment date. If a party does
15 not appoint an appraiser within ten (10) calendar days
16 after the other party has given notice of the name of its
17 appraiser, the single appraiser appointed shall be the
18 sole appraiser and shall determine said minimum monthly
19 rent. Within ten (10) calendar days after the second
20 appraiser has been appointed, they shall attempt to
21 select a third appraiser meeting the qualifications
22 stated in this paragraph. If they are unable to agree on
23 the third appraiser, either of the parties, by giving ten
24 (10) days' notice to the other party may apply to any
25 judge of the Superior Court of the County of Los Angeles
26 who shall select and appoint the third appraiser. Each
27 of the parties shall bear one-half of the cost of
28 appointing the third appraiser and of paying the third

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1 appraiser's fee. Within thirty (30) days after the
2 selection of the third appraiser, each appraiser shall
3 determine the fair market value of the Premises which
4 fair market values shall be separately stated. The total
5 of the fair market value of the Premises is referred to
6 in this subparagraph as the "appraisal." In determining
7 the fair market value of the Premises, the appraiser or
8 appraisers shall consider the use to which the Premises
9 are restricted under the provisions of paragraph 4 and
10 shall not consider the highest and best use for the
11 Premises without regard to the restrictions on use
12 thereof under the provisions of paragraph 4. If,
13 however, the low appraisal and/or the high appraisal
14 are/is more than five percent (5%) lower and/or higher
15 than the middle appraisal, the low appraisal and/or the
16 high appraisal shall be disregarded. If only one
17 appraisal is disregarded, the remaining two fair market
18 values of the Premises shall be added together and shall
19 be divided by two; the resulting quotients shall be
20 multiplied by rate of return for land (expressed as a
21 percentage) then approved by the Board of Harbor
22 Commissioners; the resulting products shall be added
23 together and divided by twelve (12) and the resulting
24 quotient shall be the Monthly Rent for the lease year
25 commencing on the first month following the FMV
26 adjustment date. After the Monthly Rent has been set as
27 provided in this paragraph, the appraiser or appraisers
28 shall immediately notify the parties and the parties

1 shall immediately execute a memorandum of adjustment of
2 Monthly Rent. The annual CPI rent adjustments shall
3 continue to be utilized throughout the term of this
4 Lease.

5 5.4 Commencing on the first day of the month next
6 succeeding the Rent Commencement Date, Lessee shall pay, or
7 cause to be paid, to City, in addition to the Monthly Rent,
8 the total amount of all applicable tariff charges accruing in
9 connection with the movement of Lessee's bulk commodities to
10 and from the Premises, under the schedule of rates covering
11 the use of wharves and other facilities owned, controlled or
12 operated by the City as set forth in the Port of Long Beach
13 Tariff No. 4, as the same may now exist or is hereinafter
14 amended or restated ("Tariff No. 4"). Lessee shall pay or
15 cause to be paid to the City on or before the 10th day of the
16 next succeeding month all of said tariff charges accruing
17 during the preceding calendar month.

18 5.4.1 Lessee shall file, or cause to be filed, with
19 the Executive Director on forms provided or approved by
20 City, on or before the tenth day following departure of
21 a vessel owned, controlled or operated by Lessee onto or
22 from which Lessee's bulk commodities have loaded or
23 unloaded from the Premises a verified statement showing
24 all applicable tariff charges which shall have accrued
25 with reference to each such vessel. Lessee shall furnish
26 any additional reports relating to its bulk commodities
27 terminal operations when requested by City.

28 5.4.2 Lessee guarantees that, during the initial

1 five-year segment of the term hereof, it will ship from
2 the Premises a minimum of 300,000 metric tons of
3 Commodities annually ("Guaranteed Minimum Annual
4 Throughput"). If Lessee has not, by the end of a given
5 year, shipped quantities of Commodities from the Premises
6 at least equal to the Guaranteed Minimum Annual
7 Throughput for that year, Lessee shall pay to City,
8 within thirty (30) days after the end of said year, a sum
9 calculated by multiplying the difference in quantity
10 between the Guaranteed Annual Minimum Throughput and the
11 actual annual quantity shipped times the then-current
12 applicable wharfage and shiploader charges established in
13 Tariff No. 4, which sum would have been paid to City had
14 such quantity of petroleum coke been shipped from the
15 Premises during said year.

16 5.4.2.1 If the Premises or the improvements to
17 be constructed thereon are damaged or destroyed so as to
18 render them wholly or partially untenable or unfit for
19 use or so as to make it impracticable for Lessee to make
20 reasonably full use of the Premises for the authorized
21 purposes, the Guaranteed Minimum Annual Throughput for
22 the then-current year shall be adjusted according to the
23 nature and extent of the damage sustained and the
24 impairment of use. In the event the parties cannot agree
25 upon the amount of such adjustment, the matter shall be
26 submitted to final and binding arbitration before
27 JAMS/ENDISPUTE, or its successor, pursuant to the United
28 States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Either

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1 party may commence the arbitration process by filing a
2 written demand for arbitration with JAMS/ENDISPUTE, with
3 a copy to the other party. The arbitration will be
4 conducted in accordance with the provisions of
5 JAMS/ENDISPUTE's Comprehensive Arbitration Rules and
6 Procedures in effect at the time of filing of the demand
7 for arbitration. The parties will cooperate with
8 JAMS/ENDISPUTE's panel of neutrals, and in scheduling the
9 arbitration proceedings. The parties covenant that they
10 shall participate in the arbitration in good faith, and
11 that they shall share equally in its costs.

12 5.4.2.2 If by reason of strikes or other labor
13 disputes, lockouts, or other work stoppages occurring
14 within the Harbor District of the City of Long Beach for
15 a period in excess of thirty (30) consecutive days,
16 Lessee is prevented from making substantial use of the
17 Premises for the purposes authorized, then the Guaranteed
18 Minimum Annual Throughput for the then-current year shall
19 be proportionately adjusted in an amount determined by
20 mutual agreement. In the event the parties cannot agree
21 upon the amount of such adjustment, the matter shall be
22 submitted to final and binding arbitration before
23 JAMS/ENDISPUTE, or its successor, pursuant to the United
24 States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Either
25 party may commence the arbitration process by filing a
26 written demand for arbitration with JAMS/ENDISPUTE, with
27 a copy to the other party. The arbitration will be
28 conducted in accordance with the provisions of

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1 JAMS/ENDISPUTE's Comprehensive Arbitration Rules and
2 Procedures in effect at the time of filing of the demand
3 for arbitration. The parties will cooperate with
4 JAMS/ENDISPUTE's panel of neutrals, and in scheduling the
5 arbitration proceedings. The parties covenant that they
6 shall participate in the arbitration in good faith, and
7 that they shall share equally in its costs.

8 5.4.2.3 The Guaranteed Minimum Annual
9 Throughput shall be adjusted by negotiations on every
10 fifth anniversary of the effective date during the term.

11 **6. CONSTRUCTION OF IMPROVEMENTS**

12 6.1 Lessee shall not construct or make any improvements
13 or alterations to the Premises without City's prior consent.

14 6.1.1 City hereby consents, and Lessee agrees to
15 make the improvements ("Lessee Improvements") described
16 in Exhibit "D" attached hereto and incorporated herein by
17 this reference to the coke storage facility ("Coke Shed")
18 located on Pier G Avenue. Lessee shall expend a minimum
19 ("Construction Minimum") of Three Million Dollars
20 (\$3,000,000.00) in completing the Lessee Improvements.
21 In the event Lessee expends less than the Construction
22 Minimum in connection with the Lessee Improvements, the
23 difference shall be paid by Lessee to City within thirty
24 (30) days of completion of the Lessee Improvements.

25 6.2 All improvements or alterations shall be
26 constructed, erected and installed in accordance with plans
27 and specifications approved in writing by the Executive
28 Director or his designee and shall be subject to such

1 conditions and limitations as may be set forth in the
2 Development Permit. All such improvements or alterations
3 shall also be constructed, erected or installed in accordance
4 with applicable law including, but not limited to Rule 1158
5 adopted by the Southern California Air Quality Management
6 District, as the same may be amended.

7 6.3 The entire cost and expense of developing and
8 constructing the Lessee Improvements or alterations shall be
9 borne by Lessee. Lessee shall protect, defend, indemnify and
10 hold City harmless from any liability whatsoever in connection
11 with the development and construction of the Lessee
12 Improvements and alterations.

13 6.4 No construction shall be commenced on the Premises
14 by Lessee until Lessee has obtained the written approval of
15 the Executive Director and has furnished City with a
16 Completion Bond in the full amount of the cost of the
17 Improvements. In lieu of this Completion Bond, City will
18 accept the completion and payment bonds supplied by Lessee's
19 contractor or contractors, provided said bonds are issued
20 jointly to Lessee and City. Said bonds must be issued by a
21 company qualified to do business in the State of California
22 and acceptable to City. Said bonds shall be in a form
23 acceptable to City and shall insure faithful and full
24 observance and performance by Lessee of all the terms,
25 conditions, covenants, and agreements relating to construction
26 of improvements upon the Premises. The Completion Bond shall
27 be in the amount and provide a penalty of one hundred percent
28 (100%) of the value of the Lessee Improvements.

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1 6.5 On or before the date of commencement of
2 construction of any building, structure or other improvements
3 on the Premises, Lessee shall file or cause to be filed with
4 City, a Payment Bond executed by Lessee or Lessee's contractor
5 and by a surety authorized to do business in the State of
6 California as surety guaranteeing the construction of the
7 building improvements, structures or other improvements to be
8 constructed on the Premises. If said bond is executed by the
9 Lessee's contractor, it shall name the Lessee and the City as
10 joint obligees. The Payment Bond shall be in the amount and
11 provide a penalty of one hundred percent (100%) of the full,
12 estimated cost of construction of the Lessee Improvements.

13 6.6 The term of both bonds shall commence on or before
14 the date of filing with City. The Completion Bond shall
15 remain in effect until the date of completion of the work to
16 the reasonable satisfaction of the Executive Director or his
17 designate. The Payment Bond shall remain in effect until the
18 expiration of the period of filing a claim of lien as
19 provided in Title 15 of Part 4 of Division 3 of the California
20 Civil Code, and as hereafter amended, or if a claim of lien is
21 filed, the expiration of the period for filing an action to
22 foreclose such lien, or until the Premises are freed from the
23 effect of such claim of lien and any action brought to
24 foreclose such lien pursuant to the provisions of said Title
25 15 of Part 4 or the lien is otherwise discharged.

26 6.7 In lieu of the Payment Bond and Completion Bond
27 required in subparagraphs 6.4 and 6.5, above, Lessee may
28 furnish cash, assignment of account, time certificate of

1 deposit, or letter of credit.

2 7. ENVIRONMENTAL MATTERS

3 7.1 Definitions

4 7.1.1 For purposes of this Lease, "Environmental
5 Law(s)" means the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980 as amended, 42
7 U.S.C. Sections 9601 et seq., the Clean Air Act, as
8 amended, 42 U.S.C. Sections 7401 et seq., the Resource
9 Conservation and Recovery Act of 1976, 42 U.S.C. Sections
10 2601 et seq., the Toxic Substances Control Act, 15 U.S.C.
11 Sections 2601 et seq., the Hazardous Materials
12 Transportation Act, 49 U.S.C. 1801 et seq., the Clean
13 Water Act, 33 U.S.C. Sections 1251 et seq., the
14 Carpenter-Presley-Tanner Hazardous Substances Account
15 Act, California Health & Safety Code Sections 25300, et
16 seq., the Porter-Cologne Water Quality Control Act,
17 California Water Code Sections 13000 et seq., and Title
18 23 Division 3, the regulations promulgated by the
19 Southern California Air Quality Management District,
20 Chapter 16 of the California Code of Regulations
21 concerning underground storage tanks as said laws are
22 supplemented or amended, the regulations promulgated
23 pursuant to said laws, and any other federal, state or
24 local law, statute, rule, regulation or ordinance which
25 regulates or proscribes the use, storage, disposal,
26 presence, cleanup, transportation or Release or
27 threatened Release into the environment of Hazardous
28 Material including, but not limited to Title 23, Division

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1 3 of the California Code of Regulations concerning
2 underground storage tanks.

3 7.1.2 "Hazardous Material" means any substance
4 which is (i) designated, defined, classified or regulated
5 as a hazardous substance, hazardous material, hazardous
6 waste, pollutant or contaminant under any Environmental
7 Law, as currently in effect or as hereafter amended or
8 enacted, (ii) a petroleum hydrocarbon, including crude or
9 waste oil or any fraction thereof and all petroleum
10 products and petroleum by-products, (iii) PCBs, (iv)
11 asbestos, (v) flammable explosives, (vi) infectious
12 materials or (vii) radioactive materials. As used
13 herein, the term "Hazardous Materials" shall also include
14 "hazardous wastes" and "extremely hazardous wastes" as
15 those terms have been defined by the Administrator of the
16 U.S. Environmental Protection Agency, the California
17 Department of Health Services, or any other person or
18 agency having jurisdiction of the management of hazardous
19 materials.

20 7.1.3 "Release" means any spilling, leaking,
21 pumping, pouring, emitting, discharging, injecting,
22 escaping, leaching, dumping or disposing into the
23 environment of any Hazardous Material (including the
24 abandonment or discarding of barrels, containers, and
25 other receptacles containing any Hazardous Material).

26 7.2 Compliance.

27 7.2.1 Environmental Laws. Lessee shall comply
28 with all applicable Environmental Laws related to

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1 Lessee's use or occupancy of the Premises including but
2 not limited to any laws regulating the use, storage,
3 generation or disposal of Hazardous Materials. Lessee
4 shall establish, maintain and observe a program of
5 compliance with all applicable Environmental Laws. On or
6 before commencement of business on the Premises, Lessee
7 shall certify to the Executive Director that Lessee's
8 operations comply with all applicable Environmental Laws;
9 provided, however, that review and approval of the
10 certification by the Executive Director shall not relieve
11 Lessee of its independent obligation to comply with
12 Environmental Laws. Lessee shall monitor its compliance
13 with Environmental Laws and immediately halt and correct
14 any incident of noncompliance.

15 7.2.2 Storage of Hazardous Materials. Lessee
16 shall not cause or permit any Hazardous Material to be
17 brought upon, kept or used in or about the Premises by
18 Lessee, its agents, employees, contractors or invitees in
19 a manner or for a purpose in violation of any
20 Environmental Laws.

21 7.2.3 Noncompliance.

22 7.2.3.1 Incident of Noncompliance. In the event
23 of an incident of noncompliance with the Environmental
24 Laws, including a regulated Release, Lessee, at its
25 cost, shall: (a) give City prompt notice of the
26 incident, providing as much detail as possible; (b) as
27 soon as possible, but no later than seventy-two (72)
28 hours, after discovery of an incident of noncompliance

1 submit a written report to City, identifying, to the
2 extent possible, the source or cause of the noncompliance
3 and the method or action required to correct the problem;
4 (c) cooperate with City or its designated agents or
5 contractors with respect to the investigation of such
6 problem; and (d) promptly commence remediation of the
7 incident of non-compliance in accordance with applicable
8 Environmental Laws and diligently prosecute the
9 remediation plan to completion. Lessee shall furnish the
10 Executive Director with copies of all waste manifests.
11 The provisions of this subparagraph shall apply unless
12 Lessee can establish to the reasonable satisfaction of
13 City that the incident of noncompliance was not caused by
14 Lessee, its officers, agents, employees, contractors or
15 invitees, or by any person or persons acting on behalf of
16 Lessee and with Lessee's knowledge and consent, express
17 or implied.

18 7.2.4 Notice. For purposes of this paragraph 7,
19 notice shall be given to the Executive Director. Lessee
20 shall give such notice promptly following an incident of
21 environmental noncompliance in person, by telephone or by
22 facsimile followed by written notice in accordance with
23 subparagraph 23.1 below.

24 7.2.5 Costs. Lessee shall be liable for all
25 costs, expenses, losses, damages, actions, claims,
26 cleanup costs, penalties, assessments or fines arising
27 from Lessee's failure to comply with the Environmental
28 Laws including, but not limited to, a failure to comply

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1 with any reporting requirements.

2 7.2.6 Inspection Rights. Upon reasonable
3 notice, and during normal business hours, City shall have
4 the right to conduct periodic inspections and audits of
5 Lessee's compliance with the Environmental Laws and
6 management of Hazardous Materials on the
7 Premises. Lessee shall have the right to have a
8 representative present during any such inspection or
9 audit. If City is required to notify any agency of any
10 violations of Environmental Laws discovered during such
11 audit, Lessee shall be given concurrent notice. City
12 acknowledges that it is not the intent of this paragraph
13 7.2.6 to prohibit Lessee from conducting its operations
14 and City shall use its best efforts to not unreasonably
15 interfere with Lessee's operations. Lessee may conduct
16 its operations according to the custom of the industry
17 and all applicable laws so long as the use or presence of
18 Hazardous Materials is strictly and properly handled,
19 monitored and disposed of according to all Environmental
20 Laws and the terms of this Lease.

21 7.2.7 Environmental Indemnification. In partial
22 performance of Lessee's obligations of indemnity under
23 paragraph 13 below, Lessee at its sole cost and expense,
24 shall indemnify, defend (with counsel acceptable to
25 City), protect and hold harmless City, the Board of
26 Harbor Commissioners, and their respective agents,
27 employees and officers, ("indemnified parties") from and
28 against any and all claims, demands, losses, damages,

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1 liabilities, fines, penalties, charges, administrative
2 and judicial proceedings, orders, judgments, remedial
3 action and compliance requirements, enforcement and
4 cleanup actions of any kind, and all costs and expenses
5 incurred in connection therewith, including, without
6 limitation, actual attorneys' fees and costs and expenses
7 of all experts and consultants (collectively, the
8 "Losses"), arising directly or indirectly, in whole or in
9 part, out of (i) a Release of on, under or from the
10 Premises after the date of this Lease from any source,
11 (ii) the use, generation, manufacturing, production,
12 handling, storage, transport, discharge or disposal of
13 any Hazardous Material on or after the date of this Lease
14 from, under or about the Premises, and (iii) the
15 violation of any Environmental Laws. Lessee's
16 obligations under this subparagraph 7.2.7 shall survive
17 the expiration or earlier termination of this Lease. The
18 provisions of this subparagraph shall apply unless Lessee
19 can establish to the reasonable satisfaction of City that
20 a Loss was not caused by Lessee, its officers, agents,
21 employees, contractors or invitees, or by any person or
22 persons acting on behalf of Lessee and with Lessee's
23 knowledge and consent, express or implied.

24 **8. MAINTENANCE AND REPAIR**

25 8.1 Lessee, at its cost, shall keep and maintain the
26 Premises, including without limitation all buildings, structures,
27 other improvements and surface paving, in good and substantial
28 repair and condition and shall perform all necessary maintenance.

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1 8.2 Should Lessee fail to make any repairs or perform
2 required maintenance within thirty (30) days after receipt of
3 notice from City to do so, City may, but shall not be
4 obligated to, make such repairs or perform such
5 maintenance. Lessee agrees to reimburse City for the cost
6 thereof within thirty (30) days after receipt of City's
7 invoice therefor. City's cost shall include, but not be
8 limited to, the cost of maintenance or repair or replacement
9 of property neglected, damaged or destroyed, including direct
10 and allocated costs for labor, materials, supervision,
11 supplies, tools, taxes, transportation, administrative and
12 general expense and other indirect or overhead expenses. In
13 the event Lessee shall commence to prosecute and diligently
14 make such repairs or shall begin to perform the required
15 maintenance within the thirty (30) day period, City shall
16 refrain from making such repairs or performing required
17 maintenance and from making demand for such payment until the
18 work has been completed by Lessee, and then only for such
19 portion thereof as shall have been made or performed by
20 City. The making of any repair or the performance or
21 maintenance by City, which repair or maintenance is the
22 responsibility of Lessee, shall in no event be construed as a
23 waiver of Lessee's duty or obligation to make future repairs
24 or perform required maintenance as provided in this Lease.

25 8.3 Lessee, at its cost, shall provide proper containers
26 for trash and keep the Premises free and clear of rubbish,
27 debris and litter at all times. Lessee, at its cost, further
28 agrees to keep and maintain all of the Premises in a safe,

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1 clean, wholesome and sanitary condition under all applicable
2 federal, state, local and other laws, rules, regulations and
3 orders. No offensive refuse, matter, nor any substance
4 constituting any unnecessary, unreasonable or unlawful fire
5 hazard, nor material detrimental to the public health shall be
6 permitted to be or remain on the Premises and Lessee shall
7 prevent such material or matter from being or accumulating
8 upon the Premises.

9 8.4 All fire protection sprinkler systems, standpipe
10 systems, fire alarm systems, portable fire extinguishers and
11 other fire-protective or extinguishing systems or appliances
12 which may be installed on the Premises shall be maintained by
13 Lessee, at its cost, in an operative condition at all times.
14 All repairs and servicing shall be made in accordance with the
15 provisions of the Long Beach Municipal Code, Chapter 18.48 and
16 all revisions thereto.

17 8.5 Lessee may provide personnel to accompany City's
18 representatives on periodic inspections of the Premises to
19 determine Lessee's compliance with the provisions of this
20 Lease.

21 9. OBSERVE APPLICABLE LAWS

22 9.1 At all times in its use and occupancy of the
23 Premises and in the conduct of its operations thereon, Lessee,
24 at its cost, shall comply with all applicable federal, state,
25 regional and municipal laws, ordinances and regulations
26 (including but not limited to the City Charter, the Long Beach
27 Municipal Code and Tariff No. 4) and obtain all requisite
28 permits for the construction of improvements on the Premises

1 and for the conduct of its operations thereon.

2 9.2 Without limiting the foregoing, Lessee shall comply
3 with applicable provisions of the Americans with Disabilities
4 Act (42 USCS Sections 12101, et seq.) ("Act") and regulations
5 promulgated pursuant thereto in Lessee's use of the Premises
6 and operations conducted thereon. As between City and Lessee,
7 Lessee shall be solely responsible for assuring that the
8 Premises are in compliance with applicable provisions of said
9 Act and related regulations.

10 **10. UTILITY CHARGES**

11 Lessee, at its cost, shall make arrangements for and pay
12 for all utility installations and services furnished to or used by
13 it, including without limitation gas, electricity, water, telephone
14 service and trash collection and for all connection charges.

15 **11. TAXES**

16 Except where contested in good faith in a court of
17 appropriate jurisdiction, Lessee shall pay, prior to delinquency,
18 all lawful taxes, assessments and other governmental or district
19 charges that may be levied upon its property and improvements of
20 any kind located on the Premises and upon the interest granted
21 under this Lease. Lessee recognizes and understands that this
22 Lease may create a possessory interest subject to property taxation
23 and that Lessee may be subject to the payment of property taxes and
24 assessments levied on such interest. Payment of any such
25 possessory interest tax or assessment shall not reduce any
26 compensation due City hereunder.

27 **12. MECHANICS' LIENS**

28 Lessee shall pay all costs for construction done by it or

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1 caused by it to be done on the Premises. Lessee shall keep the
2 Premises free and clear of all mechanics' liens resulting from
3 construction done by or for Lessee. Lessee shall have the right to
4 contest the correctness or the validity of any such lien if,
5 immediately on demand by City, Lessee procures and records a lien
6 release bond issued by a corporation authorized to issue surety
7 bonds in California in an amount equal to one and one-half times
8 the amount of the claim of lien. The bond shall meet the
9 requirements of Civil Code Section 3143 and shall provide for the
10 payment of any sum that the claimant may recover on the claim
11 (together with costs of suit, if claimant recovers in the action).
12 Lessee agrees that it will at all times save City free and harmless
13 and indemnify City against all claims for labor or materials in
14 connection with the construction, erection or installation of
15 Lessee's improvements made upon the Premises, or from additions or
16 alterations made thereto, or the repair of the same, by or for
17 Lessee, and the costs of defending against any such claim,
18 including reasonable attorneys' fees.

19 **13. INDEMNIFICATION**

20 Lessee shall defend and indemnify the City of Long Beach,
21 the Board of Harbor Commissioners (individually and collectively)
22 and their officers and employees ("indemnified parties") harmless
23 from and against any and all actions, suits, proceedings, claims
24 and demands, loss, liens, costs, expense and liability of any kind
25 and nature whatsoever ("claims"), for injury to or death of
26 persons, or damage to property, including property owned by City,
27 brought, made, filed against, imposed upon or sustained by the
28 indemnified parties, or any of them, and arising from or

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1 attributable to or caused, directly or indirectly:

2 (i) by the use or condition of the Premises or the
3 facility and improvements located thereon by Lessee, or from
4 operations conducted thereon by Lessee, its officers, agents,
5 employees, contractors or invitees, or by any person or
6 persons acting on behalf of Lessee and with Lessee's knowledge
7 and consent, express or implied;

8 (ii) by reason of or arising out of the state of
9 repair and maintenance of the Premises or the improvements and
10 facilities located thereon by Lessee, or the construction,
11 improvement or repair of the improvements and facilities on
12 the Premises by Lessee, its officers, agents, employees,
13 contractors, or invitees, or by any person or persons acting
14 on behalf of Lessee and with Lessee's knowledge and consent,
15 express or implied; or

16 (iii) by reason of injury to or death of employees
17 of Lessee or others as a result of Lessee's failure or refusal
18 to comply with the provisions of Section 6300 et seq. of the
19 California Labor Code or any federal, state or local
20 regulations or laws pertaining to the safety of the Premises
21 or improvement and facilities located upon the Premises;

22 The provisions of this paragraph 13 shall apply regardless of
23 whether any act or omission of the indemnified parties, or any of
24 them contributed thereto, but excluding any claim arising from or
25 attributable to or caused directly by the active negligence of the
26 indemnified parties, or any of them. With respect to any claims,
27 City shall notify Lessee thereof, shall tender Lessee defense
28 thereof, and shall assist Lessee as may reasonably be requested in

1 the defense thereof. Lessee shall resist and defend such action,
2 suit or proceeding, shall conduct or have conducted the necessary
3 investigations and adjusting related thereto, and Lessee shall
4 indemnify the indemnified parties. Payment of a claim by an
5 indemnified party shall not be a condition precedent to recovery
6 under this indemnity.

7 **14. LIABILITY INSURANCE**

8 As a condition precedent to the effectiveness of this
9 Lease, and in partial performance of Lessee's obligations of
10 indemnity under paragraph 13 above, Lessee, at its cost, shall
11 procure and maintain in full force and effect while this Lease
12 shall remain in effect and at such other times as may be required
13 under "claims made" insurance, a policy or policies of general
14 liability insurance or its equivalent with minimum limits of at
15 least Five Million and No/100 Dollars (\$5,000,000.00) combined
16 single limit issued by an insurance company with an AM Best rating
17 of AVII or better.

18 14.1 The policy or policies shall provide that:

19 14.1.1 The indemnified parties, while acting
20 within the scope of their authority, shall be included as
21 additional insureds, such insurance to be primary and any
22 other insurance, deductible, retention or self insurance
23 maintained by an indemnified party or any of them shall
24 not contribute with such primary insurance.

25 14.1.2 Each insured shall be covered, in the
26 same manner as if separate policies had been issued to
27 each named and additional insured, except that the limits
28 of insurance shall not be increased thereby.

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1 14.1.3 That the same shall not be cancelled or
2 coverage reduced until a thirty (30) day written notice
3 of cancellation has been served upon the Executive
4 Director by certified mail.

5 14.1.4 That said insurance shall either
6 contain a blanket form of contractual liability coverage
7 or there shall be attached to said policy or policies an
8 endorsement, providing that such insurance as is provided
9 for therein shall apply to the obligations of indemnity
10 assumed by Lessee under this Lease.

11 14.1.5 If any of the required insurance is
12 provided on a "claims-made" basis, any "prior acts"
13 coverage or "retroactive date" on such insurance and all
14 subsequent insurance shall be as of the first date of the
15 "claims-made" coverage. Upon expiration or termination
16 of coverage of required insurance, Lessee shall procure
17 "tail" coverage or an extended reporting coverage period
18 endorsement and submit proof thereof in accordance with
19 the provisions of subparagraph 14.4.

20 14.1.6 Such insurance provided by Lessee may
21 provide for such deductibles or self-insured retention as
22 shall be acceptable to the Executive Director in his
23 reasonable discretion.

24 14.2 Lessee, at its cost, shall procure and maintain in
25 full force and effect while this Lease shall remain in effect
26 worker's compensation and longshore and harbor workers'
27 compensation insurances to the extent required by law. The
28 provisions of subparagraph 17.4 shall be applicable to the

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1 insurances required by this paragraph 14.

2 14.3 The City of Long Beach, the Board of Harbor
3 Commissioners, and their officers and employees shall not be
4 liable for the payment of any premiums or assessments on any
5 policy or policies required under this paragraph 14.

6 14.4 Lessee shall deliver said policy or policies of
7 insurance, or certified photostatic copies thereof, or
8 certificates of insurance identifying same, together with an
9 endorsement bearing original signatures to the general
10 liability policy or policies satisfying the above requirements
11 and in form approved by the Board of Harbor Commissioners, to
12 the Executive Director for approval as to sufficiency and to
13 the City Attorney for approval as to form. At least fifteen
14 (15) days prior to the expiration of any such policy, a
15 certificate, showing that such insurance coverage has been
16 renewed or extended, shall be filed with the Executive
17 Director. If such coverage is cancelled or reduced, Lessee
18 shall, within ten (10) days after receipt of written notice of
19 such cancellation or reduction of coverage, file with the
20 Executive Director an endorsement or certificate showing that
21 the required insurance has been reinstated or provided through
22 another insurance company or companies, and said policy shall
23 be submitted for approval as herein provided.

24 14.5 The procuring of such policy or policies of
25 insurance shall not be construed to be a limitation in any
26 respect upon Lessee's obligation or indemnity hereunder.

27 14.6 Not more frequently than every five (5) years, if in
28 the opinion of City or an insurance broker retained by City,

1 the amount of the foregoing insurance requirements is not
2 adequate, Lessee shall increase the insurance coverage as
3 required by City.

4 15. SIGNS

5 No signs or placards of any type or design, except safety
6 or regulatory signs prescribed by law, shall be painted, inscribed
7 or placed in or on the Premises without the prior written consent
8 of the Executive Director, which consent shall not be unreasonably
9 withheld. Upon the expiration or termination of this Lease,
10 Lessee, at its cost, shall remove promptly and to the satisfaction
11 of the Executive Director any and all signs and placards placed by
12 it upon the Premises.

13 16. DEFAULT

14 The occurrence of any of the following shall constitute
15 a default:

16 (i) Failure by Lessee to pay rent when due, if the
17 failure continues for ten (10) days after notice has been
18 given by City to Lessee;

19 (ii) Failure by either party to perform any other
20 provision of this Lease if the failure to perform is not cured
21 within thirty (30) days after notice has been given by the
22 other party; provided, if the default cannot reasonably be
23 cured within thirty (30) days, the party obligated to perform
24 shall not be in default if such party commences to cure the
25 default within the thirty (30) day period and diligently and
26 in good faith continues to cure the default.

27 16.1 Notices given under this paragraph shall
28 specify the alleged default and the applicable Lease

1 provisions and shall demand that the defaulting party perform
2 the provisions of this Lease or pay the rent that is in
3 arrears, as the case may be, within the applicable period of
4 time or, in the case of a default by Lessee, that Lessee quit
5 the Premises. No such notice shall be deemed a forfeiture or
6 a termination of this Lease unless City so elects in its
7 notice to Lessee.

8 16.2 Upon any such termination by City, all
9 improvements of whatsoever character constructed, erected or
10 installed upon the Premises by Lessee shall, at City's option,
11 and upon City's declaring a forfeiture, immediately become the
12 property of City as provided in Subsection 1207(i) of the City
13 Charter.

14 16.3 The remedies of each party shall be cumulative
15 and in addition to any other remedies available.

16 16.4 For the purpose of this paragraph; each of the
17 covenants, conditions and agreements imposed upon or to be
18 performed by one party shall, at the option of the other
19 party, be deemed to be either covenants or conditions,
20 regardless of how designated in this Lease.

21 **17. FORCE MAJEURE**

22 17.1 Neither party to this Lease shall be deemed to be in
23 default in the performance of the terms, covenants or
24 conditions of this Lease, if such party is prevented from
25 performing said terms, covenants or conditions hereunder by
26 causes beyond its control, including, without limitation,
27 earthquake, flood, fire, explosion or similar catastrophe,
28 war, insurrection, riot or other civil disturbance, failure or

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1 delay in performance by suppliers or contractors, or any other
2 cause reasonably beyond the control of the defaulting party,
3 but excluding strikes or other labor disputes, lockouts or
4 work stoppages. In the event of the happening of any of such
5 contingencies, the party delayed from performance shall
6 immediately give the other party written notice of such
7 contingency, specifying the cause for delay or failure, and
8 such notice from the party delayed shall be prima facie
9 evidence that the delay resulting from the cause or causes
10 specified in the notice is excusable. The party so delayed
11 shall use reasonable diligence to remove the cause of delay,
12 and if and when the occurrence or condition which delayed or
13 prevented the performance shall cease or be removed, the party
14 delayed shall notify the other party immediately, and the
15 delayed party shall recommence its performance of the terms,
16 covenants and conditions of this Lease.

17 17.2 If the Premises are not reasonably useable in
18 whole or in part for the uses delineated in paragraph 4 by
19 reason of any cause contemplated by this paragraph 17, for a
20 period of six (6) months or longer, either party shall have
21 the option of terminating this Lease in its entirety by giving
22 written notice to the other party. Monthly Rent shall be
23 abated during the period the Premises are not reasonably
24 usable according to the nature and extent of the damage
25 sustained and the impairment of use. In the event the parties
26 cannot agree upon the amount of the rent abatement, the matter
27 shall be submitted to final and binding arbitration before
28 JAMS/ENDISPUTE, or its successor, pursuant to the United

1 States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Either party
2 may commence the arbitration process by filing a written
3 demand for arbitration with JAMS/ENDISPUTE, with a copy to the
4 other party. The arbitration will be conducted in accordance
5 with the provisions of JAMS/ENDISPUTE's Comprehensive
6 Arbitration Rules and Procedures in effect at the time of
7 filing of the demand for arbitration. The parties will
8 cooperate with JAMS/ENDISPUTE's panel of neutrals, and in
9 scheduling the arbitration proceedings. The parties covenant
10 that they shall participate in the arbitration in good faith,
11 and that they shall share equally in its costs.

12 17.3 During any period in which the Premises are not
13 reasonably useable in whole or in part for the uses delineated
14 in paragraph 4 by reason of any cause contemplated by this
15 paragraph, Lessee shall not be relieved of its obligation to
16 pay any amounts due hereunder including amounts due to City at
17 the time of the occurrence.

18 17.4 Notwithstanding the foregoing, the occurrence
19 of any cause contemplated by this paragraph shall not excuse
20 or otherwise delay performance by Lessee of its obligation to
21 obtain all required permits, licenses, approvals and consents
22 from governmental agencies having jurisdiction for the
23 operation and conduct of permitted activities.

24 18. TERMINATION BY ACTION OF OTHERS

25 In the event the United States of America, the State of
26 California, or any agency or instrumentality of said governments
27 other than the City of Long Beach shall, by condemnation or
28 otherwise, take title, possession or the right to possession of the

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1 Premises, or any part thereof, or deny Lessee the right to use the
2 Premises as contemplated by this Lease, or if any court shall
3 render a decision which has become final and which will prevent the
4 performance by City of any of its obligations under this Lease,
5 and if such taking, denial or decision substantially impairs the
6 utility of the Premises to Lessee, then either party may, at its
7 option, terminate this Lease as of the date of such taking, denial
8 or decision, and all further obligations of the parties shall end,
9 except as to:

10 (i) any award to which Lessee may be entitled from
11 the condemning authority for loss or damage suffered by
12 Lessee, including but not limited to relocation benefits and
13 Lessee's interest in its building, improvements, trade
14 fixtures and removable personal property;

15 (ii) obligations of indemnity which arise under the
16 provisions of paragraph 13; or

17 (iii) any obligations or liabilities which shall have
18 accrued prior to the date of taking.

19 **19. SURRENDER OF POSSESSION**

20 19.1 All improvements of any kind constructed,
21 erected or installed upon the Premises shall be removed by
22 Lessee, at its sole cost, within five (5) months following
23 expiration or earlier termination of this Lease ("Removal
24 Period"), and Lessee shall repair any damage caused by such
25 removal; provided, the City, at its option, may elect to take
26 title to said improvements in lieu of requiring Lessee to
27 remove the same and restore the Premises. City shall make its
28 election by giving written notice to Lessee one (1) year prior

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1 to the expiration or an earlier termination of this
2 Lease. The obligations contained in this paragraph shall
3 remain in full force and effect, notwithstanding the
4 expiration or termination of this Lease.

5 19.1.1 Rent. The provisions of paragraph 22 to
6 the contrary notwithstanding, Lessee shall pay rent during the
7 Removal Period in the amount of One Thousand Dollars
8 (\$1,000.00) per month ("Surrender Period Rent"), provided,
9 that Lessee shall pay monthly rent in an amount equal to three
10 times the Surrender Rent for each month or portion thereof
11 following expiration of the Removal Period until the
12 Improvements are removed ("Extended Removal Period").

13 19.1.2 Throughput. The Guaranteed Minimum
14 Annual Throughput shall not apply during the Removal Period or
15 the Extended Removal Period.

16 19.2 Except as to property owned by City, or
17 property in which City may have an interest, upon termination
18 of this Lease (whether by lapse of time or otherwise) Lessee
19 shall cause all other property upon the Premises, whether or
20 not such property be owned by Lessee or by third parties, to
21 be removed from the Premises prior to the termination date and
22 shall cause to be repaired any damage occasioned by such
23 removal; provided, however, that if any of such property is
24 not with due diligence susceptible of removal prior to the
25 termination date, Lessee's obligation hereunder shall be to
26 remove it in the most expeditious manner and as rapidly as
27 possible following the termination date. If the property is
28 not so removed from the Premises, City shall have the right to

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City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 remove and/or sell and/or destroy the same (subject to the
2 interest of any person other than Lessee therein) at Lessee's
3 expense, and Lessee agrees to pay the reasonable cost of any
4 such removal, sale, or destruction.

5 **20. RELOCATION ASSISTANCE**

6 Lessee understands and agrees that nothing contained in
7 this Lease shall create any right in Lessee for relocation
8 assistance or payment from City upon the termination of this Lease
9 or upon the termination of any holdover period. Lessee
10 acknowledges and agrees that it shall not be entitled to any
11 relocation assistance or payment pursuant to the provisions of
12 Title 1, Division 7, Chapter 16, of the Government Code of the
13 State of California (Sections 7260 et seq.) with respect to any
14 relocation of its business or activities upon the termination of
15 this Lease as a result of the lapse of time or Lessee's default or
16 upon the termination of any hold over period.

17 **21. ASSIGNMENT**

18 Lessee shall not assign, sublet or otherwise transfer
19 (whether voluntary or involuntary) this Lease or any interest
20 therein without the prior written consent of City which consent
21 shall not be unreasonably withheld.

22 **22. HOLDING OVER**

23 22.1 If Lessee shall hold over after the expiration of
24 this Lease for any cause, such holding over shall be deemed a
25 tenancy from month to month only, upon the same terms,
26 conditions and provisions of this Lease, except as set forth
27 in paragraph 19 above, unless other terms, conditions and
28 provisions be agreed upon in writing by City and Lessee. The

1 Executive Director may establish the compensation to be paid
2 by Lessee during such holdover period, taking into account the
3 character of the Premises, the terms and conditions affecting
4 their use, and the fair rental value of similar premises and
5 facilities devoted to similar use. In addition, the Executive
6 Director may, by written notice given at any time during the
7 holdover period, modify any other provision under which Lessee
8 occupies the Premises in order that such provision will
9 conform to the then-current leasing practices and requirements
10 of City.

11 22.2 If at any time following the expiration or earlier
12 termination of this Lease, City determines to sell or lease
13 the Coke Shed, City shall notify Lessee of the terms on which
14 City is willing to sell or lease the Coke Shed. If Lessee,
15 within fifteen (15) days after receipt of City's notice,
16 indicates in writing its agreement to purchase or lease the
17 Coke Shed on the terms stated in City's notice, City shall
18 sell or lease, and Lessee shall purchase or lease, as the case
19 may be, the Coke Shed on the terms stated in the notice. If
20 Lessee does not indicate its agreement within the fifteen (15)
21 days, City thereafter shall have the right to sell or lease
22 the Coke Shed to a third party on the same terms stated in the
23 notice.

24 **23. MISCELLANEOUS PROVISIONS**

25 23.1 Any notice, demand, request, consent, approval or
26 communication that either party desires or is required to give
27 to the other party or to any other person shall be in writing
28 and either served personally or sent by prepaid, first-class

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1 mail. The addresses of the parties are as follows:

2 To City: Executive Director
3 Long Beach Harbor Department
4 P.O. Box 570
5 Long Beach, California 90801

6 To Lessee: Applied Industrial Materials Corporation
7 320 Golden Shores, Suite 120
8 Long Beach, California 90802
9 Attn: General Manager

10 Either party may change its address by notifying the other
11 party in writing of such change. Notice shall be deemed
12 communicated within forty-eight (48) hours from the time of
13 mailing if mailed as provided in this subparagraph and as of
14 the time of receipt if personally served.

15 23.2 Lessee agrees, subject to applicable laws, rules and
16 regulations, that no person shall be subject to discrimination
17 in the performance of this Lease on the basis of race, color,
18 religion, national origin, sex, sexual orientation, AIDS, AIDS
19 related condition, age, disability, handicap, or Vietnam Era
20 veteran status. Lessee shall take affirmative action to
21 ensure that applicants are employed and that employees are
22 treated during employment without regard to any of these
23 bases, including but not limited to employment, upgrading,
24 demotion, transfer, recruitment, recruitment advertising,
25 layoff, termination, rates of pay or other forms of
26 compensation, and selection for training, including
27 apprenticeship. Lessee agrees to post in conspicuous places
28 available to employees and applicants for employment notices
to be provided by the City setting out the provisions of this
nondiscrimination clause. Lessee shall in all solicitations
or advertisements for employees state that all qualified

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1 applicants will receive consideration for employment without
2 regard to these bases.

3 23.3 The parties hereby waive all claims against the
4 other for damage or loss caused by any suit or proceeding
5 commenced by a third party, directly or indirectly attacking
6 the validity of this Lease, or any part thereof, or by any
7 judgment or award in any suit or proceeding declaring this
8 Lease null, void or voidable, or delaying the same, or any
9 part thereof, from being carried out, provided that Lessee
10 shall not be liable for payment of compensation hereunder to
11 the extent that, during any period, it is so prevented from
12 exercising its rights hereunder.

13 23.4 The use of paragraph headings or captions in this
14 Lease is solely for the purpose of convenience, and the same
15 shall be entirely disregarded in construing any part or
16 portion of this Lease.

17 23.5 This Lease shall be governed by the laws of the
18 State of California, both as to interpretation and
19 performance.

20 23.6 No waiver by either party at any time of any of the
21 terms, conditions, covenants or agreements of this Lease shall
22 be deemed or taken as a waiver at any time thereafter of the
23 same or any other term, condition, covenant or agreement
24 herein contained nor of the strict and prompt performance
25 thereof by the party obligated to perform. No delay, failure
26 or omission of either party to exercise any right, power,
27 privilege or option arising from any default nor subsequent
28 acceptance of compensation then or thereafter accrued shall

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1 impair any such right, power, privilege or option or be
2 construed to be a waiver of any such default or relinquishment
3 thereof or acquiescence therein. No option, right, power,
4 remedy or privilege of either party hereto shall be construed
5 as being exhausted or discharged by the exercise thereof in
6 one or more instances. It is agreed that each and all of the
7 rights, powers, options or remedies given to the parties by
8 this Lease are cumulative, and no one of them shall be
9 exclusive of the other or exclusive of any remedies provided
10 by law, and that the exercise of one right, power, option, or
11 remedy by a party shall not impair its rights to any other
12 right, power, option or remedy.

13 23.7 This Lease shall be binding upon and shall
14 inure to the benefit of the successors and assigns of City and
15 shall be binding upon and inure to the benefit of the
16 permitted successors and assigns of Lessee.

17 23.8 Should any of the covenants, conditions or
18 agreements of this Lease be held by a court of competent
19 jurisdiction to be illegal or in conflict with any applicable
20 law, or with any provision of the Charter of the City of Long
21 Beach, the validity of the remaining portions or provisions
22 shall not be affected thereby.

23 23.9 If either party commences an action against the
24 other party arising out of or in connection with this Lease,
25 the prevailing party shall be entitled to have and recover
26 from the losing party reasonable attorneys' fees and costs of
27 suit.

28 23.10 This Lease may be amended or terminated at any

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time by the written mutual agreement of the parties.

23.11 All provisions, whether covenants or conditions on the part of Lessee, shall be deemed to be both covenants and conditions.

23.12 This document constitutes the whole agreement between City and Lessee. There are no terms, obligations or conditions other than those contained herein. No modification or amendment of this Lease shall be valid and effective, unless evidenced by a written agreement signed by the parties which makes specific reference to this Lease.

23.13 This Lease shall be effective upon execution by the Executive Director.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation

September 16, 1999

By [Signature]
Its: President, Carbon Product Group

_____, 1999

Mary J. Appleman, Notary Public
my commission expires Apr 30, 2000

By _____
Its: _____

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

DATED: Nov. 4, 1999


By [Signature]
Richard D. Steinke
Executive Director
Long Beach Harbor Department
"City"

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The foregoing Lease is hereby approved as to form this

11th day of October, 1999.

ROBERT E. SHANNON, City Attorney

By: 
Everett L. Glenn, Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

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09/01/99 #99-00248
F:\APPS\CtyLaw32\WPD0CS\D024\P001\00006631.WPD

POB
 N 21,404.97
 E 26,151.50

N30° 33' 30" E
 81.95'

S55° 09' 53" E
 59.48'

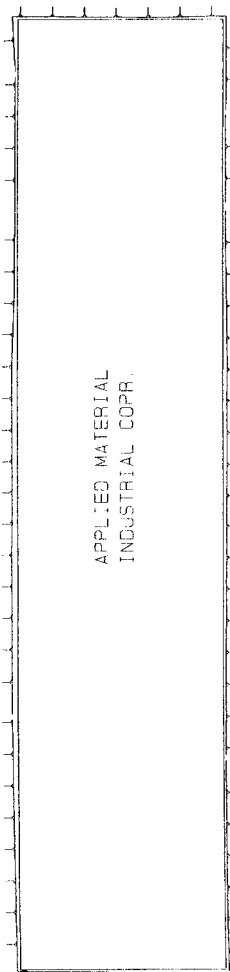
115.59'
 EAST



SCALE
 1" = 100'

PIER G AVENUE SOUTH

NORTH 970.00'



APPLIED MATERIAL
 INDUSTRIAL CORP.

R = 92.00'
 L = 144.51'

WEST 128.17'

SOUTH 173.12'

147.00'

104.50'

95.95'

183.35'

111.01'

92.38.56" E

31° 27' 30" E

31° 55' 54" E

31° 39' 32" E

30° 29' 23" E

PIER G AVENUE NORTH

LEASE AREA
 177,820± SQ. FT.
 4.08± ACRES

EXHIBIT A

PORT OF LONG BEACH - CALIFORNIA
 OFFICE OF THE EXECUTIVE DIRECTOR

SCALE 1" = 100' DATE ORIGINAL 2-16-58
 DESIGNED _____
 DRAWN H.M.V. 9-13-99
 CHECKED S.D.K.

1140 PIER G AVENUE

APPLIED INDUSTRIAL
 MATERIAL CORPORATION

LEASE AREA

HD 3406

EXHIBIT "B"

IMPROVEMENTS PURCHASED BY LESSEE

1. 60,000 metric ton capacity Coke Shed.
2. Receiving Conveyor System including conveyors #C18, #C19, and #C20, related equipment, structures and motor(s).
3. Truck Dump associated with receiving conveyor system.
4. Truck Wash Rack.
5. Reclaim Conveyor System including conveyor #C18, related equipment, structures, tunnel and motor(s).
6. Electrical Control Center.
7. Miscellaneous Paving.
8. Truck Dump Fence.

EXHIBIT "C"

BILL OF SALE

For good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners, ("City") does hereby grant, bargain, sell, transfer, and deliver to Applied Industrial Materials Corporation, a Delaware corporation, the improvements, fixtures, furniture, office equipment and other property ("Property") located at 1140 Pier G Avenue, in the Harbor District of the City of Long Beach, California listed and described in Schedule "A" attached hereto and incorporated herein by this reference.

City shall have all the rights and title to the Property in itself and its successors and assigns.

Further, City covenants and warrants that it is the lawful owner of the Property, and will defend that right and title against the lawful claims and demands of all persons.

In Witness Whereof, City has executed this instrument on this _____ day of _____, 1999.

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

By _____

Richard D. Steinke
Executive Director
Long Beach Harbor Department

SCHEDULE "A"

LIST OF PROPERTY

1. 60,000 metric ton capacity Coke Shed.
2. Receiving Conveyor System including conveyors #C18, #C19, and #C20, related equipment, structures and motor(s).
3. Truck Dump associated with receiving conveyor system.
4. Truck Wash Rack.
5. Reclaim Conveyor System including conveyor #C18, related equipment, structures, tunnel and motor(s).
6. Electrical Control Center.
7. Miscellaneous Paving.
8. Truck Dump Fence.

EXHIBIT "D"

LESSEE IMPROVEMENTS

- 1) Build new concrete floor and vertical walls inside building.
- 2) Repair and paint receiving conveyors. Install new pans where necessary.
- 3) Install sprinkler system inside building and around doors as required by SCAQMD Rule 1158.
- 4) Repair and modify truck dump, transfer boxes and truck wash as required by SCAQMD Rule 1158.
- 5) Repair existing wind damage to roof.

FIRST AMENDMENT TO LEASE

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3 **THIS FIRST AMENDMENT TO LEASE** is made and entered into as
4 of the 18th day of March, 2005, by and between **CITY OF**
5 **LONG BEACH**, a municipal corporation, acting by and through its
6 Board of Harbor Commissioners ("**City**"), pursuant to Ordinance No.
7 HD-1928, adopted by said Board at its meeting of February 14,
8 2005, and **OXBOW CARBON & MINERALS LLC**, a Delaware limited liability
9 company, as successor to **APPLIED INDUSTRIAL MATERIALS CORPORATION**,
10 a Delaware corporation ("**Lessee**").

11 **1. RECITALS:**

12 1.1 City and Lessee entered into a lease for
13 certain premises on Pier G on November 4, 1999 (HD-6282).

14 1.2 City and Lessee desire to amend the
15 compensation and insurance provisions.

16 2. Paragraph 5.1.3 of the Lease is added and reads as
17 follows:

18 "5.1.3 Subject to the provisions of subparagraph
19 5.2, Lessee shall pay to City, as rental for the use of
20 the Premises, without deduction, setoff, prior notice or
21 demand, the sum of Twenty-Nine Thousand Forty-three
22 Dollars and 92/100 (\$29,043.92) per month ("Monthly
23 Rent") payable in advance on the first day of each month
24 commencing on November 4, 2004. If Monthly Rent
25 commences on a day other than the first day of a month or
26 is payable for a partial month, then Monthly Rent shall
27 be prorated on the basis of a thirty (30) day month."

28 3. Effective November 4, 2004, paragraph 5.2 of the

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City Attorney of Long Beach
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1 Lease is amended and restated in its entirety to read as follows:

2 "5.2 The Monthly Rent shall be adjusted annually on
3 each anniversary of the effective date during the term
4 ("adjustment date") without further action of the
5 parties. Said adjustment shall be made by comparing the
6 Consumer Price Index for All Urban Consumers (base year
7 1967=100) for Los Angeles-Long Beach-Anaheim, published
8 by the United States Department of Labor, Bureau of Labor
9 Statistics ("Index"), which is published for the date
10 nearest March 1 of the year of the adjustment date
11 ("Current Index"), with the Index published nearest March
12 1, 2004 ("Beginning Index"). If the Current Index has
13 increased over the Beginning Index, the Monthly Rent for
14 the then-current lease year shall be set by multiplying
15 the Monthly Rent set forth above by a fraction, the
16 numerator of which is the Current Index and the
17 denominator of which is the Beginning Index; provided, in
18 no event shall the Monthly Rent be less than the Monthly
19 Rent in effect immediately preceding the adjustment date.
20 The term "lease year" shall mean the twelve (12)
21 consecutive calendar month period commencing on the
22 adjustment date. If the Index is discontinued or revised
23 during the term, such other government index or
24 computation shall be used in order to obtain
25 substantially the same result as if the Index had not
26 been discontinued."

27 4. Effective November 4, 2004, paragraph 5.4.2 of the
28 Lease is amended and restated in its entirety as follows:

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1 "5.4.2 Lessee guarantees that, during the five-year
2 segment commencing November 4, 2004, it will ship from
3 the Premises a minimum of 400,000 metric tons of
4 Commodities per lease year ("Guaranteed Minimum Annual
5 Throughput"). If Lessee has not, by the end of a given
6 lease year, shipped quantities of Commodities from the
7 Premises at least equal to the Guaranteed Minimum Annual
8 Throughput for the lease year, Lessee shall pay to City,
9 within thirty (30) days after the end of said lease year,
10 a sum calculated by multiplying the difference in
11 quantity between the Guaranteed Annual Minimum Throughput
12 and the actual quantity shipped for that lease year times
13 the then-current applicable wharfage and shiploader
14 charges established in Tariff No. 4, which sum would have
15 been paid to City had such quantity of petroleum coke
16 been shipped from the Premises during said year."

17 5. Effective November 4, 2004, paragraph 14 of the Lease
18 is amended and restated in its entirety to read as follow:

19 "14. INSURANCE:

20 14.1 **Insurance Required.** As a condition precedent to
21 Lessee's right to continued occupancy of the Premises, and
22 without limiting Lessee's obligations of indemnity, Lessee, at
23 no cost to City shall procure and maintain in full force and
24 effect during the term of this lease, and at such other times
25 as may be required under "claims-made" insurance if such form
26 of insurance is provided, the following types and levels of
27 insurance.

28 14.1.1 Commercial General Liability

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1 **Insurance.** Commercial general liability insurance with
2 coverage at least as broad as Insurance Services Office
3 Commercial General Liability Form CG0001, with limits of not
4 less than \$5,000,000 per occurrence and, if written within
5 aggregate, the aggregate shall be double the per occurrence
6 limit.

7 **14.1.2 Automobile Liability Insurance.** Automobile
8 liability insurance with coverage at least as broad as
9 Insurance Services Office Form CA0001 covering automobile
10 liability code 1 (any auto), with a limit of \$5,000,000 per
11 accident.

12 **14.1.3 Workers' Compensation.** Workers' compensation
13 insurance, as required by the State of California, and
14 employer's liability insurance, with a limit of not less than
15 \$1,000,000 per accident for bodily injury and disease and any
16 required coverage under the U.S. Longshore and Harbor Workers'
17 Compensation Act, Federal Employers Liability Act and/or Jones
18 Act for employees performing services covered by said Act(s).

19 **14.1.4 Environmental Impairment Liability.**
20 Environmental Impairment Liability Insurance to include onsite
21 and offsite coverage for bodily injury (including death and
22 mental anguish), property damage, defense costs and cleanup
23 costs with minimum limits of \$5 million per loss and \$10
24 million total all losses. Non-owned disposal site coverage
25 shall be provided if handling, storing or generating hazardous
26 materials or any material/substance otherwise regulated under
27 environmental laws/regulations.

28 **14.2 Ratings and Deductibles.** Each policy shall be

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1 from a company or companies with a current A.M. Best's rating
2 of no less than A:VII and authorized to do business in the
3 State of California, or otherwise allowed to place insurance
4 through surplus line brokers under applicable provisions of
5 the California Insurance Code or any federal law. Any
6 deductible or self-insured provision must be approved in
7 writing by the Executive Director and shall protect the
8 Indemnified Parties in the same manner and to the same extent
9 as they would have been protected had the insurance not
10 contained such provision. The deductible or self-insured
11 amount shall be shown on any evidence of insurance provided to
12 City, and City reserves the right to limit said amount and to
13 review the self-insured's financial statements if the amount
14 exceeds a level acceptable to City.

15 **14.3 Endorsements Required for All Policies.** Each
16 such policy shall be endorsed to provide that the policy shall
17 not be canceled or coverage reduced until a thirty (30) day
18 written notice of cancellation has been served upon the
19 Executive Director of the Harbor Department by registered or
20 certified mail except ten (10) days notice shall be sufficient
21 upon cancellation for non-payment of premium.

22 **14.4 Additional Endorsements for Liability**
23 **Policies.** The policy or policies required under paragraphs
24 14.1.1 and 14.1.2 above shall also be endorsed to provide as
25 follows:

26 **14.4.1 Additional Insured.** That the Indemnified
27 Parties shall be additional insureds with regard to
28 liability and defense of claims arising from the

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1 operations, products, and activities performed by or on
2 behalf of the named insured.

3 **14.4.2 Primary Insurance.** That such insurance is
4 primary and any other insurance, deductible, retention or
5 self-insurance maintained by the Indemnified Parties
6 shall not contribute with such primary insurance.

7 **14.4.3 Severability.** That in the event a claim
8 is made or a suit is filed against an insured (whether
9 named or additional), including a claim or suit by
10 another insured (whether named or additional), the policy
11 shall cover the insured against whom the claim is made or
12 suit is filed in the same manner as if separate policies
13 had been issued to each insured, except that the limits
14 of insurance shall not be increased thereby.

15 **14.4.4 Indemnity Coverage.** That the coverage
16 provided therein shall apply to the obligations assumed
17 by Lessee under the indemnity provisions of this Lease,
18 unless the policy or policies contain a blanket form of
19 contractual liability coverage.

20 **14.4.5 Duties.** Any failure by the named insured
21 to comply with reporting provisions of the policy or
22 breaches or violation of warranties shall not affect
23 coverage provided to the Indemnified Parties.

24 **14.5 Additional Endorsements for Workers' Policies.**
25 The policy or policies required under paragraph 14.1.3 above
26 shall also be endorsed to provide a waiver of subrogation
27 stating that the insurer waives indemnification from the
28 Indemnified Parties or any of them.

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1 **14.6 Claims-Made Policies.** If any of the required
2 insurance is provided on a "claims-made" basis, any "prior
3 acts" coverage or "retroactive date" on such insurance and all
4 subsequent insurance shall be as of beginning of the term of
5 this lease. Upon expiration or termination of coverage of
6 required insurance, Lessee shall procure and submit to City
7 evidence of "tail" coverage or an extended reporting coverage
8 period endorsement for the period of at least three (3) years
9 from termination or expiration of this lease.

10 **14.7 Procedures.** Lessee shall deliver either
11 certified copies of the required policies or endorsements on
12 forms approved by the City ("evidence of insurance") to the
13 Executive Director for approval as to sufficiency and to the
14 City Attorney for approval as to form. At least fifteen (15)
15 days prior to the expiration of any such policy, evidence of
16 insurance showing that such insurance coverage has been
17 renewed or extended shall be filed with the Executive
18 Director. If such coverage is canceled or reduced, Lessee
19 shall, within ten (10) days after receipt of written notice of
20 such cancellation or reduction of coverage, file with the
21 Executive Director evidence of insurance showing that the
22 required insurance has been reinstated or has been provided
23 through another insurance company or companies. Lessee agrees
24 to suspend and cease all operations hereunder during such
25 period of time as the required insurance coverage is not in
26 effect and evidence of insurance has not been furnished to the
27 City.

28 6. Except as otherwise stated herein, all of the other

1 terms and conditions of the Lease shall remain unchanged and in
2 full force and effect.

3 OXBOW CARBON & MINERALS LLC, a
4 Delaware limited liability company,
5 as successor to APPLIED INDUSTRIAL
6 MATERIALS CORPORATION, a Delaware
7 corporation

8 JANUARY 28, 2005

9 By: [Signature]
10 Name: Josiah Winstanley
11 Title: VICE-PRESIDENT - WEST COAST BUSINESS

12 JANUARY 28, 2005

13 By: [Signature]
14 Name: ERWIN C MYERS
15 Title: Vice Pres. West Coast Terminals

16 "Lessee"

17 CITY OF LONG BEACH, a municipal
18 corporation, acting by and through
19 its Board of Harbor Commissioners

20 3-18, 2005

21 By: [Signature]
22 Richard D. Steinke
23 Executive Director
24 Long Beach Harbor Department

25 "City"

26 The foregoing First Amendment to Lease is hereby approved
27 as to form.

28 3-~~18~~ 17, 2005

By: [Signature]
ROBERT E. SHANNON, City Attorney
Charles M. Gale, Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES } ss.

On 1/28/2005, before me, SHEILAH GRAGEDA, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JOSEPH LOMBARDI
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

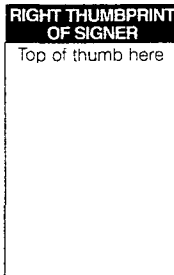
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

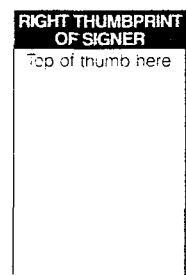
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

} ss.

On 1/28/2005

Date

before me, SHEILAH GRAGEDA, NOTARY PUBLIC

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

ERVIN C. MYERS

Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Handwritten Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

1 **SECOND AMENDMENT TO LEASE**

2
3
4 **THIS SECOND AMENDMENT TO LEASE** is made and entered into as of
5 the 20th day of January, 2011, by and between **CITY OF LONG BEACH**, a
6 municipal corporation, acting by and through its Board of Harbor Commissioners ("**City**"),
7 pursuant to Ordinance No. HD-2087, adopted by said Board at its meeting of
8 December 13, 2010, and **OXBOW CARBON & MINERALS LLC**, a Delaware limited
9 liability company, as successor to **APPLIED INDUSTRIAL MATERIALS**
10 **CORPORATION**, a Delaware corporation ("**Lessee**").

11 **1. RECITALS:**

12 1.1 City and Lessee entered into a lease for certain
13 premises on Pier G on November 4, 1999 (HD-6282), which was amended
14 by First Amendment on March 18, 2005 (HD-6282A) (collectively, the
15 "**Lease**").

16 1.2 City and Lessee desire to amend the compensation
17 provisions and confirm the insurance requirements for the five-year
18 segment of the term commencing November 4, 2009.

19 **2. Effective November 4, 2009, paragraph 5.1.3 of the Lease is**
20 **amended to read as follows:**

21
22 "5.1.3 Subject to the provisions of subparagraph 5.2, Lessee
23 shall pay to City, as rental for the use of the Premises, without deduction,
24 setoff, prior notice or demand, the sum of \$33,913 per month ("**Monthly**
25 **Rent**") payable in advance on the first day of each month commencing on
26 November 4, 2009. If Monthly Rent commences on a day other than the
27 first day of a month or is payable for a partial month, then Monthly Rent
28 shall be prorated on the basis of a thirty (30) day month."

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 3. Effective November 4, 2009, paragraph 5.4.2 of the Lease is
2 amended to read as follows:

3
4 "5.4.2 Lessee guarantees that, during the five-year segment
5 commencing November 4, 2009, it will ship from the Premises a minimum
6 of 500,000 metric tons of Commodities per lease year ("Guaranteed
7 Minimum Annual Throughput"). If Lessee has not, by the end of a given
8 lease year, shipped quantities of Commodities from the Premises at least
9 equal to the Guaranteed Minimum Annual Throughput for the lease year,
10 Lessee shall pay to City, within thirty (30) days after the end of said lease
11 year, a sum calculated by multiplying the difference in quantity between the
12 Guaranteed Minimum Annual Throughput and the actual quantity shipped
13 for that lease year times the then-current applicable wharfage and
14 shiploader charges established in Tariff No. 4, which sum would have been
15 paid to City had such quantity of petroleum coke been shipped from the
16 Premises during said year."


17
18 4. For the segment of the term commencing November 4, 2009, City
19 has determined that there will be no adjustment to the insurance required to be provided
20 and maintained by Lessee under the Lease. Lessee shall continue to provide and
21 maintain the types and amounts of insurance set forth in paragraph 14 of the Lease.

22 //
23 //
24 //
25 //
26 //
27 //
28 //

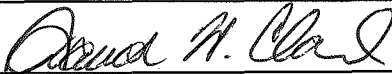
1 5. Except as otherwise stated herein, all of the other terms and
2 conditions of the Lease shall remain unchanged and in full force and effect.

3
4 OXBOW CARBON & MINERALS LLC, a
5 Delaware limited liability company, as
6 successor to APPLIED INDUSTRIAL
7 MATERIALS CORPORATION, a
8 Delaware corporation

9 NOVEMBER 12, 2010

10 By: 
11 Name: DAVID B. NESTLER
12 Title: EXECUTIVE VICE PRESIDENT


13 NOVEMBER 12, 2010

14 By: 
15 Name: DAVID W. CLARK
16 Title: ASSISTANT SECRETARY

17 LESSEE

18 CITY OF LONG BEACH, a municipal
19 corporation, acting by and through its
20 Board of Harbor Commissioners

21 JAN 20, 2010

22 By: 
23 for Richard D. Steinke
24 Executive Director
25 Long Beach Harbor Department

26 CITY

27 The foregoing Second Amendment to Lease is hereby approved as to form.

28 ROBERT E. SHANNON, City Attorney

Jan. 18, ²⁰¹¹2010

By: 
Tiffani L. Shin, Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

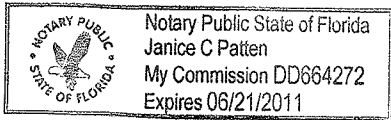
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Florida }
 County of Palm Beach }

On November 12, 2010 before me, David B. Nestler,
Date Here Insert Name and Title of the Officer

personally appeared as Executive Vice President of Oxbow Carbon & Minerals LLC,
Name(s) of Signer(s)
 a Delaware limited liability company, on behalf of the Company _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Florida that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Janice C Patten
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

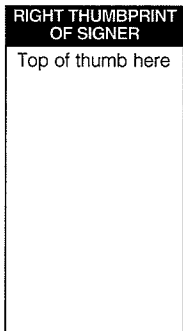
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

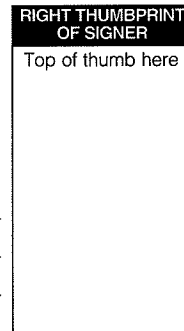
- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

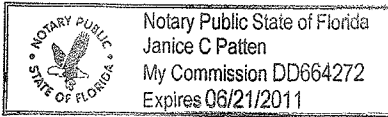
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Florida }
 County of Palm Beach }

On Nov. 12, 2010 before me, David W. Clark
Date Here Insert Name and Title of the Officer

personally appeared as Assistant Secretary of Oxbow Carbon & Minerals LLC,
Name(s) of Signer(s)
a Delaware limited liability company, on behalf of the company

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Florida that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Janice C Patten
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

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Signer's Name: _____

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- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing: _____

ASSIGNMENT

THIS ASSIGNMENT is made and entered into as of the Effective Date specified below, by and between Koch Carbon, Inc., a Kansas corporation, having an address at 4111 East 37th Street North, Wichita, KS 67220 (hereinafter referred to as "Koch"), and Applied Industrial Materials Corporation, a Delaware corporation, having an address at 100 First Stamford Place, Stamford, CT 06904-2388 (hereinafter referred to as "Aimcor");

RECITALS:

A. Pursuant to the terms and conditions of that certain Lease dated as of January 8, 1987, being identified as Document No. HD-4239, as amended by that certain First Amendment To Lease dated as of March 8, 1990, being identified as Document No. HD-4722, and as further amended by that certain Second Amendment To Lease dated as of July 17, 1997, being identified as Document No. HD-5875 (collectively, the "Port Lease"), Koch leased from the City of Long Beach, California, a municipal corporation, acting by and through its Board of Harbor Commissioners (the "City"), certain real property and improvements located on Pier "G" near Berths 212 and 213, as more particularly described in the Port Lease; and

B. Subject to the consummation of a certain asset purchase and sale transaction between Koch and Aimcor (the "Asset Sale and Purchase Agreement"), including the release by the City of Koch and its guarantor, Koch Industries, Inc., from all the terms, covenants, conditions and liabilities accruing under the Port Lease from and after the Effective Date as specified below, Koch desires to assign and convey to Aimcor, and Aimcor desires to accept and receive from Koch, all of the right, title and interest of Koch in and to the Port Lease, together with all improvements, fixtures, equipment and other property located upon or appurtenant to the premises covered thereunder;

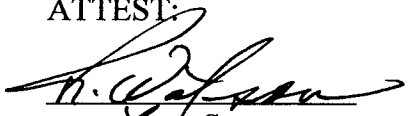
NOW, THEREFORE, in consideration of the recitals, promises and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

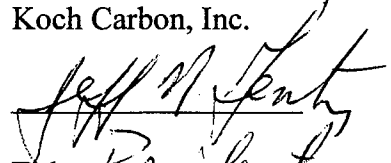
1. Subject to the written consent of the City as hereinafter provided, including the release by the City of Koch and its guarantor, Koch Industries, Inc., from all the terms, covenants, conditions and liabilities accruing under the Port Lease from and after the Effective Date specified below, and effective as of the Effective Date specified below, Koch hereby assigns, transfers and conveys to Aimcor all right, title and interest of Koch in and to the Port Lease, together with all improvements, fixtures, equipment and other property located upon or appurtenant to the premises covered thereunder.

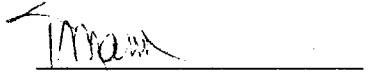
2. Aimcor hereby accepts the foregoing assignment, transfer and conveyance from Koch and agrees to be bound by and to comply with all the terms, covenants and conditions accruing under the Port Lease from and after the Effective Date.

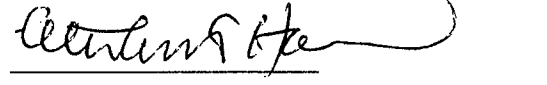
3. The Effective Date of this Assignment shall be the later of (i) the date of a notice delivered to the City and signed by Koch and Aimcor, stating that Koch and Aimcor have consummated the Asset Sale and Purchase Agreement; or (ii) the date on which the City shall have complied with the provisions of the Shipping Act of 1984, as amended, with respect to the filing of marine terminal agreements with the Federal Maritime Commission.

IN WITNESS WHEREOF, the parties have duly executed this Assignment, which shall be effective as of the Effective Date, subject to the written consent of the City, including the release by the City of Koch and its guarantor, Koch Industries, Inc., from all the terms, covenants and conditions of the Port Lease from and after the Effective Date.

ATTEST:

asst. Secretary

Koch Carbon, Inc.

Title: President

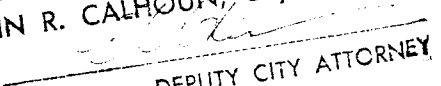
ATTEST:

Asst. Secretary

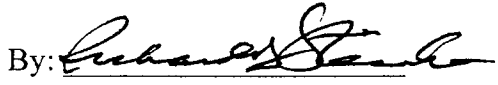
Applied Industrial Materials Corporation

Title: Pres. & CEO

CONSENT TO ASSIGNMENT AND RELEASE

In consideration of the assumption by Aimcor of the obligations of Koch under the Port Lease, the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners (the "City"), hereby consents to the foregoing Assignment by Koch to Aimcor and agrees that Koch and its guarantor, Koch Industries, Inc., shall be released from all the terms, covenants, conditions and liabilities accruing under the Port Lease from and after the Effective Date.

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

APPROVED AS TO FORM
5/3, 19 99
JOHN R. CALHOUN, City Attorney
By 
DEPUTY CITY ATTORNEY

By: 
Title: Executive Director

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

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SECOND AMENDMENT
TO
LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Second Amendment") is made and entered into as of the 17th day of July, 1997 pursuant to Ordinance No. HD-1738, adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of June 16, 1997, by and between CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), and Koch Carbon, Inc., a Kansas corporation ("Koch").

1. **RECITALS:** This Second Amendment is made with reference to the following facts and objectives:

1.1 On January 8, 1987, City and SSM CARBON, a division of SSM Coal North America, Inc., an Ohio corporation ("SSM") entered into a Lease Agreement ("Lease") by which City leased to Lessee certain improved real property situated within the Harbor District and preferentially assigned the adjacent Berths 212 and 213 on Pier G (Harbor Department Document No. 4239 and Federal Maritime Commission Agreement No. 224-011046). The Lease was for a term of five years, commencing on February 1, 1987, and provides for seven (7) renewal options, each for a period of five (5) years.

1.2 On December 2, 1987, City and Koch entered into a Lease and Preferential Assignment Agreement ("Lease and Assignment Agreement") by which City leased to Koch certain improved real property situated within the Harbor District of

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

1 the City of Long Beach ("Harbor District") and preferentially
2 assigned to Koch the adjacent Berths 210 and 211 on Pier A (now
3 Pier F) and the railroad trackage, shiploader and other
4 improvements located thereon in connection with the movement
5 of cargo to and from across the leased and assigned premises
6 (Harbor Department Document No. HD-4371 and Federal Maritime
7 Commission Agreement No. 224-00075). The Lease and Assignment
8 Agreement was for a term of five (5) years commencing January
9 1, 1988, and provides for seven (7) renewal options each for
10 a period of five (5) years.

11 1.3 Pursuant to the terms of an Asset Purchase and
12 Sale Agreement between Koch and SSM dated on or about March 12,
13 1992 ("Asset Agreement"), Koch acquired certain of the assets
14 of SSM including, but not limited to, the interest of SSM under
15 the Lease. As a result of its acquisition of the interest of
16 SSM under the Lease, Koch is the lessee under both the Lease
17 and the Lease and Assignment Agreement.

18 1.4 The second renewal term of the Lease is
19 scheduled to commence on February 1, 1997. The second renewal
20 term of the Lease and Assignment Agreement is scheduled to
21 commence on January 1, 1998. In order to coordinate the
22 commencement and expiration date of all future renewal terms
23 under the Lease and the Lease and Assignment Agreement, Koch
24 has requested that the term of the first renewal term of the
25 Lease be extended to December 31, 1997.

26 1.5 Paragraph 9.1 of the Lease requires that ground
27 rent for the leased premises be renegotiated every five (5)
28 years. As a result of extending the term of the first renewal

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

1 term to December 31, 1997, the parties must agree on a
2 renegotiated ground rent for the period between January 1, 1997
3 and December 31, 1997.

4 1.6 The parties intend by this Second Amendment
5 to extend the expiration date of the first renewal term
6 from January 31, 1997 to December 31, 1997, set forth
7 their agreement on renegotiated ground rent and Guaranteed
8 Minimum Annual Throughput for the extended term of the
9 first renewal term under the Lease, acknowledge the
10 exercise by Koch of the second renewal term under the
11 Lease, and to otherwise set forth their understandings and
12 agreements concerning compensation and renegotiation
13 factors for the second renewal term of the Lease
14 commencing January 1, 1998.

15 2. **TERM AND OPTIONS TO RENEW:** Notwithstanding the
16 effective date of the Lease, the term of the first renewal term
17 under the Lease shall be and hereby is extended to December 31,
18 1997. The second renewal term under the Lease shall commence on
19 January 1, 1998, and the commencement and expiration date of all
20 subsequent renewal terms under the Lease shall be determined and
21 adjusted on the basis of the January 1, 1998 commencement date for
22 the second renewal term.

23 3. **GROUND RENTAL/EXTENDED FIRST RENEWAL TERM:**
24 Commencing on the effective date, and continuing through December
25 31, 1997, Lessee shall pay City renegotiated annual ground rent for
26 the leased premises in the amount of One Hundred Ninety-Four
27 Thousand Seven Hundred Dollars (\$194,700) in equal monthly
28 installments of Sixteen Thousand Two Hundred Twenty-Five Dollars

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

1 (\$16,225.00).

2 4. GROUND RENTAL/SECOND RENEWAL TERM: Commencing
3 January 1, 1998, and continuing through December 31, 2002, Lessee
4 shall pay City renegotiated annual ground rent for the leased
5 premises in the amount of One Hundred Ninety-Four Thousand Seven
6 Hundred Dollars (\$194,700) in equal monthly installments of Sixteen
7 Thousand Two Hundred Twenty-Five Dollars (\$16,225.00).

8 5. GUARANTEED MINIMUM THROUGHPUT/EXTENDED FIRST RENEWAL
9 TERM: Commencing on the effective date, and
10 continuing through December 31, 1997, Lessee guarantees that it will
11 ship 300,000 metric tons of petroleum coke or other dry bulk
12 commodities (products) per year ("Guaranteed Minimum Annual
13 Throughput").

14 6. GUARANTEED MINIMUM THROUGHPUT/SECOND RENEWAL TERM:
15 Commencing January 1, 1998, and continuing through December 31,
16 2002, Lessee guarantees that it will ship 300,000 metric tons of
17 petroleum coke or other dry bulk commodities (products) per year
18 ("Guaranteed Minimum Annual Throughput").

19 7. COMPENSATION RENEGOTIATION/ARBITRATION: Paragraph 9
20 of the Lease shall be deleted and a new paragraph 9 added in its
21 place and read as follows:

22 "9.1 In accordance with the provisions of Long
23 Beach City Charter Section 1207(d), commencing with the
24 third renewal term under the Lease the parties agree to
25 renegotiate the ground rent for the leased premises, the
26 Guaranteed Minimum Annual Throughput, and the amount of
27 insurance (if any) to be provided by Lessee for the use
28 of the leased premises for each optional five-year renewal

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

1 of the term commencing at least one hundred eighty (180)
2 days prior to the beginning of each succeeding five-year
3 renewal term. If the parties cannot reach agreement at
4 least one hundred twenty (120) days before the end of the
5 then-current term, either party may request arbitration
6 pursuant to subparagraph 9.3 hereof.

7 9.2 In the negotiations to establish such
8 renegotiated compensation, the parties shall take into
9 consideration the character of the leased premises, their
10 value, the fair rental value of similar premises and
11 facilities devoted to similar use, the terms, conditions
12 and restrictions of this Lease, the quantity of material
13 handled at, on or from the leased Premises, the return to
14 City, maintenance costs, insurance, taxes and any other
15 facts and data necessary for the proper determination of
16 such compensation; provided that the fair compensation to
17 be paid by Lessee shall be determined without taking into
18 consideration the value of any improvements or facilities
19 owned by Lessee.

20 9.3 If the parties cannot reach agreement with
21 respect to compensation or any other matter in this Lease
22 which is specifically stated to be subject to arbitration,
23 either party may request arbitration. The party desiring
24 arbitration shall select an arbitrator and give written
25 notice to the other party, who shall select an arbitrator
26 within ten (10) business days after receipt of such
27 notice. If the other party fails to name such second
28 arbitrator within said ten (10) day period, the arbitrator

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

1 first selected shall decide the matter within sixty (60)
2 days after the expiration of said ten (10) day period.
3 Otherwise, the two arbitrators selected shall, within ten
4 (10) business days after the appointment of the second,
5 select a third. If the two cannot agree upon a third, the
6 third arbitrator shall be appointed by any judge of the
7 Superior Court of the County of Los Angeles, California,
8 upon application made therefor by either party upon ten
9 (10) days' written notice to the other. Upon their
10 appointment, the three arbitrators shall enter immediately
11 upon the discharge of their duties and must determine the
12 issue or issues submitted to them and file their
13 determination in writing with City and Lessee within sixty
14 (60) days after the appointment of the third arbitrator.
15 The arbitration proceedings shall be in accordance with
16 the provisions of Title 9 (Arbitration, 27 of Part 3 of
17 the California Code of Civil Procedure commencing at Code
18 of Civil Procedure Section 1280, unless the parties agree
19 otherwise."

20 8. **EFFECTIVE DATE:** This Second Amendment shall be
21 effective as of February 1, 1997.

22 9. **FORCE AND EFFECT:** Except as provided in this Second
23 Amendment, all terms and conditions of the Lease shall remain

24 /

25 /

26 /

27 /

28 /

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(562) 570-2200

1 unchanged and in full force and effect.

KOCH CARBON, INC., a Kansas corporation

2
3
4
5 Dated: May 7, 1997

By: Jeff M. Gentry
President

6
7 Dated: May 7, 1997

By: [Signature]
Secretary

8 "LESSEE"

9
10 CITY OF LONG BEACH, a municipal corporation, by and through its Board of Harbor Commissioners

11
12 Dated: Aug 12, 1997

By: [Signature]
Steven R. Dillenbeck,
Executive Director

14 "CITY"

15 The foregoing Second Amendment to Lease and Preferential
16 Assignment Agreement is hereby approved as to form.

17 JOHN R. CALHOUN, City Attorney

18
19 Dated: Aug 8, 1997

By: [Signature]
Everett L. Glenn, Deputy

20
21 **CONSENT**

22 The undersigned, as guarantor of the performance of
23 Koch Carbon, Inc., hereby consents to the foregoing Second Amendment
24 to Lease Agreement.

GUARANTOR:

KOCH INDUSTRIES, INC.

25
26
27 Dated: May 7, 1997

By: W. W. Hanna
President

28 ELG:ss
04/10/97
K-1\KOCH-2.AGR

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of KANSAS

County of SEDGWICK

On May 7, 1997 before me, Kelly S. Nebergall, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeff N. Gentry and H. Allan Caldwell
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kelly S. Nebergall
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Second Amendment to Lease Agreement

Document Date: May 7, 1997 Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jeff N. Gentry

- Individual
- Corporate Officer
Title(s): President
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:
Koch Carbon, Inc.

Signer's Name: H. Allan Caldwell

- Individual
- Corporate Officer
Title(s): Secretary
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:
Koch Carbon, Inc.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of KANSAS

County of SEDGWICK

On JULY 16, 1997 before me, BRENDA GALVAN, NOTARY PUBLIC,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared W. W. HANNA,
Name(s) of Signer(s)

personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Brenda K. Galvan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Consent to Second Amendment to Lease Agreement

Document Date: MAY 7, 1997 Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: W. W. HANNA

- Individual
- Corporate Officer
Title(s): PRESIDENT
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:
KOCH INDUSTRIES, INC.

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 **FIFTH AMENDMENT TO LEASE AGREEMENT**

2
3 **THIS FIFTH AMENDMENT TO LEASE AGREEMENT ("Fifth Amendment")**

4 is made and entered into as of April 25, 2013, pursuant to Ordinance No.
5 HD-2146, adopted by the Board of Harbor Commissioners of the City of Long Beach at
6 its meeting of March 18, 2013, by and between the CITY OF LONG BEACH, a
7 municipal corporation, acting by and through its Board of Harbor Commissioners ("City"),
8 and OXBOW CARBON & MINERALS LLC, a Delaware limited liability company, as
9 successor to APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware
10 corporation ("Oxbow").

11 1. **RECITALS.** This Fifth Amendment is made with reference to the
12 following facts and objectives:

13 1.1 On January 8, 1987, City and SSM CARBON, a division of
14 SSM Cal North America, Inc., an Ohio corporation ("SSM"), entered into a Lease
15 Agreement by which City leased to SSM certain improved real property situated
16 within the Harbor District (Harbor Department Document No. HD-4239). The
17 Lease Agreement was amended on March 8, 1990 (Document No. HD-4722) and
18 July 17, 1997 (Document No. HD-5875) and assigned from SSM to Aimcor
19 effective May 28, 1998 (Document No. HD-6030). The Lease Agreement was
20 further amended on April 20, 2004 (Document No. HD-6795) and on
21 August 15, 2008 (Document No. HD-4239D). The Lease Agreement, as so
22 amended and assigned, is referred to herein as the "Agreement."

23 1.2 The parties intend by this Fifth Amendment to acknowledge
24 the exercise by Oxbow of the fifth renewal term of five (5) years commencing
25 January 1, 2013, and to set forth their agreement on negotiated ground rent and a
26 Guaranteed Minimum Annual Throughput.

27 2. **GROUND RENTAL/FIFTH RENEWAL TERM.** Subject to
28 subparagraph 2.1, commencing January 1, 2013 and continuing through

1 December 31, 2017, Oxbow shall pay City monthly ground rent for the leased premises in
2 the amount of Twenty Six Thousand Six Hundred Seventy Eight Dollars (\$26,678).
3 Ground rent shall be payable in advance on the first day of each calendar month without
4 deduction set off, prior notice or demand.

5 2.1 The monthly ground rental shall be adjusted on January 1 of
6 each year during the fourth renewal term ("adjustment date"). Said adjustment
7 shall be made by comparing the Consumer Price Index for All Urban Consumers
8 (base year 1982-84=100) for Los Angeles-Riverside-Orange County, California
9 published by the United States Department of Labor, Bureau of Labor Statistics
10 ("Index"), which is published nearest the October 1st date which is three (3) months
11 prior to the adjustment date ("Current Index"), with the Index published nearest
12 October 1, 2012 ("Beginning Index"). If the Current Index has increased over the
13 Beginning Index, the monthly ground rental for the then-current year shall be set
14 by multiplying the monthly ground rental set forth above by a fraction, the
15 numerator of which is the Beginning Index; provided, in no event shall the monthly
16 ground rental be less than the monthly ground rental for the previous lease year.
17 If the Index is discounted or revised during the term, such other government Index
18 or computation shall be used in order to obtain substantially the same result as if
19 the Index had not been discontinued. On adjustment of the rent as provided
20 herein, the parties shall immediately execute a writing setting forth the adjusted
21 rent and when said writing is executed by the Executive Director, it shall constitute
22 a legally binding agreement of the parties without further municipal, corporate or
23 other action.

24 3. GUARANTEED MINIMUM THROUGHPUT/FIFTH RENEWAL
25 TERM. Commencing January 1, 2013 and continuing through December 31, 2017,
26 Oxbow guarantees that it will ship five hundred thousand (500,000) metric tons of
27 petroleum coke or other dry bulk commodities (products) per year ("Guaranteed Minimum
28 Annual Throughput").

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664


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4. EFFECTIVE DATE. This Fifth Amendment shall be effective as of
January 1, 2013.

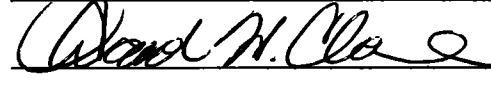
5. FORCE AND EFFECT. Except as provided in this Fifth Amendment,
all terms and conditions of the Agreement shall remain unchanged and in full force and
effect.

OXBOW CARBON & MINERALS LLC, a
Delaware limited liability company, as
successor to APPLIED INDUSTRIAL
MATERIALS CORPORATION, a
Delaware corporation

January 18, 2013

By: 
Name: Erwin C. Myers
Title: Senior Vice President


January 18, 2013

By: 
Name: David W. Clark
Title: Assistant Secretary

OXBOW

CITY OF LONG BEACH, a municipal
corporation, acting by and through its
Board of Harbor Commissioners

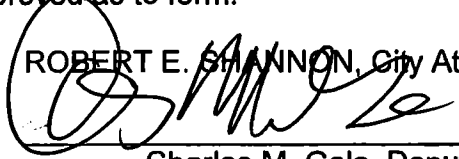
4/25, 2013

By: 
J. Christopher Lytle
Executive Director
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

4-18, 2013

By: 
ROBERT E. SHANNON, City Attorney
Charles M. Gale, Deputy

CMG:arh 01/16/13 #A08-01325
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CALIFORNIA-ALL-PURPOSE ACKNOWLEDGMENT

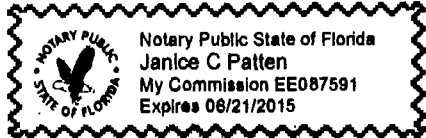
Florida

State of ~~California~~ Florida }
County of Palm Beach }

On 1/18/2013 before me, Janice C. Patten
Date Here Insert Name and Title of the Officer

personally appeared Ervin C. Myers and David W. Clark,
Name(s) of Signer(s)
as Senior Vice President and Asst. Secretary of
Oxbow Carbon Minerals LLC

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Janice C. Patten
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

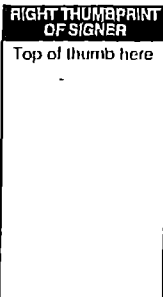
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

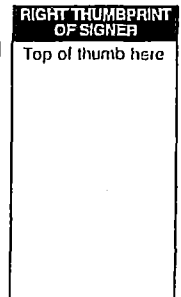
Signer's Name: _____ Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

1 **FOURTH AMENDMENT TO LEASE AGREEMENT**

2
3 **THIS FOURTH AMENDMENT TO LEASE AGREEMENT** ("Fourth
4 Amendment") is made and entered into as of August 15, 2008, pursuant to
5 Ordinance No. HD-2025, adopted by the Board of Harbor Commissioners of the City of
6 Long Beach at its meeting of July 14, 2008, by and between the CITY OF
7 LONG BEACH, a municipal corporation, acting by and through its Board of Harbor
8 Commissioners ("City"), and OXBOW CARBON & MINERALS LLC, a Delaware limited
9 liability company, as successor to APPLIED INDUSTRIAL MATERIALS CORPORATION,
10 a Delaware corporation ("Oxbow").

11 1. RECITALS. This Fourth Amendment is made with reference to the
12 following facts and objectives:

13 1.1 On January 8, 1987, City and SSM CARBON, a division of
14 SSM Cal North America, Inc., an Ohio corporation ("SSM"), entered into a Lease
15 Agreement by which City leased to SSM certain improved real property situated
16 within the Harbor District (Harbor Department Document No. HD-4239). The
17 Lease Agreement was amended on March 8, 1990 (Document No. HD-4722) and
18 July 17, 1997 (Document No. HD-5875) and assigned from SSM to Aimcor
19 effective May 28, 1998 (Document No. HD-6030). The Lease Agreement was
20 further amended on April 20, 2004 (Document No. HD-6795). The Lease
21 Agreement, as so amended and assigned, is referred to herein as the
22 "Agreement."

23 1.2 The parties intend by this Fourth Amendment to acknowledge
24 the exercise by Oxbow of the fourth renewal term of five (5) years commencing
25 January 1, 2008, and to set forth their agreement on negotiated ground rent, a
26 Guaranteed Minimum Annual Throughput, and insurance provisions.

27 2. GROUND RENTAL/FOURTH RENEWAL TERM. Subject to
28 subparagraph 2.1, commencing January 1, 2008 and continuing through

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 December 31, 2012, Oxbow shall pay City monthly ground rent for the leased premises in
2 the amount of Twenty Four Thousand Two Hundred Ninety Nine Dollars (\$24,299).
3 Ground rent shall be payable in advance on the first day of each calendar month without
4 deduction set off, prior notice or demand.

5 2.1 The monthly ground rental shall be adjusted on January 1 of
6 each year during the fourth renewal term ("adjustment date"). Said adjustment
7 shall be made by comparing the Consumer Price Index for All Urban Consumers
8 (base year 1982-84=100) for Los Angeles-Riverside-Orange County, California
9 published by the United States Department of Labor, Bureau of Labor Statistics
10 ("Index"), which is published nearest the October 1st date which is three (3) months
11 prior to the adjustment date ("Current Index"), with the Index published nearest
12 October 1, 2007 ("Beginning Index"). If the Current Index has increased over the
13 Beginning Index, the monthly ground rental for the then-current year shall be set
14 by multiplying the monthly ground rental set forth above by a fraction, the
15 numerator of which is the Beginning Index; provided, in no event shall the monthly
16 ground rental be less than the monthly ground rental for the previous lease year.
17 If the Index is discounted or revised during the term, such other government Index
18 or computation shall be used in order to obtain substantially the same result as if
19 the Index had not been discontinued. On adjustment of the rent as provided
20 herein, the parties shall immediately execute a writing setting forth the adjusted
21 rent and when said writing is executed by the Executive Director, it shall constitute
22 a legally binding agreement of the parties without further municipal, corporate or
23 other action.

24 3. GUARANTEED MINIMUM THROUGHPUT/FOURTH RENEWAL
25 TERM. Commencing January 1, 2008 and continuing through December 31, 2012,
26 Oxbow guarantees that it will ship three hundred fifty thousand (350,000) metric tons of
27 petroleum coke or other dry bulk commodities (products) per year ("Guaranteed Minimum
28 Annual Throughput").

1 4. INSURANCE. Paragraph 18 of the Agreement is deleted in its
2 entirety and is hereby amended to read as follows:

3
4 "18. As a condition precedent to the Lessee's right to
5 continued possession of the Premises, Lessee shall procure and maintain
6 in full force and effect during the term of the Agreement, the following
7 policies of insurance.

8 "(a) Commercial General Liability Insurance which
9 affords coverage at least as broad as Insurance Services Office
10 'occurrence' form CG 00 01 with minimum limits of \$5,000,000 per
11 occurrence, and if written with an aggregate, the aggregate shall be
12 double the per occurrence limit. The policy shall contain no
13 provisions or endorsements limiting coverage for (1) products -
14 completed operations; (2) contractual liability; (3) independent
15 contractors; (4) third party action over claims; (5) explosion,
16 collapse or underground hazard (XCU), if there is exposure; and (6)
17 defense costs shall be excess of limits.

18 "(b) Automobile Liability Insurance with coverage at
19 least as broad as Insurance Services Office Form CA 0001
20 covering 'Any Auto' (Symbol 1) with minimum limits of \$5,000,000
21 each accident.

22 "(c) Workers' Compensation Insurance, as required
23 by the State of California and Employer's Liability Insurance with a
24 limit of not less than \$1,000,000 per accident for bodily injury and
25 disease, and any required coverage under the U.S.
26 Longshoremen's and Harbor Workers' Act (USL&H), Federal
27 Employers Liability Act and Jones Act for employees performing
28 services covered by said Acts.

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“(1) A waiver of subrogation stating that the insurer waives all rights of subrogation against the Indemnified Parties.

“(2) The policy or policies shall not be canceled or coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor except notice of ten (10) days shall be allowed for non-payment of premium.

“The policy or policies of insurance for Property Insurance shall be endorsed, as follows:

“(1) A waiver of subrogation stating that the insurer waives all rights of subrogation against the Indemnified Parties.

“(2) The policy or policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor except notice of ten (10) days shall be allowed for non-payment of premium.

“(3) Losses payable under this policy shall be adjusted with the named insured and paid to City as its interests may appear.

“Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the Indemnified Parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

“Lessee shall deliver either certified copies of the required policies or endorsements on forms approved by the City (‘evidence of insurance’) to the Executive Director for approval as to sufficiency and as to form. At least fifteen (15) days prior to the expiration of any such policy,

1 evidence of insurance showing that such insurance coverage has been
2 renewed or extended shall be filed with the Executive Director. If such
3 coverage is canceled or reduced, Lessee shall, within ten (10) days after
4 receipt of written notice of such cancellation or reduction of coverage, file
5 with the Executive Director evidence of insurance showing that the
6 required insurance has been reinstated or has been provided through
7 another insurance company or companies.

8 "The coverage provided shall apply to the obligations
9 assumed by the Lessee under the indemnity provisions of this Agreement,
10 but this insurance provision in no way limits the indemnity provisions and
11 the indemnity provisions in no way limit this insurance provision.

12 "Lessee agrees to suspend and cease all operations
13 hereunder during such period of time as the required insurance coverage
14 is not in effect and evidence of insurance has not been approved by the
15 City. The City shall have the right to withhold any payment due Lessee
16 until Lessee has fully complied with the insurance provisions of this
17 Agreement.

18 "Each such policy shall be from a company or companies
19 with a current A.M. Best's rating of no less than A:VII and authorized to do
20 business in the State of California, or otherwise allowed to place insurance
21 through surplus line brokers under applicable provisions of the California
22 Insurance Code or any federal law.

23 "If coverage is written on a claims-made basis, the
24 retroactive date on such insurance and all subsequent insurance shall
25 coincide with or precede the effective date of the Agreement and
26 continuous coverage shall be maintained or Lessee shall obtain and
27 submit to City an extended reporting period endorsement for a period of at
28 least three (3) years from termination or expiration of this Agreement.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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"Upon expiration or termination of coverage of required insurance, Lessee shall procure and submit to City evidence of 'tail' coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from termination or expiration of this Agreement.

"Lessee shall be responsible for causing all contractors and sublessees to purchase the appropriate insurance in compliance with the terms of the Agreement. If Lessee does not obtain evidence of the required insurance, Lessee's required limits of Liability shall be increased by 50%."

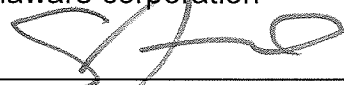
5. EFFECTIVE DATE. This Fourth Amendment shall be effective as of January 1, 2008.

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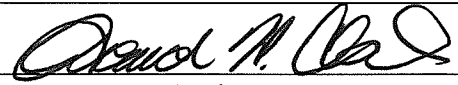
1 6. FORCE AND EFFECT. Except as provided in this Fourth
2 Amendment, all terms and conditions of the Agreement shall remain unchanged and in
3 full force and effect.

OXBOW CARBON & MINERALS LLC, a
Delaware limited liability company, as
successor to APPLIED INDUSTRIAL
MATERIALS CORPORATION, a
Delaware corporation

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8 Shelley L. McPhee, 2008

By: 
Name: Steven E. Fried
Title: Executive Vice President

9
10 Shelley L. McPhee, 2008

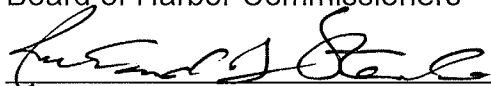
By: 
Name: David W. Clark
Title: Assistant Secretary

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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15 8-15, 2008

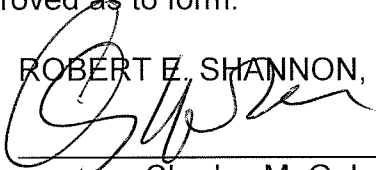
OXBOW

CITY OF LONG BEACH, a municipal
corporation, acting by and through its
Board of Harbor Commissioners

By: 
Richard D. Steinke
Executive Director
Long Beach Harbor Department

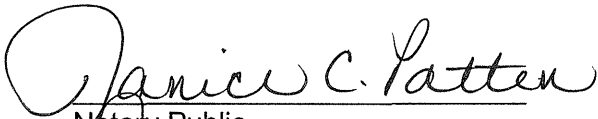
16
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18
19 The foregoing document is hereby approved as to form.

20
21 8-14, 2008

By: 
ROBERT E. SHANNON, City Attorney
Charles M. Gale, Deputy

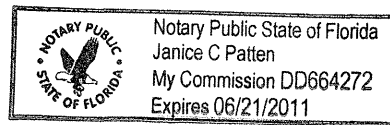
STATE OF FLORIDA)
 :SS
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 18th day of June, 2008, by David W. Clark, as Assistant Secretary of Oxbow Carbon & Minerals LLC, a Delaware limited liability company, on behalf of the Company.



Notary Public
State of Florida

 Personally known ✓
 or Produced Identification _____
Type of Identification Produced _____



Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 2003, and to set forth their agreement on negotiated
2 ground rent, a Guaranteed Minimum Annual Throughput, and
3 insurance provisions.

4 2. GROUND RENTAL/THIRD RENEWAL TERM: Subject to
5 subparagraph 2.1, commencing January 1, 2003 and continuing through
6 December 31, 2007, Lessee shall pay City monthly ground rent for
7 the leased premises in the amount of Twenty Thousand Four Hundred
8 One and 63/100 Dollars (\$20,401.63). Ground rent shall be payable
9 in advance on the first day of each calendar month without
10 deduction set off, prior notice or demand.

11 2.1 The monthly ground rental shall be
12 adjusted on January 1 of each year during the third
13 renewal term ("adjustment date"). Said adjustment shall
14 be made by comparing the Consumer Price Index for All
15 Urban Consumers (base year 1982-84=100) for Los Angeles-
16 Anaheim-Riverside, published by the United States
17 Department of Labor, Bureau of Labor Statistics
18 ("Index"), which is published nearest the October 1st
19 date which is three (3) months prior to the adjustment
20 date ("Current Index"), with the Index published nearest
21 October 1, 2002 ("Beginning Index"). If the Current
22 Index has increased over the Beginning Index, the monthly
23 ground rental for the then-current year shall be set by
24 multiplying the monthly ground rental set forth above by
25 a fraction, the numerator of which is the Current Index
26 and the denominator of which is the Beginning Index;
27 provided, in no event shall the monthly ground rental be
28 less than the monthly ground rental for the previous

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 lease year. If the Index is discontinued or revised
2 during the term, such other government Index or
3 computation shall be used in order to obtain
4 substantially the same result as if the Index had not
5 been discontinued. On adjustment of the rent as provided
6 herein, the parties shall immediately execute a writing
7 setting forth the adjusted rent and when said writing is
8 executed by the Executive Director, it shall constitute
9 a legally binding agreement of the parties without
10 further municipal, corporate or other action.

11 **3. GUARANTEED MINIMUM THROUGHPUT/THIRD RENEWAL TERM:**

12 Commencing January 1, 2003 and continuing through December 31,
13 2007, Lessee guarantees that it will ship three hundred thousand
14 (300,000) metric tons of petroleum coke or other dry bulk
15 commodities (products) per year ("Guaranteed Minimum Annual
16 Throughput").

17 **4. INSURANCE** Paragraph 18 of the Agreement is deleted in
18 its entirety and is hereby amended to read as follows:

19 **"18. INSURANCE:**

20 **"18.1 Insurance Required.** As a condition precedent
21 to Lessee's right to continued possession of the
22 Premises, and without limiting Lessee's obligations of
23 indemnity, Lessee, at no cost to City shall procure and
24 maintain in full force and effect during the term of this
25 Lease, and at such other times as may be required under
26 "claims-made" insurance if such form of insurance is
27 provided, the following types and levels of insurance.

28 **"18.1.1 Commercial General Liability**

1 **Insurance.** Commercial general liability
2 insurance with coverage at least as broad as
3 Insurance Services Office Commercial General
4 Liability Form CG0001, with limits of not less
5 than \$5,000,000 per occurrence.

6 **"18.1.2 Automobile Liability Insurance.**

7 Automobile liability insurance with coverage
8 at least as broad as Insurance Services Office
9 Form CA0001 covering automobile liability code
10 1 (any auto), with a limit of \$5,000,000 per
11 accident.

12 **"18.1.3 Workers' Compensation.** Workers'

13 compensation insurance, as required by the
14 State of California, and employer's liability
15 insurance, with a limit of not less than
16 \$1,000,000 per accident for bodily injury and
17 disease and any required coverage under the
18 U.S. Longshore and Harbor Workers'
19 Compensation Act, Federal Employers Liability
20 Act and/or Jones Act for employees performing
21 services covered by said Act(s).

22 **"18.1.4 Property Insurance.** Property

23 Insurance on an "All Risk" basis equal to the
24 full replacement cost of the property insured
25 with no coinsurance clause.

26 **"18.2 Ratings and Deductibles.** Each policy shall

27 be from a company or companies with a current A.M. Best's
28 rating of no less than A:VII and authorized to do

1 business in the State of California, or otherwise allowed
2 to place insurance through surplus line brokers under
3 applicable provisions of the California Insurance Code or
4 any federal law. Any deductible or self-insured
5 provision must be approved in writing by the Executive
6 Director and shall protect the indemnified parties in the
7 same manner and to the same extent as they would have
8 been protected had the insurance not contained such
9 provision. The deductible or self-insured amount shall
10 be shown on any evidence of insurance provided to City,
11 and City reserves the right to limit said amount and to
12 review the self-insured's financial statements if the
13 amount exceeds a level acceptable to City.

14 **"18.3 Endorsements Required for All Policies.** Each
15 such policy shall be endorsed to provide that the policy
16 shall not be canceled or coverage reduced until a thirty
17 (30) day written notice of cancellation has been served
18 upon the Executive Director of the Harbor Department by
19 registered or certified mail except ten (10) days notice
20 shall be sufficient upon cancellation for non-payment of
21 premium.

22 **"18.4 Additional Endorsements for Liability**
23 **Policies.** The policy or policies required under paragraphs
24 18.1.1 and 18.1.2 above shall also be endorsed to provide as
25 follows:

26 **"18.4.1 Additional Insured.** That the
27 indemnified parties shall be additional
28 insureds with regard to liability and defense

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 of claims arising from the operations,
2 products, and activities performed by or on
3 behalf of the named insured.

4 "18.4.2 Primary Insurance. That such
5 insurance is primary and any other insurance,
6 deductible, retention or self-insurance
7 maintained by the indemnified parties shall
8 not contribute with such primary insurance.

9 "18.4.3 Severability. That in the
10 event a claim is made or a suit is filed
11 against an insured (whether named or
12 additional), including a claim or suit by
13 another insured (whether named or additional),
14 the policy shall cover the insured against
15 whom the claim is made or suit is filed in the
16 same manner as if separate policies had been
17 issued to each insured, except that the limits
18 of insurance shall not be increased thereby.

19 "18.4.4 Indemnity Coverage. That the
20 coverage provided therein shall apply to the
21 obligations assumed by Lessee under the
22 indemnity provisions of this Lease, unless the
23 policy or policies contain a blanket form of
24 contractual liability coverage.

25 "18.4.5 Duties. Any failure by the
26 named insured to comply with reporting
27 provisions of the policy or breaches or
28 violation of warranties shall not affect

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coverage provided to the indemnified parties.

"18.5 Additional Endorsements for Property Insurance Policies. The policy or policies of insurance required under paragraph 18.1.4 shall be endorsed, as follows:

"18.5.1 Waiver of Subrogation. A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

"18.5.2 Loss Payee. Losses payable under this policy shall be adjusted with the Named Insured and paid to City as its interests may appear.

"18.6 Additional Endorsements for Workers' Policies. The policy or policies required under paragraph 18.1.3 above shall also be endorsed to provide a waiver of subrogation stating that the insurer waives indemnification from the indemnified parties or any of them.

"18.7 Claims-Made Policies. If any of the required insurance is provided on a "claims-made" basis, any "prior acts" coverage or "retroactive date" on such insurance and all subsequent insurance shall be as of the Effective Date of the term of this Lease. Upon expiration or termination of coverage of required insurance, Lessee shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least

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1 three (3) years from termination or expiration of this
2 Lease.

3 "18.8 Procedures. Lessee shall deliver either
4 certified copies of the required policies or endorsements
5 on forms approved by the City ("evidence of insurance")
6 to the Executive Director for approval as to sufficiency
7 and to the City Attorney for approval as to form. At
8 least fifteen (15) days prior to the expiration of any
9 such policy, evidence of insurance showing that such
10 insurance coverage has been renewed or extended shall be
11 filed with the Executive Director. If such coverage is
12 canceled or reduced, Lessee shall, within ten (10) days
13 after receipt of written notice of such cancellation or
14 reduction of coverage, file with the Executive Director
15 evidence of insurance showing that the required insurance
16 has been reinstated or has been provided through another
17 insurance company or companies. Lessee agrees to suspend
18 and cease all operations hereunder during such period of
19 time as the required insurance coverage is not in effect
20 and evidence of insurance has not been furnished to the
21 City."

22 5. EFFECTIVE DATE: This Third Amendment shall be
23 effective as of January 1, 2003 .

24 6. FORCE AND EFFECT: Except as provided in this Third

25 ///

26 ///

27 ///

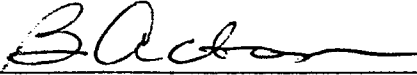
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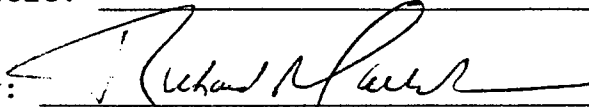
1 Amendment, all terms and conditions of the Agreement shall remain
2 unchanged and in full force and effect.

3 OXBOW CARBON & MINERALS LLC, a Delaware
4 limited liability company, as successor
5 to APPLIED INDUSTRIAL MATERIALS
CORPORATION, a Delaware corporation

6 February 10, 2004

By: 
Name: BRIAN L. ACTON
Title: President


8 February 10, 2004

By: 
Name: RICHARD P. CALLAHAN
Title: Secretary

10 "Aimcor"

12 CITY OF LONG BEACH, a municipal
13 corporation, by and through its Board of
14 Harbor Commissioners

15 4-20, 2004

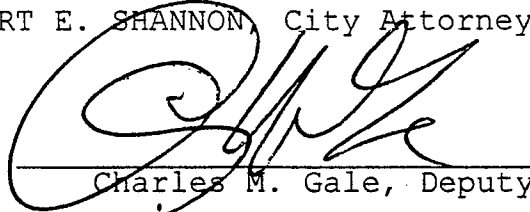
By: 
Richard D. Steinke,
Executive Director
Long Beach Harbor Department

18 "City"

19 The foregoing Third Amendment to Lease Agreement is hereby
20 approved as to form.

21 ROBERT E. SHANNON, City Attorney

23 April 15, 2004

By: 
Charles M. Gale, Deputy

27 CMG:RMB

1-20-04/A-7 (APPLIED3RD.AMD) 03-00303

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FLORIDA
~~CALIFORNIA~~ ALL-PURPOSE ACKNOWLEDGMENT

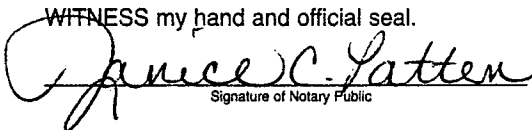
State of ~~California~~ FLORIDA }
County of PALM BEACH } ss.

On February 10, 2004 before me, JANICE C. PATTEN
Date BRIAN L. ACTON, a Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared President of Oxbow Carbon & Minerals LLC
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

 Janice C Patten
My Commission DD196502
Expires June 21, 2007

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

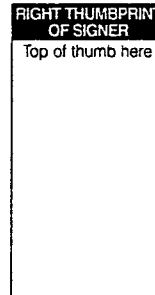
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



FLORIDA

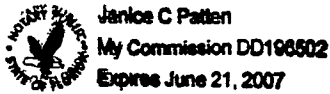
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ FLORIDA }
County of PALM BEACH } ss.

On February 10, 2004 before me, JANICE C. PATTEN
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared RICHARD P. CALLAHAN, as Secretary of
Oxbow Carbon & Minerals LLC
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Janice C. Patten
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



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FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE is made and entered into as of the 8th day of MARCH, 1990, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to Ordinance No. HD-1529, adopted by said Board at its meeting of FEBRUARY 5, 1990; and SSM CARBON, a division of SSM Coal North America, Inc., an Ohio corporation ("Lessee").

1. This First Amendment is made with reference to the following:

1.1 The parties hereto entered into a lease of certain premises located within the Harbor District of the City of Long Beach by document dated January 8, 1987 (Harbor Department Document No. HD-4239) ("Lease"). Said Lease provided for construction of certain improvements by Lessee and further provided that the boundaries of the leasehold premises may be adjusted to conform with actual construction following completion of construction of said improvements, if necessary.

1.2 The parties now wish to revise the boundaries of the leasehold premises and adjust the compensation to be paid by Lessee to City accordingly.

2. Subparagraph 2.1 of said Lease is revised in its entirety to read as follows:

2.1 As of the commencement date of the term (as defined in paragraph 4) hereof, City leases to Lessee, and

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Long Beach, California 90802
Telephone (213) 590-6061

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Telephone (213) 590-6061

1 Lessee accepts, a lease of certain property, located on
2 Pier G, Berths 212-213 consisting of the following:

3 Parcel 1 - approximately 106,537 square feet of land, to
4 be used for construction of a storage building of not
5 less than 80,000 metric ton capacity; of said area,
6 12,407 square feet consists of subterranean footings
7 for said storage building and it is agreed that the
8 surface of said footing area may be used and occupied
9 by adjacent tenants;

10 Parcel 2 - approximately 19,024 square feet of land to be
11 used for construction of a roadway, a truck dump, and
12 a screening tower;

13 Parcel 3 - approximately 1,072 square feet of overhead
14 right-of-way for construction and operation of an
15 overhead conveyor system between the screening tower
16 and the storage building; and

17 Parcel 4 - approximately 1,505 square feet of overhead
18 right-of-way for construction and operation of an
19 overhead conveyor system from the storage building to
20 a connection point with City's existing Pier G bulk
21 conveyor system;

22 all as shown on Harbor Department Drawing No. HD-3-221
23 (Rev. 10-25-89), a copy of which is attached hereto and by
24 this reference made a part hereof. Said areas, together
25 with the improvements now situated thereon and
26 improvements to be constructed thereon, are collectively
27 referred to herein as the "leased premises" or the
28 "premises".

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1 City also grants to Lessee nonexclusive rights of
2 access to the premises for vehicles and for utilities
3 across adjacent property of City within such corridors or
4 rights-of-way as shall be determined by City in connection
5 with detailed design and construction of Lessee's
6 contemplated improvements.

7 3. Section 7.2 of said Lease is amended to read, in
8 its entirety, as follows:

9 7.2 During the initial term hereof, Lessee shall
10 pay to City ground rent for Parcels 1 and 2 calculated at
11 the rate of \$0.44 per square foot per year until
12 construction of the storage building and appurtenant
13 improvements are completed and placed into operation, or
14 for the first two (2) years of the term, whichever is
15 less. During the remainder of the initial term, the
16 ground rent for Parcels 1 and 2 shall be calculated at the
17 rate of \$1.40 per square foot per year; for purposes of
18 determining the amount of such compensation, the 12,407
19 square feet of underground footings shall not be included
20 in the area of Parcel 1. Ground rent for Parcels 3 and 4
21 shall in both cases be one-half (1/2) of the above-
22 referenced ~~period~~ ^{RATE}. The parties agree that said
23 improvements were completed as of June 1, 1988 and that
24 ground rent during the remainder of the initial term is
25 the sum of One Hundred Sixty Thousand Two Hundred Nineteen
26 and 50/100 Dollars (\$160,219.50) per year. Ground rent
27 for any renewal term is subject to renegotiation and
28 arbitration in accordance with Paragraph 9 hereof.

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4. Harbor Department Drawing No. HD-3-221 (Rev. 10-25-89), a copy of which is attached hereto, is substituted for the earlier version of said drawing No. HD-3-221 attached to said Lease.

5. Except as specifically amended herein, all terms and conditions of said Lease shall remain in full force and effect.

SSM CARBON, a division of SSM COAL NORTH AMERICA, INC., an Ohio corporation

Dated: January 18, 1990

By Thomas C. Sebaste

Dated: _____, 1990

By _____

LESSEE

CITY OF LONG BEACH, a municipal corporation, by and through its Board of Harbor Commissioners

Dated: March 8, 1990

By Paul E. Brown
Paul E. Brown,
Acting Executive Director
Long Beach Harbor Department

CITY

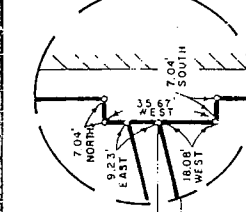
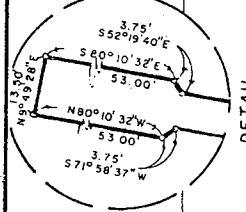
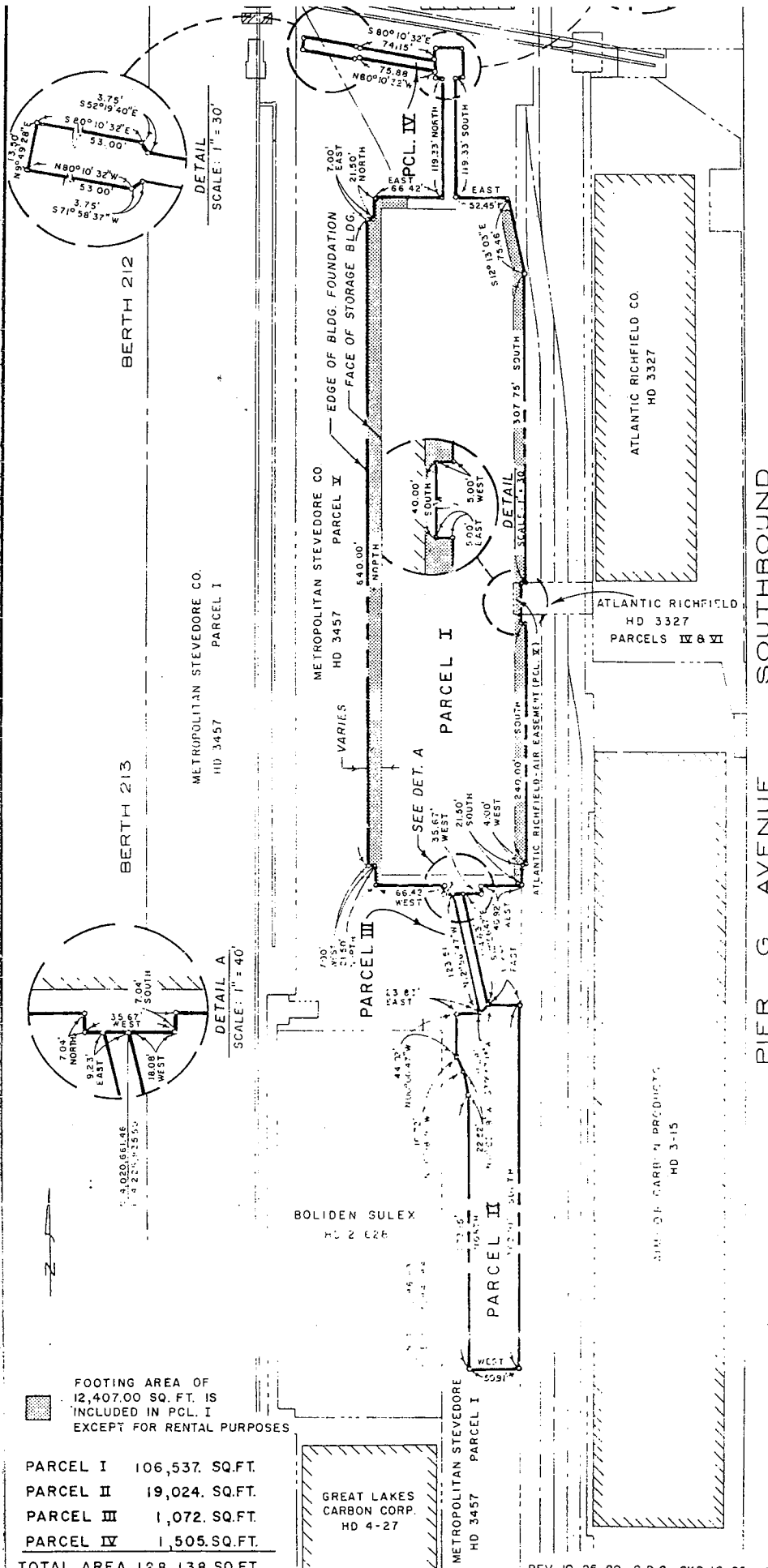
The foregoing First Amendment to Lease is hereby approved as to form.

JOHN R. CALHOUN, City Attorney

Dated: February 8, 1990

By Richard L. Landes
Richard L. Landes, Deputy

RLL:mm
1/3/90
S-4



FOOTING AREA OF 12,407.00 SQ. FT. IS INCLUDED IN PCL. I EXCEPT FOR RENTAL PURPOSES

PARCEL I 106,537. SQ.FT.
 PARCEL II 19,024. SQ.FT.
 PARCEL III 1,072. SQ.FT.
 PARCEL IV 1,505. SQ.FT.
 TOTAL AREA 128,138. SQ.FT.

GREAT LAKES CARBON CORP.
HD 4-27

REV. 10-25-89 G.D.S. CKD.10-25 03 A

PORT OF LONG BEACH - CALIFORNIA
 OFFICE OF THE EXECUTIVE DIRECTOR
 SCALE 1" = 100' DATE 7-9-86
 DESIGNED _____
 DRAWN M.L.A. *of Moran*
 CHECKED L.A.A. L.S. 3681

1165 PIER G AVE. SOUTHBOUND
 SSM CARBON LEASE AREA
 HD 3-27

LEASE
BETWEEN

THE CITY OF LONG BEACH

AND

SSM CARBON, A DIVISION OF
SSM COAL NORTH AMERICA, INC.

Document No. HD-4239

Dated JANUARY 8, 1987

LEASE
between
CITY OF LONG BEACH
and
SSM CARBON, A DIVISION OF
SSM COAL NORTH AMERICA, INC.

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Attachments:

Harbor Department Drawing No. HD 3-221

LEASE

1
2
3 THIS LEASE is made and entered into as of the 8th
4 day of JANUARY, 198~~6~~⁷, pursuant to Ordinance
5 No. HD-1434, adopted by the Board of Harbor Commissioners of the
6 City of Long Beach at its meeting of DECEMBER 8, 1986,
7 by and between CITY OF LONG BEACH, a municipal corporation,
8 acting by and through its Board of Harbor Commissioners ("City"),
9 and SSM CARBON, a division of SSM Coal North America, Inc., an
10 Ohio corporation ("Lessee").

11 1. PURPOSE

12 This Lease is entered into for the purpose of constructing
13 and operating a proprietary and/or contract dry bulk shipping
14 and storage facility to be operated by Lessee in conjunction with
15 City's existing Pier G Bulk Terminal, to facilitate the waterborne
16 shipment of petroleum coke and other dry bulk products from
17 Southern California via the Port of Long Beach. The Board of Har-
18 bor Commissioners ("Board") is empowered by the City Charter of the
19 City of Long Beach to authorize the operation of any properties and
20 facilities under its jurisdiction by private persons, firms, asso-
21 ciations and corporations by lease, franchise, license, assign-
22 ment, permit or otherwise upon such terms and conditions as the
23 Board shall prescribe. It is the Board's policy to obtain fair and
24 adequate compensation for the use of such properties and facili-
25 ties. For the Pier G Bulk Terminal and in the context of petroleum
26 coke storage sheds, the Board's objective, upon termination of
27 existing leases (whether by lapse of time or otherwise), in grant-
28 ing new or renewing existing leases, franchises, licenses,

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1 assignments and permits for the use of such facilities is to obtain
2 compensation reflecting the fair market rental value of the land
3 and facilities owned by the City as determined by the Board. The
4 foregoing shall not be deemed or construed as a limitation upon
5 the powers and discretions vested in the Board by the Constitution
6 and laws of the State of California or the Charter of the City of
7 Long Beach, and the Board shall not be liable to Lessee or any
8 third party in the event the Board's objective is not realized.

9 2. PREMISES

See 157
Amend

10 2.1 As of the Commencement Date of the term (as defined in
11 paragraph 4) hereof, City leases to Lessee, and Lessee accepts a
12 lease of certain property, located on Pier G near Berths 212-213
13 consisting of the following:

14 Parcel I - approximately 100,800 square feet of
15 land, to be used for construction of a storage
16 building of not less than 80,000 metric ton capacity;

17 Parcel II - approximately 11,225 square feet of
18 land, to be used for construction of a roadway,
19 a truck dump, and a screening tower;

20 Parcel III - right of way for construction and opera-
21 tion of an overhead conveyor system between the
22 screening tower and the storage building; and

23 Parcel IV - right of way for construction and opera-
24 tion of an overhead conveyor system from the storage
25 building to a connection point with City's existing
26 Pier G bulk conveyor system;

27 all as shown on Harbor Department Drawing No. HD 3-221, a copy
28 of which is attached hereto and by this reference made a part

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1 hereof. Said areas, together with the improvements now situated
2 thereon and improvements to be constructed thereon, are collec-
3 tively referred to in this Lease as the "leased premises" or the
4 "premises".

5 City also grants to Lessee nonexclusive rights of access to
6 the premises for vehicles and for utilities across adjacent
7 property of City within such corridors or rights of way as shall
8 be determined by City in connection with detailed design and
9 construction of Lessee's contemplated improvements.

10 The precise boundaries of the premises shall be adjusted in
11 connection with the detailed design and construction of the
12 contemplated improvements and a revised Drawing No. HD 3-221
13 shall be prepared, attached hereto, and be incorporated herein
14 in place of the drawing presently attached and incorporated.
15 Additionally, a copy of said revised drawing shall be filed
16 with the Federal Maritime Commission.

17 2.2 There are excepted and reserved from the leased premises
18 all minerals and mineral rights of every kind and character
19 now known to exist or hereafter discovered, including, without
20 limitation, oil, gas and water rights, together with the full,
21 exclusive and perpetual rights to explore for, remove and dispose
22 of said minerals from the premises without, however, the right
23 of surface entry upon the premises for such purposes.

24 2.3 This Lease, and all rights granted to Lessee hereunder,
25 are subject to restrictions, reservations, conditions and
26 encumbrances of record, including, without limitation, the trusts
27 and limitations set forth in Chapter 676, Statutes of 1911;
28 Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935;

1 Chapter 29, Statutes of 1956, First Extraordinary Session;
2 Chapter 138, Statutes of 1964, First Extraordinary Session; and
3 the Federal navigational servitude.

4 2.4 The leased premises shall be subject to rights of way
5 for such sewers, storm drains, pipelines and utility conduits
6 for telephone, electricity and water service as may from time to
7 time be determined by the Board of Harbor Commissioners in accor-
8 dance with Section 1207(g) of the Charter of the City of Long
9 Beach.

10 3. TERM & OPTIONS TO RENEW

11 3.1 The term of this Lease shall be for a period of five
12 (5) years commencing on the Commencement Date (as defined in
13 paragraph 4).

14 3.2 Subject to the provisions of paragraph 3.3 below, Lessee
15 shall have seven (7) options to renew the term of this Lease.
16 Each option shall be for a five-year renewal term, upon the terms
17 and conditions of this Lease, except as to rent and minimum limits
18 of insurance, which will be negotiated in accordance with the
19 provisions of paragraph 9 hereof. Lessee shall notify City of
20 its intent to exercise its option for each optional renewal term
21 at least one hundred eighty (180) days prior to expiration of
22 the then-current term, and shall make a binding decision whether
23 or not to exercise the option at least sixty (60) days prior to
24 expiration of the then-current term.

25 3.3 Lessee acknowledges that the term of this Lease could
26 extend significantly beyond the terms of the leases for petroleum
27 coke sheds on Pier G now in effect. The parties further agree
28 that presently unforeseen developments could make Lessee's

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Telephone (213) 590-6061

1 operations incompatible with future uses to which City may desire
2 to devote Pier G. In the event that City elects to redevelop the
3 westerly portion of Pier G (including all of the facilities on
4 Pier G now or hereafter used for handling coal or petroleum coke)
5 for a common purpose (i) which is incompatible with Lessee's con-
6 tinued use of the leased premises to handle coal or petroleum coke,
7 and (ii) no substantial part of which involves the handling of dry
8 bulk commodities, then City, by notice to Lessee prior to exercise
9 by Lessee of the sixth or seventh renewal option, may cancel
10 Lessee's right to exercise such of the sixth and seventh renewal
11 options as have not been exercised. Any dispute as to whether
12 any such notice given by City is valid shall be subject to arbi-
13 tration under Section 9.3. In the event City so cancels Lessee's
14 option rights, Lessee shall be relieved of any obligation to
15 demolish its improvements, and Lessee shall be relieved of the
16 obligation to pay to City the unamortized balance of the pur-
17 chase price, if Lessee would otherwise have been obligated to do
18 so under Section 7.4. After assuming possession of the improve-
19 ments pursuant to this paragraph 3.3, City shall not utilize the
20 improvements for the storage or movement of coal or petroleum coke.

21 3.4 City may elect to relocate Lessee's operations at
22 City's expense to a comparable facility at the end of the fourth
23 option period. As used herein, "comparable" shall mean a facility
24 of similar capacity and function, including loading and discharge
25 capability. Such relocation, if undertaken, shall be accomplished
26 so as not to significantly interfere with Lessee's operations. If
27 City makes such election, then the fifth, sixth and seventh options
28 set forth in subparagraphs 3.2 and 3.3 above and all other terms

1 and conditions of this Lease shall be applicable to such substitute
2 facility. Lessee, if still the owner of the improvements on the
3 leased premises, shall convey same to City without payment of com-
4 pensation therefor, and Lessee shall be relieved of its obligation
5 under subparagraph 24.2 hereof to demolish said improvements.

6 4. COMMENCEMENT DATE

7 The term of this Lease shall commence on the first day of the
8 calendar month following satisfaction of the filing and notice pro-
9 cedures and requirements of the Shipping Act of 1984 and related
10 regulations of the Federal Maritime Commission (the "Commencement
11 Date").

12 5. USE OF PREMISES

13 5.1 Lessee is authorized to use the leased premises to con-
14 duct a proprietary and/or contract dry bulk storage and shipping
15 facility to handle petroleum coke and/or other dry bulk commodi-
16 ties, and for related uses necessary in carrying out the author-
17 ized uses and purposes.

18 5.2 The leased premises shall not be used for any other
19 purposes without the prior consent in writing of the Executive
20 Director of the Long Beach Harbor Department ("Executive Direc-
21 tor"), which consent shall not be unreasonably withheld. The
22 premises shall not be used for any purpose which shall interfere
23 with commerce, navigation or fisheries or be inconsistent with the
24 trusts and limitations upon which the premises are now or may here-
25 after be held by the City of Long Beach.

26 5.3 Lessee is not granted the right to, nor shall Lessee,
27 operate a public terminal or public warehousing business upon the
28 leased premises.

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1 6. CITY'S CONVEYOR SYSTEM

2 City owns a conveyor system, consisting of mechanical ship-
3 loaders, conveyors, structures and appurtenant equipment for
4 stockpiling and reclaiming bulk commodities at the wharf premises
5 adjacent to the wharf at Berths 212 to 215, inclusive, and for
6 the loading of vessels with bulk commodities at said berths.
7 Said conveyor system, wharves and wharf premises are presently
8 preferentially assigned to Metropolitan Stevedore Company ("City's
9 preferential assignee"). It is contemplated City's conveyor
10 system and shiploaders will be used to move bulk commodities
11 from the leased premises to vessels berthed at Berths 212-215.

12 Lessee shall have the right, in accordance with the provisions
13 of City's Tariff No. 4, and subject to the rights of City's
14 preferential assignee, to use City's conveyor system and ship-
15 loaders and the wharves at Berths 212-215 for the conveyance of
16 bulk commodities from the leased premises for loading aboard
17 vessels. In moving bulk commodities from the leased premises
18 over City's conveyor system and through City's shiploaders,
19 Lessee may exercise its rights granted hereunder by contracting
20 with City's preferential assignee, or by contracting with inde-
21 pendent stevedoring contractors and terminal operators who would
22 request assignments of said conveyor system and shiploaders
23 from City pursuant to the provisions of said Tariff No. 4, or
24 Lessee itself may obtain assignments thereof, subject to the pref-
25 erential rights held by City's preferential assignee and to the
26 provisions of said Tariff No. 4. The intent of the parties is
27 to assure the movement of Lessee's bulk commodities from the
28 leased premises over City's conveyor system to vessels at Berths

1 212-215, without unreasonable delay or expense to Lessee.

2 Lessee's right to use City's conveyor system and shiploaders
3 to convey and load any dry bulk commodity other than petroleum
4 coke or other product presently handled by the conveyor system
5 and shiploaders is subject to City's determination, set forth in
6 writing, that the handling of such commodity will not be unduly
7 detrimental to said conveyor system or shiploaders.

8 7. COMPENSATION

9 7.1 Definitions

10 7.1.1 The word "year" as used herein shall mean the
11 twelve (12) consecutive month period commencing on the
12 Commencement Date of the initial term and any optional renewal
13 term hereof. Any period which is less than a year shall be
14 deemed and called a "partial year".

15 7.1.2 The words "tariff" or "Tariff No. 4" as used
16 herein shall mean City's "Tariff No. 4 naming Rates, Rules
17 and Regulations Governing the Port of Long Beach, California",
18 as amended, or the successor to such tariff.

19 7.1.3 The words "ton" or "metric ton" as used herein
20 shall mean 1000 kilograms.

21 7.2 During the initial term hereof, Lessee shall pay to City
22 ground rent for Parcels I and II calculated at the rate of \$0.44
23 per square foot per year until construction of the coke storage
24 shed and appurtenant improvements are completed and placed into
25 operation, or for the first two (2) years of the term, whichever
26 is less. During the remainder of the initial term, the ground
27 rent for Parcels I and II shall be calculated at the rate of
28 \$1.40 per square foot per year. Ground rent for Parcels III and

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1 IV shall in both cases be one-half of the above rates. Ground
2 rent for any renewal term is subject to renegotiation and arbitra-
3 tion in accordance with paragraph 9 hereof.

4 7.3 In addition to the ground rent for use of the leased
5 premises, Lessee shall pay, or cause to be paid, to City the
6 total amount of all applicable tariff charges accruing in connec-
7 tion with the movement of Lessee's bulk commodities across the
8 wharves at Berths 212-215. In connection therewith, Lessee shall
9 file, or cause to be filed, with the Executive Director on forms
10 provided or approved by City, on or before the tenth day following
11 the departure of each vessel docking at Berths 212-215 and aboard
12 which bulk commodities from the leased premises have been loaded,
13 a verified statement showing all charges which shall have accrued
14 for wharfage, shiploader charges and other applicable charges
15 with reference to each such vessel. Lessee shall furnish any
16 additional reports relating to its bulk commodity terminal opera-
17 tions when requested by City. Unless required for reasons of
18 public safety or necessity, nothing herein shall require Lessee
19 to disclose names of customers, pricing, or similar proprietary
20 information.

21 7.4 If Lessee elects to sell the coke storage shed and
22 related improvements to City at the end of the initial term pur-
23 suant to paragraph 23 hereof and Lessee also exercises its option
24 to extend the term pursuant to paragraph 3 hereof, Lessee shall
25 pay to City, in addition to the ground rent and the applicable
26 tariff charges, rental based on fair market value for the use of
27 said improvements ("improvements rent"). For each five-year
28 renewal term hereof, the improvements rent shall be renegotiated

1 in accordance with the provisions of paragraph 9 hereof.

2 If Lessee so elects to sell the coke storage shed and related
3 improvements and to renew the lease term, Lessee guarantees that
4 it will pay during the renewal terms or at termination of this
5 Lease, total aggregate improvements rent to City equivalent to
6 the purchase price paid by City to Lessee. If Lessee declines
7 to exercise its option to renew the term hereof for the second
8 or any subsequent option period, Lessee shall pay to City as of
9 the termination of this Lease the unamortized balance of the
10 purchase price of the coke storage shed and related improvements.

11 The unamortized balance of the purchase price outstanding at
12 any time shall be the amount of principal which would remain out-
13 standing at such time if at the end of the initial term, the City
14 had made a loan to Lessee in the amount of the purchase price paid
15 by City to Lessee and Lessee had made repayments to the City in
16 the amount of each installment of improvements rent, with interest
17 at two (2) percent per annum above the prime rate published in the
18 Wall Street Journal on the last business day prior to the date of
19 each payment of improvements rent. Thus, on the date of each pay-
20 ment of improvements rent, the then-unamortized balance of the
21 purchase price shall be multiplied by the applicable interest
22 rate (the annual rate being divided by 12 to reflect a monthly
23 rate) and that product shall be subtracted from the payment of
24 improvements rent; the difference is applied against the un-
25 amortized balance of the purchase price.

26 7.5 Lessee guarantees that, upon commencement of operation
27 of the coke storage shed and appurtenant improvements or commenc-
28 ing with the first day of the third year of the term, whichever

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1 occurs first, it will ship from the leased premises 300,000
2 metric tons of petroleum coke or other dry bulk commodities
3 ("product") per year ("Guaranteed Minimum Annual Throughput"
4 or "GMAT"). If Lessee has not, by the end of the five-year
5 term, shipped quantities of product from the leased premises at
6 least equal to the GMAT times the period of the term for which
7 it is applicable (i.e. beginning with commencement of operation
8 or the first day of the third year, whichever is earlier, through
9 the end of the initial five-year term, and the full five years
10 of any renewal term), Lessee shall pay to City, within thirty
11 (30) days after the end of said five-year term, the difference
12 between the amount actually paid to City during said period of
13 the term and the sum which would have been paid to City had such
14 quantity of product been shipped from the leased premises dur-
15 ing said period of the term. Said sum shall be calculated by
16 multiplying the difference in quantity between the GMAT times
17 the period it is applicable and the actual quantity shipped (the
18 "cumulative throughput deficiency") times a rate calculated by
19 multiplying each of the wharfage and shiploader charges established
20 in City's Tariff No. 4, Items 356 and 515 which were in effect dur-
21 ing said period of the term times the number of days each of said
22 rates was in effect divided by the number of days in said period of
23 the term (the "average Tariff rate"). If said sum is paid within
24 said thirty (30) days, Lessee's failure to ship the specified
25 minimum quantities of product from the leased premises shall not
26 otherwise constitute a default of its obligations hereunder.

27 7.6 If the leased premises or the improvements to be con-
28 structed thereon are damaged or destroyed so as to render them

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1 wholly or partially untenable or unfit for use or so as to
2 make it impracticable for Lessee to make reasonably full use of,
3 the premises for the authorized purposes, the Guaranteed Minimum
4 Annual Throughput for the then-current year shall be adjusted
5 according to the nature and extent of the damage sustained and
6 the impairment of use. In the event the parties cannot agree
7 upon the amount of such adjustment, the amount thereof shall be
8 determined by arbitration as provided in paragraph 9.3 herein.

9 7.7 If, by reason of strikes or other labor disputes, lock-
10 outs, or other work stoppages occurring within the Harbor District
11 of the City of Long Beach for a period in excess of thirty (30)
12 consecutive days, Lessee is prevented from making substantial
13 use of the leased premises for the purposes authorized, then the
14 Guaranteed Minimum Annual Throughput for the then-current year
15 shall be proportionately adjusted in an amount determined by
16 mutual agreement. In the event the parties cannot agree upon the
17 amount of such adjustment, the amount thereof shall be determined
18 by arbitration as provided in paragraph 9.3 herein.

19 8. BOOKS OF ACCOUNTS, RECORDS AND STATEMENTS

20 Lessee shall keep at the leased premises or at another loca-
21 tion within forty (40) miles of Long Beach, California, full and
22 accurate books of accounts and records relating to its operations
23 on the leased premises. City shall be entitled during the term
24 and within two (2) years after the expiration or termination of
25 this Lease to inspect and examine such books of account and
26 records so City can ascertain the total quantity of petroleum
27 coke and other product handled at the leased premises. Lessee
28 shall cooperate fully with City's representatives in making the

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1 inspection. City shall also be entitled once during each rental
2 year and once after the expiration or termination of the initial
3 term and each option term, to an independent audit at City's
4 expense of Lessee's books of account and records, by a certified
5 public accountant designated by City or by other representative
6 of City, to determine the total quantity of petroleum coke or
7 other product handled by Lessee on the leased premises. Any
8 such audit shall be conducted during usual business hours at
9 Lessee's office. Lessee shall not be required to disclose pricing
10 or similar proprietary information. If the audit shows that
11 there is a deficiency in the payment of any sums due City, the
12 deficiency shall become immediately due and payable, together
13 with interest thereon at the rate set forth in City's Tariff No.
14 4 from the date the payment or payments should have been made.
15 If the audit shows an overpayment, such overpayment shall be
16 credited against current or future payment obligations of Lessee.

17 Lessee shall also make available at Lessee's local offices
18 or City's offices for City's review, at no cost to City, copies
19 of Lessee's and its Guarantor's annual financial statements for
20 each year this Lease remains in effect. The statement of the
21 Guarantor shall be an audited statement. Such statements shall
22 be available to City within one hundred twenty (120) days after
23 the end of the fiscal year to which the statement relates. Such
24 statements shall not be duplicated nor retained as City records.

25 9. COMPENSATION RENEGOTIATION/ARBITRATION

26 9.1 In accordance with the provisions of Long Beach City
27 Charter Section 1207(d), the parties agree to renegotiate the
28 ground rent, the improvements rent, if applicable, and the minimum

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1 amounts of insurance to be provided by Lessee for the use of the
2 leased premises for each optional five-year renewal of the term,
3 at least one hundred eighty (180) days prior to the beginning of
4 each succeeding five-year renewal term. If the parties cannot
5 reach agreement at least one hundred twenty (120) days before the
6 end of the then-current term, either party may request arbitration
7 pursuant to subparagraph 9.3 hereof.

8 9.2 In the negotiations to establish such renegotiated rent,
9 the parties shall take into consideration the character of the
10 leased premises, their value, the fair rental value of similar
11 premises and facilities devoted to similar use, the terms, con-
12 ditions and restrictions of this Lease, the quantity of material
13 handled at, on or from the leased premises, the return to City,
14 maintenance costs, insurance, taxes and any other facts and data
15 necessary for the proper determination of such compensation; pro-
16 vided that unless and until City purchases the improvements on
17 the premises pursuant to paragraph 23 hereof, the fair rental
18 value to be paid by Lessee shall be determined without regard to
19 any improvements or facilities constructed at Lessee's expense.

20 9.3 If the parties cannot reach agreement with respect to
21 rent or any other matter in this Lease which is specifically
22 stated to be subject to arbitration, either party may request
23 arbitration. The party desiring arbitration shall select an
24 arbitrator and give written notice to the other party, who shall
25 select an arbitrator within ten (10) business days after receipt
26 of such notice. If the other party fails to name such second
27 arbitrator within the ten (10) day period, the arbitrator first
28 selected shall decide the matter within sixty (60) days after

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1 the expiration of that ten (10) day period. The two arbitrators
2 selected shall, within ten (10) business days after the appoint-
3 ment of the second, select a third. If the two cannot agree
4 upon a third, the third arbitrator shall be appointed by any
5 judge of the Superior Court of the County of Los Angeles, Cali-
6 fornia, upon application made therefor by either party upon ten
7 (10) days' written notice to the other. Upon their appointment,
8 the three arbitrators shall enter immediately upon the discharge
9 of their duties and must determine the issue or issues submitted
10 to them and file their determination in writing with City and
11 Lessee within sixty (60) days after the appointment of the third
12 arbitrator. The arbitration proceedings shall be in accordance
13 with the provisions of Title 9 (Arbitration) of Part 3 of the
14 California Code of Civil Procedure commencing at Code of Civil
15 Procedure Section 1280, unless the parties agree otherwise.

16 10. CONSTRUCTION OF IMPROVEMENTS

17 10.1 City, at no cost to Lessee, shall remove existing
18 railroad trackage, area lighting and other surface improvements,
19 shall relocate interfering portions of gas, water and other
20 utility service lines, shall excavate to the rough subgrade of
21 the proposed improvements and shall compact the surface of the
22 area.

23 Additionally, City shall, and at no cost to Lessee, design
24 and construct systems and facilities necessary to convey both
25 dry weather water drainage and storm water runoff from the leased
26 premises and shall provide potable water and sewer service suffi-
27 cient for office, restroom and miscellaneous uses to the leased
28 premises. City's responsibility shall commence outside the

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1 leased premises at a point or points located within five (5)
2 feet of Lessee's storage shed; City shall have no responsibility
3 for collection or handling of drainage or wastewater, nor delivery
4 of potable water, within five (5) feet of the leased premises.

5 In addition to the above, City shall modify and recon-
6 struct area lighting removed in order to clear the premises for
7 construction of Lessee's improvements. Lessee shall permit
8 installation and maintenance of area lighting on the storage
9 shed.

10 City shall cause to be prepared specifications and/or draw-
11 ings (collectively "Plans") showing with reasonable specificity
12 the work to be performed. The Plans shall be subject to Lessee's
13 prior written approval, which shall not be unreasonably withheld.
14 Upon such approval, such work shall be promptly commenced and
15 diligently pursued to completion. Upon completion of the work
16 described in the approved Plans and acceptance thereof by Lessee,
17 which acceptance shall not be unreasonably withheld, City shall
18 have completely and fully discharged its obligation to deliver
19 to Lessee the premises in a condition suitable for Lessee to
20 commence construction of a petroleum coke shed as provided in
21 paragraph 10.2.

22 10.2 Lessee, at its cost, shall construct upon the leased
23 premises a petroleum coke storage shed of not less than 80,000
24 metric ton capacity and all necessary appurtenances, including
25 truck unloading facilities and interconnections to City's Pier
26 G conveyor systems. In its design process for said improvements,
27 Lessee shall investigate, in accordance with reasonably prudent
28 engineering practices, the existing soil conditions and shall

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1 determine the extent, if any, of soil compaction or other work
2 necessary in addition to City's surface compaction set forth in
3 paragraph 10.1 above in order to provide adequate support for
4 the proposed improvements. Said necessary work shall be incor-
5 porated into Lessee's construction of the proposed improvements.
6 All such improvements shall be constructed, erected and installed
7 in accordance with plans and specifications approved in writing by
8 City's Executive Director or his designee, which approval shall not
9 be unreasonably withheld, and in accordance with all applicable
10 federal, state and local laws and regulations. Construction
11 shall be commenced within one hundred eighty (180) calendar days
12 after the Commencement Date (as defined in paragraph 4) and be
13 diligently pursued to completion. Said date of commencement of
14 construction may be modified by the Executive Director upon show-
15 ing of good cause by Lessee.

16 10.3 Within six (6) months after start of operations, Lessee
17 shall provide City with records to establish Lessee's actual cost
18 of construction of such improvements, which records shall be sub-
19 ject to review and audit by City. As used herein, "Lessee's
20 actual cost of construction" shall include all payments made to
21 designers, engineers, contractors and suppliers of the designated
22 improvements constructed by Lessee, but shall not include costs
23 of financing, interest or penalty charges, or any employee or
24 other internal costs of Lessee. If the parties hereto cannot
25 agree, the determination of Lessee's actual cost of construction
26 shall be subject to arbitration in accordance with the provisions
27 of subparagraph 9.3 hereof.

28 10.4 Lessee, at its cost and subject to City's prior

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1 approval, may construct, erect and install additional improvements
2 upon the leased premises, and may make alterations thereto, pro-
3 vided that all such additional improvements of any type must be
4 so constructed, erected and installed only in accordance with
5 plans and specifications approved in writing by City's Executive
6 Director or his designee, which approval shall not be unreasonably
7 withheld.

8 11. MAINTENANCE AND REPAIR

9 11.1 City, at no cost to Lessee, shall be responsible for,
10 and shall perform all necessary repairs arising from, damage to
11 the leased premises, including all buildings, structures and
12 improvements of any kind thereon including surface paving, caused
13 by general subsidence or other ground movement of the filled soil
14 underlying the surface of the leased premises. Such obligation
15 of City shall not include subsidence or ground movement caused
16 by earthquake, nor damage resulting from Lessee's breach of its
17 obligations of soil investigation, and compaction or other work
18 if necessary, of the specific building site, as set forth in
19 paragraph 10.2 above.

20 11.2 Lessee, at its cost, shall keep and maintain the leased
21 premises, and all buildings, structures and improvements of any
22 kind thereon including surface paving, in good and substantial
23 repair and condition and shall perform all necessary maintenance.

24 11.3 Should Lessee fail to make any repairs or perform the
25 required maintenance within thirty (30) days after receipt of
26 notice from City to do so, City may, but shall not be obligated
27 to, make and perform such repairs or maintenance. Lessee agrees
28 to reimburse City for the actual cost thereof within thirty (30)

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1 days after receipt of City's invoice therefor. Should Lessee
2 commence to prosecute and diligently make such repairs or begin
3 to perform the required maintenance within the thirty (30) day
4 period, City shall refrain from commencing to make any repairs
5 or required maintenance and from making demand for such payment
6 until the work has been completed by Lessee, and then only for
7 such portion thereof as shall have been made or performed by
8 City. The making of any inspection or repair or the performance
9 of any maintenance by City, which repair or maintenance is the
10 responsibility of Lessee, shall in no event be construed as a
11 waiver of the duty or obligation of Lessee to make future repairs
12 or perform required maintenance as provided in this Lease.

13 11.4 Lessee, at its cost, shall provide proper containers
14 for trash and keep the leased premises free and clear of rubbish,
15 debris and litter at all times. Lessee, at its cost, further
16 agrees to keep and maintain all of the premises in a safe and rea-
17 sonably clean, wholesome and sanitary condition under all applica-
18 ble federal, state, local and other laws, rules, regulations and
19 orders. No offensive refuse, matter, nor any substance constitut-
20 ing any unnecessary, unreasonable or unlawful fire hazard, nor
21 material detrimental to the public health shall be permitted to be
22 or remain on the premises and Lessee shall prevent such material
23 or matter from being or accumulating upon the premises.

24 11.5 All fire protection sprinkler systems, fire hydrant
25 systems, standpipe systems, fire alarm systems, portable fire
26 extinguishers and other fire-protective or extinguishing systems
27 or appliances which may be installed on the leased premises
28 shall be maintained by Lessee, at its cost, in an operative

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1 condition at all times. All repairs and servicing shall be made
2 in accordance with the provisions of the Long Beach Municipal
3 Code, Chapter 18.48 and all revisions thereto.

4 11.6 Lessee shall provide personnel to accompany City's
5 representatives on periodic inspections of the leased premises
6 to determine Lessee's compliance with the provisions of this
7 Lease to be performed by Lessee.

8 12. PROPERTY AND CARGO UNDER LESSEE'S CONTROL

9 As between City and Lessee, any property of any kind
10 belonging to or in the care, custody or control of Lessee that
11 may be on the leased premises during the term of this Lease
12 shall be at the sole risk of Lessee and Lessee hereby waives
13 all claims against City with respect to such property; provided,
14 however, that Lessee does not waive claim for injury, loss or
15 damage to property or to any person on the premises in case such
16 injury or damage is caused by the active negligence of City, its
17 officers or employees.

18 13. OBSERVE APPLICABLE LAWS

19 Lessee shall at all times, in its use and occupancy of the
20 leased premises and in the conduct of its operations thereon,
21 comply with all laws, ordinances and regulations applicable
22 thereto, enacted or adopted by federal, state, municipal or other
23 governmental bodies or departments or officers thereof, including
24 the City Charter and the Long Beach Municipal Code. Lessee
25 reserves the right to contest in appropriate proceedings any
26 change in laws, ordinances or regulations which would be in
27 derogation of Lessee's rights hereunder.

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1 14. UTILITY CHARGES

2 Lessee shall make arrangements for and pay for all utilities,
3 and services furnished to or used by it, including without
4 limitation gas, electricity, water, telephone service and trash
5 collection, and for all connection charges.

6 15. TAXES

7 Except where contested in good faith in a court of appropriate
8 jurisdiction, Lessee shall pay, prior to delinquency, all lawful
9 taxes, assessments and other governmental or district charges
10 that may be levied upon its property and improvements of any
11 kind located on the leased premises and upon the interest granted
12 under this Lease. Lessee recognizes and understands that this
13 Lease may create a possessory interest subject to property
14 taxation and that Lessee may be subject to the payment of property
15 taxes and assessments levied on such interest. Lessee agrees
16 that payment of any such possessory interest tax or assessment
17 shall not reduce any compensation due City hereunder.

18 16. LIENS

19 Except where contested in good faith in a court of appropri-
20 ate jurisdiction, and except for non-delinquent liens arising
21 from taxes or tax assessments, Lessee shall keep the leased
22 premises free from liens of any kind or nature arising out of
23 its operations, including any liens arising out of any labor
24 performed for or materials furnished to or on behalf of Lessee
25 on the premises. Lessee agrees that it will at all times save
26 City free and harmless and indemnify it against all claims for
27 labor or materials in connection with the construction, erection
28 or installation of Lessee's improvements made upon the premises,

1 or from additions or alterations made thereto, or the repair of
2 the same, by or at the direction of Lessee, and the costs of
3 defending against any such claim, including reasonable attorneys'
4 fees.

5 17. INDEMNIFICATION

6 17.1 Lessee shall defend, indemnify, and save harmless the
7 City and all of its boards, officers, and employees ("indemnified
8 parties") from and against any and all actions, suits, proceedings,
9 claims and demands, loss, liens, costs, expense and liability of
10 any kind and nature whatsoever ("claims"), for injury to or death
11 of persons, or damage to property, including property owned by
12 City, brought, made, filed against, imposed upon or sustained by
13 the indemnified parties or any of them, and arising from or
14 attributable to or caused, directly or indirectly, (i) by the
15 use or condition of the leased premises or the facilities and
16 improvements located thereon, or from operations conducted thereon
17 by Lessee, its officers, agents, employees or invitees or by any
18 person or persons acting on behalf of Lessee and with Lessee's
19 knowledge and consent, express or implied; or (ii) by reason of
20 or arising out of the state of repair and maintenance of the
21 leased premises or the improvements and facilities located there-
22 on, or the construction, improvement or repair of the improvements
23 and facilities on the leased premises by Lessee, its officers,
24 agents, employees or invitees, or by any person or persons acting
25 on behalf of Lessee and with the knowledge and consent, express
26 or implied, of Lessee; or (iii) by reason of injury to or death
27 of employees of Lessee or others as a result of Lessee's failure
28 or refusal to comply with the provisions of Section 6300 et seq.

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1 of the California Labor Code or any federal, state or local
2 regulations or laws pertaining to the safety of the leased prem-
3 ises or of equipment located upon the leased premises. This
4 paragraph applies regardless of whether any act or omission of
5 the indemnified parties or any of them contributed thereto,
6 but this paragraph does not apply to any claim arising from or
7 attributable to or caused, directly or indirectly, from the
8 active negligence of the indemnified parties or any of them.

9 17.2 With respect to any claim covered by paragraph 17.1,
10 City shall notify Lessee thereof, shall tender Lessee defense
11 thereof, and shall assist Lessee as may reasonably be requested
12 in the defense thereof. Lessee shall resist and defend such
13 action, suit or proceeding, shall conduct or have conducted, the
14 necessary investigations and adjusting related thereto, and
15 Lessee shall indemnify the indemnified parties. Payment of a
16 claim by an indemnified party shall not be a condition precedent
17 to recovery under this indemnity.

18 18. LIABILITY INSURANCE

19 18.1 In partial performance of Lessee's obligations of
20 indemnity, Lessee shall procure and maintain in full force and
21 effect, while this Lease shall remain in effect and at such
22 other times as may be required under "claims-made" insurance, a
23 policy or policies of comprehensive general liability insurance
24 or its equivalent from a company or companies authorized to do
25 business in the State of California, with minimum coverages of
26 \$5,000,000 combined single limit; and

27 18.2 The policy or policies shall provide as follows:

28 18.2.1 That the City of Long Beach, the Board of Harbor

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1 bor Commissioners, and their officers and employees, while
2 acting within the scope of their authority, shall be included
3 as additional insureds, such insurance to be primary and
4 any other insurance, deductible, retention or self insurance
5 maintained by the foregoing shall not contribute with such
6 primary insurance.

7 18.2.2 The policy shall cover each insured against
8 whom claim is or may be made, in the same manner as if
9 separate policies had been issued to each named and addi-
10 tional insured, except that the limits of insurance shall
11 not be increased thereby.

12 18.2.3 That said policy or policies shall either con-
13 tain a blanket form of contractual liability coverage or there
14 shall be attached to said policy or policies an endorsement,
15 providing that such insurance as is provided for therein
16 shall apply to the obligations of indemnity assumed by Lessee
17 under this Lease.

18 18.2.4 That the same shall not be cancelled or coverage
19 reduced until a thirty-day written notice of cancellation has
20 been served upon the Executive Director by registered or
21 certified mail.

22 18.2.5 If any of the required insurance is provided on
23 a "claims-made" basis, any "prior acts" coverage or "retro-
24 active date" on such insurance and all subsequent insurance
25 shall be as of the first date of the "claims-made" coverage.
26 Upon expiration or termination of coverage of required insur-
27 ance, Lessee shall procure "tail" coverage or an extended
28 reporting coverage period endorsements and submit proof

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1 thereof in accordance with the provisions of paragraph 18.7.

2 18.3 Such insurance provided by Lessee may provide for such
3 deductibles or self-insured retention as shall be acceptable to the
4 Executive Director in his reasonable discretion.

5 18.4 Lessee, at its cost, shall procure and maintain in full
6 force and effect while this Lease shall remain in effect workers'
7 compensation and longshoremen's and harbor workers' compensation
8 insurances to the extent required by law. The provisions of
9 paragraph 18.6 shall be applicable to the insurances required by
10 this paragraph.

11 18.5 The City of Long Beach, the Board of Harbor Commission-
12 ers, and their officers and employees shall not be liable for the
13 payment of any premiums or assessments on the policy or policies
14 required under this paragraph 18.

15 18.6 Lessee shall deliver said policy or policies of insur-
16 ance, or certified or photostatic copies thereof, or an endorsement
17 thereto, to the Executive Director for approval as to sufficiency
18 and to the City Attorney for approval as to form. At least fifteen
19 (15) days prior to the expiration of any such policy, an endorse-
20 ment, showing that such insurance coverage has been renewed or
21 extended, shall be filed with the Executive Director. If such
22 coverage is cancelled or reduced, Lessee shall, within ten (10)
23 days after receipt of written notice of such cancellation or
24 reduction of coverage, file with the Executive Director an endorse-
25 ment showing that the required insurance has been reinstated or
26 provided through another insurance company or companies, and said
27 policy shall be submitted for approval as herein provided.

28 18.7 If, after the initial term hereof, the minimum amount

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1 of insurance set forth in subparagraph 18.1, as adjusted pursuant
2 to paragraph 9, is not reasonably available, Lessee may, with
3 the concurrence of City's Executive Director, provide coverage
4 in a lesser amount. The failure to maintain the stated minimum
5 amount of insurance in effect shall not constitute an event of
6 default hereunder so long as (i) City's Executive Director has
7 concurred in the amount of coverage in effect; and (ii) the
8 Guarantee attached hereto shall remain in full force and effect.
9 In the event the parties hereto cannot agree on the reasonable
10 availability of insurance, or the amount of reduction of coverage,
11 such issues shall be subject to arbitration as provided in para-
12 graph 9.3 herein.

13 18.8 The procuring of such policy or policies of insurance
14 shall not be construed to be a limitation in any respect upon
15 Lessee's obligation of indemnity hereunder.

16 19. ACCESS

17 19.1 Lessee, its agents, employees and third persons using
18 the leased premises with the consent and approval of Lessee shall
19 have access to the premises over the street system and other
20 property owned or controlled by City, but only in connection with
21 the business operations of Lessee on the premises.

22 19.2 City's authorized representatives shall have access to
23 the leased premises at any and all reasonable times, for the
24 purpose of determining whether or not Lessee is complying with
25 the terms and conditions hereof, for fire and police purposes,
26 or for any other purposes incidental to the rights or duties of
27 City. This right of inspection reserved to City shall impose no
28 obligation on City to make inspections to ascertain the condition

1 of the premises and shall impose no liability upon City for
2 failure to make such inspection.

3 20. SIGNS

4 No signs or placards of any type or design, except safety or
5 regulatory signs prescribed by law, shall be painted, inscribed
6 or placed in or on the leased premises or any building or structure
7 located thereon without the prior written consent of the Executive
8 Director. Lessee, at its cost, agrees to remove promptly and to
9 the satisfaction of the Executive Director, upon the expiration
10 or termination of this Lease, any and all signs and placards
11 placed by it upon the premises.

12 21. DEFAULT

13 21.1 If either party should fail to perform any of its
14 obligations hereunder (except when such failure shall be excused
15 under other provisions hereof), the other party shall have the
16 option of terminating this Lease as follows:

17 21.1.1 The party not in default shall give written
18 notice to the party in default, stating specifically the
19 default or breach relied upon by the party giving the notice
20 as justifying termination hereof. If the default or breach
21 is not remedied within thirty (30) days, if it can be
22 remedied within that period, or if the party in default
23 fails to commence promptly and attempt diligently to remedy
24 the same where the default or breach is not remediable
25 within thirty (30) days after said written notice, the
26 party not in default shall have the right forthwith to
27 terminate this Lease.

28 21.1.2 If within the thirty (30) day period the party

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1 in default does remedy or remove said default or breach, or
2 commences promptly and attempts diligently to remedy or
3 remove the same where not remediable within the thirty (30)
4 day period, and fully indemnifies the party not in default
5 from any and all loss and liability resulting from such
6 default or breach, the notice shall be deemed withdrawn and
7 this Lease shall continue in full force and effect.

8 Upon any such termination by City, all improvements of whatsoever
9 character constructed, erected or installed upon the leased
10 premises by Lessee shall be disposed of in accordance with the
11 provisions of paragraphs 24.2 and 24.3.

12 21.2 In the event of termination of this Lease by City,
13 or in case of abandonment or vacation of the leased premises
14 by Lessee, and the City does not elect to invoke a forfeiture
15 of this Lease, Lessee hereby irrevocably appoints City as the
16 agent of Lessee to enter upon the leased premises and remove
17 any and all persons and/or property whatsoever situated upon the
18 premises and place all or any portion of said property (except
19 such property as may be forfeited to City) in storage for the
20 account of, and at the expense of, Lessee. In such case, City
21 may assign or lease the premises upon such terms as it deems
22 proper. If a sufficient sum shall not be thus realized after
23 paying expenses of such assignment or lease and collecting to
24 satisfy the compensation and other sums to be paid to City, Lessee
25 agrees to satisfy and pay any deficiency and to pay expenses of
26 such assignment or leasing and collecting. Lessee agrees to
27 save harmless City from any cost, loss or damage arising out of
28 or caused by any such entry or re-entry upon the premises and/or

1 the removal of persons and/or property and storage of such
2 property by City or its representatives.

3 22. TERMINATION

4 22.1 In the event the United States of America, the State
5 of California, or any agency or instrumentality of said govern-
6 ments other than the City of Long Beach shall, by condemnation
7 or otherwise, take title, possession or the right to possession
8 of the leased premises, or any part thereof, City may, at its
9 option, and, if the taking has substantially impaired the utility
10 of the premises to Lessee, Lessee may, at its option, terminate
11 this Lease as of the date of such taking, and all further
12 obligations of the parties shall end, except as to liabilities
13 which shall have accrued prior to the date of taking. The condem-
14 nation proceeds related to the land and pre-existing improvements
15 shall belong to City, and the proceeds related to the improvements
16 constructed by Lessee shall belong to whichever party is the owner
17 of said improvements as of the date of taking.

18 22.2 In the event any court having jurisdiction in the
19 matter shall render a decision which has become final and which
20 will prevent the performance by City of any of its obligations
21 hereunder, then either party hereto may terminate this Lease by
22 written notice. City, if it has not already done so, shall pur-
23 chase Lessee's improvements at the price specified in paragraph
24 23 hereof, and all rights and obligations hereunder (with the
25 exception of any undischarged rights and obligations that accrued
26 prior to the effective date of termination) shall thereupon
27 terminate.

28 /

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1 23. OPTION TO CONVEY IMPROVEMENTS TO CITY

2 23.1 Upon the expiration of the initial five-year term
3 hereof, Lessee shall have the right and option to sell the
4 storage building, truck dump, screening tower, conveyors and
5 related improvements constructed by Lessee to City, and City
6 shall have the obligation to purchase same, whether or not
7 Lessee exercises its option to extend the term hereof for the
8 first optional five-year renewal term. If Lessee intends to
9 exercise this option, Lessee shall so notify City of its intent
10 at least ninety (90) days prior to expiration of the initial five-
11 year term, and shall make a binding decision whether or not to
12 exercise the option at least sixty (60) days prior to expiration
13 of the initial term. If exercised, transfer of ownership to City
14 shall be closed not later than the end of the initial term.

15 23.2 Subject to the adjustment set forth in subparagraph
16 23.3 below, the price to be paid by City for said improvements
17 shall be Lessee's actual cost of construction of said improvements
18 depreciated on a twenty-year straight-line basis (5% per year)
19 from the date of completion of construction or the first day of
20 the third year of the initial term, whichever is sooner, to the
21 end of the fifth year of the initial term.

22 23.3 If, during the twelve (12) month period ending June 30,
23 1991, the total tonnage of all petroleum coke shipped through the
24 Ports of Long Beach and Los Angeles is less than fifty percent
25 (50%) of the average annual aggregate tonnage of petroleum coke
26 shipped through the Ports of Long Beach and Los Angeles during
27 the twelve (12) month periods ending June 30, 1989 and June 30,
28 1990, the purchase price determined in accordance with the

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1 provisions of subparagraph 23.2 above shall be reduced by an
2 amount not exceeding twenty-five percent (25%), such percentage
3 to be subject to arbitration under subparagraph 9.3 hereof, if
4 the parties cannot agree.

5 24. SURRENDER OF POSSESSION

6 24.1 Upon the expiration or termination of this Lease, and
7 subject to the provisions of subparagraph 24.2 below, Lessee, at
8 its cost, shall restore the leased premises to as good a state and
9 condition as the same were in upon taking possession thereof by
10 Lessee, reasonable wear and tear and damage by the elements except-
11 ed, and Lessee shall thereafter peaceably surrender possession.

12 24.2 Except in case of: (i) termination by City due to the
13 default of Lessee, as provided in paragraph 21 above; or (ii)
14 sale of designated improvements by Lessee to City, as provided
15 in paragraph 23 above; or (iii) relocation of Lessee pursuant to
16 paragraph 3.4 above, all improvements of any kind constructed,
17 erected or installed upon the leased premises by Lessee shall be
18 and remain the property of Lessee until the expiration or termina-
19 tion of this Lease. Upon such expiration or termination, Lessee
20 shall, at City's option, either: (i) convey all of its improve-
21 ments to City without compensation therefor; or (ii) remove all
22 of its improvements within thirty (30) days after such expiration
23 or termination, and at its cost repair any damage caused by such
24 removal. If Lessee shall not remove its improvements and repair
25 such damage, if any, within said thirty (30) day period, City
26 shall have the right to remove and/or sell and/or destroy the
27 same at the expense of Lessee, and Lessee agrees to pay to City
28 the reasonable cost of any such removal, sale or destruction.

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1 The obligations contained in this paragraph shall remain in full
2 force and effect, notwithstanding the expiration or termination
3 of this Lease.

4 24.3 Except as to property owned by City, or property in
5 which City may have an interest, with respect to any and all
6 other property used by Lessee in its operations upon the leased
7 premises, whether or not such property be owned by Lessee or by
8 third parties, Lessee, upon the expiration or earlier termination
9 of this Lease, shall cause all such property to be removed
10 from the premises within thirty (30) days from such expiration
11 or termination and shall cause to be repaired any damage occa-
12 sioned by such removal. If such property is not so removed from
13 the premises, City shall have the right to remove and/or sell
14 and/or destroy the same (subject to the interest of any person
15 other than Lessee therein) at Lessee's expense, and Lessee agrees
16 to pay the reasonable cost of any such removal, sale, or destruc-
17 tion.

18 25. RELOCATION ASSISTANCE

19 Except for relocation to substitute premises pursuant to sub-
20 paragraph 3.4 above, it is understood and agreed that nothing
21 contained herein shall create any right in Lessee for relocation
22 assistance or payment from City upon the expiration or termination
23 of this Lease or upon the termination of any holdover period.
24 Lessee acknowledges and agrees that it shall not be entitled to
25 any relocation assistance or payment from City pursuant to the
26 provisions of Title 1, Division 7, Chapter 16, of the Government
27 Code of the State of California (Sections 7260 et seq.) with
28 respect to any relocation of its business or activities upon

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1 the expiration or termination of this Lease.

2 26. ASSIGNMENT

3 26.1 Except as otherwise provided herein Lessee shall not
4 assign or transfer this Lease or any interest therein, nor its
5 right to use the whole or any part of the leased premises, nor
6 shall this Lease or any interest thereunder be assignable or
7 transferable by operation of law or by any process or proceeding
8 of any court, or otherwise, without the written consent of City
9 first obtained. City agrees that it will not unreasonably with-
10 hold such consent. In the event City gives such written consent
11 to Lessee, a copy of the assignment agreement shall be provided
12 to City. Additionally, a copy of same, together with a copy of
13 City's written consent, shall be filed with the Federal Maritime
14 Commission if this Lease is subject to Commission jurisdiction.

15 26.2 Notwithstanding the foregoing, City agrees and here-
16 by consents to the assignment of this Lease: (i) to any sub-
17 sidiary of Lessee now existing or created in the future, provided,
18 however, if such subsidiary is subsequently sold to any third
19 party, the provisions of subparagraph 26.1 above shall apply; or
20 (ii) to any person, firm or corporation succeeding to Lessee's
21 business, or any substantial portion thereof, through merger,
22 consolidation, or sale. In either case, City's consent is con-
23 tingent in that Lessee's successor must agree in writing to be
24 bound by the terms, covenants and conditions contained herein, and
25 a guarantee in acceptable form must be furnished to City.

26 27. DAMAGE AND DESTRUCTION

27 27.1 In addition to the insurance required under paragraph
28 18.1, Lessee at its cost, during the time it owns the improvements

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1 to be constructed upon the leased premises, shall procure and
2 maintain in effect a policy or policies of insurance, insuring
3 Lessee to the extent of at least the full replacement value of
4 Lessee's improvements against loss by reason of destruction or
5 damage of the buildings and other improvements owned by Lessee
6 upon the leased premises from fire and other hazards covered by
7 a standard form of fire insurance policy bearing an extended
8 coverage endorsement. The provisions of paragraph 18.6 shall
9 be applicable to the insurance required by this paragraph.

10 27.2 In the event of destruction of or damage to the build-
11 ing or other improvements owned by Lessee during the term hereof,
12 Lessee shall apply the proceeds of said insurance policy or
13 policies to the repair or restoration of any damaged part or por-
14 tion of the leased premises to a condition comparable to that
15 existing prior to such damage or destruction, provided that all
16 necessary permits required for such repair or restoration can be
17 obtained.

18 27.3 In the event of total destruction of the leased
19 premises and the improvements thereon or such damage or destruction
20 thereof so that the premises and improvements are substantially
21 unusable by Lessee in the conduct of its operations, either party
22 may terminate this Lease by giving a thirty (30) day written
23 notice of its intention to so terminate to the other party.

24 28. HAZARDOUS SUBSTANCES AND ACTIVITIES

25 No goods, merchandise or material shall be kept, stored or
26 sold in or on the leased premises which are in any way explosive
27 or hazardous without complying with applicable federal, state
28 and local laws, rules, regulations, and orders and no offensive

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1 or dangerous trade, business or occupation shall be carried on
2 therein or thereon, and nothing shall be done on the premises,
3 other than as is provided for in paragraph 5 hereof, which will
4 increase the rate or suspend the insurance upon the premises
5 hereby leased to Lessee or upon adjacent buildings or other
6 structures owned by the City, and no machinery or apparatus shall
7 be used or operated on said premises which will in any way injure
8 the premises or adjacent structures; provided, however, that
9 nothing contained in this paragraph shall preclude Lessee from
10 bringing, keeping or using, on or about said premises and struc-
11 tures, such materials, supplies, equipment and machinery as are
12 necessary or customary in carrying out the uses specified in para-
13 graph 5.

14 29. OPTION ON ADJACENT FACILITIES

15 There is on Pier G and presently used for the stockpiling
16 and shipment of petroleum coke a parcel of land and certain below-
17 ground improvements depicted on Harbor Department Drawing No.
18 HD 3-147. Said premises and improvements are referred to
19 hereinafter as "Pad 14". The Pad 14 area has not been improved by
20 construction of a bulk commodity covered storage building.

21 In consideration of Lessee entering into this Lease and agree-
22 ing to construct the improvements described in subparagraph 10.2
23 hereof, City agrees that, if the then-current lessee of Pad 14
24 fails, prior to January 1, 1989, to commit to construction of
25 certain "Enhancements" (as hereinafter defined) at Pad 14, then
26 Lessee hereunder shall have the exclusive right, between January
27 1, 1989 and June 30, 1989, to negotiate with City for a twenty-
28 year lease of Pad 14 commencing not later than May 1, 1990, and

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1 which shall provide for the prompt construction of such Enhance-
2 ments thereon by Lessee. The term "Enhancements" shall include,
3 as a minimum, construction of a building or other enclosed facil-
4 ity to contain petroleum coke or related products with a storage
5 capacity of at least 80,000 metric tons or the equivalent thereof
6 which meets the then-current requirements for permitting by all
7 federal, state, regional and local authorities having jurisdiction
8 over such building or facility.

9 30. MISCELLANEOUS PROVISIONS

10 30.1 Any notice, demand, request, consent, approval or
11 communication that either party desires or is required to give
12 to the other party or any other person shall be in writing and
13 either served personally or sent by prepaid, first-class mail
14 addressed as follows:

15 To City: Executive Director
16 Long Beach Harbor Department
17 P. O. Box 570
Long Beach, California 90801

18 To Lessee: President, SSM
19 5565 Sterret Place
Columbia, Maryland 21044

20 Either party may change its address by notifying the other party
21 of a change of address. Notice shall be deemed communicated
22 within forty-eight (48) hours from the time of mailing if mailed
23 as provided in this paragraph.

24 30.2 In the performance of this Lease, Lessee shall not
25 discriminate against any employee or applicant for employment
26 or any person using or desiring to use the leased premises because
27 of age, sex, religion, race, color, ancestry, national origin or
28 handicapped condition. Lessee will take affirmative action to

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1 ensure that applicants are employed, that employees are treated
2 during employment and that persons desiring to use the leased
3 premises are treated without regard to their age, sex, religion,
4 race, color, ancestry, national origin or handicapped condition.
5 Such action shall include, without limitation, the following:
6 employment, promotion, demotion or transfer; recruitment or
7 recruitment advertising; layoff or termination; rates of pay or
8 other forms of compensation; selection for training, including
9 apprenticeship; and maintenance of the leased premises and
10 facilities in a condition permitting reasonable access thereto
11 by handicapped persons. Lessee shall post in conspicuous places
12 notices setting forth the provisions of this paragraph.

13 30.3 City covenants that Lessee, upon performance of Lessee's
14 obligations hereunder, shall have quiet possession and enjoyment
15 of the premises for the term hereof.

16 30.4 Subject to the provisions of subparagraph 30.3 above,
17 the parties hereto hereby waive all claims against the other for
18 damage or loss caused by any suit or proceeding, directly or
19 indirectly attacking the validity of this Lease, or any part
20 thereof, or by any judgment or award in any suit or proceeding
21 declaring this Lease null, void or voidable, or delaying the
22 same, or any part thereof, from being carried out, provided that
23 Lessee shall not be liable for payment of compensation hereunder
24 to the extent that, during any period, it is so prevented from
25 exercising its rights hereunder.

26 30.5 The use of paragraph headings or captions herein is
27 solely for the purpose of convenience, and the same shall be
28 entirely disregarded in construing any part or portion hereof.

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1 30.6 This Lease shall be governed by the laws of the
2 State of California, both as to interpretation and performance.

3 30.7 No waiver by either party at any time of any of the
4 terms, conditions, covenants or agreements contained herein
5 shall be deemed or taken as a waiver at any time thereafter of
6 the same or any other term, condition, covenant or agreement
7 contained herein nor of the strict and prompt performance thereof
8 by the party obligated to perform. No delay, failure or omission
9 of either party to exercise any right, power, privilege or option
10 arising from any default nor subsequent acceptance of compensation
11 then or thereafter accrued shall impair any such right, power,
12 privilege or option or be construed to be a waiver of any such
13 default or relinquishment thereof or acquiescence therein. No
14 option, right, power, remedy or privilege of either party hereto
15 shall be construed as being exhausted or discharged by the exercise
16 thereof in one or more instances. It is agreed that each and all
17 if the rights, powers, options or remedies given to the parties
18 by this Lease are cumulative, and no one of them shall be
19 exclusive of the other or exclusive of any remedies provided by
20 law, and that the exercise of one right, power, option, or remedy
21 by a party shall not impair its rights to any other right, power,
22 option or remedy.

23 30.8 This Lease shall be binding upon and shall enure
24 to the benefit of the successors and assigns of City and shall
25 be binding upon and enure to the benefit of the permitted succes-
26 sors and assigns of Lessee.

27 30.9 Should any of the covenants, conditions or agreements
28 contained herein be held by a court of competent jurisdiction

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1 to be illegal or in conflict with any applicable law, or with
2 any provision of the Charter of the City of Long Beach, the
3 validity of the remaining portions or provisions shall not be
4 affected thereby if Lessee's use of the premises is not sub-
5 stantially impaired.

6 30.10 The parties hereto agree that this Lease may be
7 amended or terminated at any time by the mutual agreement of the
8 parties.

9 30.11 This document constitutes the whole agreement between
10 City and Lessee. There are no terms, obligations or conditions
11 other than those contained herein. No modification or amendment
12 hereof shall be valid and effective, unless evidenced by an
13 agreement in writing and signed by the parties making specific
14 reference to this Lease.

15 31. GUARANTEE

16 As a condition precedent to the effectiveness of this Lease,
17 Lessee shall cause the Guarantee attached hereto to be duly
18 executed and delivered to City.

21 SSM CARBON, a division of SSM
22 COAL NORTH AMERICA, INC., a
23 corporation

24 November 17, 1986

By R. E. Dymond
President

26 November 17, 1986

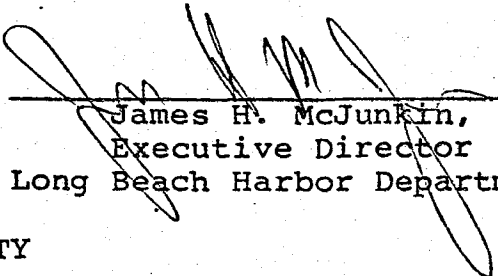
By William J. White
Secretary

28 LESSEE

CITY OF LONG BEACH, a municipal corporation, by and through its Board of Harbor Commissioners


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9 Dec, 1986

By 
James H. McJunkin,
Executive Director
Long Beach Harbor Department
CITY

The foregoing Lease is hereby approved as to form this
9th day of December, 1986.

JOHN R. CALHOUN, City Attorney

By 
Deputy

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6061

RLL:cy
11/05/86
S-22

(Corporation)

STATE OF ~~CALIFORNIA~~ MARYLAND
City BALTIMORE } SS.
~~COUNTY OF LOS ANGELES~~

On November 17, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared Michael J. Antille and Raymond E. Dymond

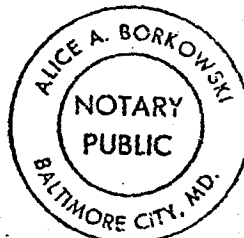
(personally known to me or () proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as _____ President and _____ Secretary on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Signature Alice A. Borkowski

Alice A. Borkowski
Name (Typed or Printed)

My Commission Expires July 1, 1990



(This area for official notarial seal)

STAPLE HERE

GUARANTEE

1
2
3 For good and valuable consideration to the undersigned,
4 the receipt of which is hereby acknowledged, SHV NORTH AMERICA
5 CORPORATION, a Delaware corporation, ("Guarantor") hereby uncon-
6 ditionally guarantees to the CITY OF LONG BEACH, a municipal cor-
7 poration, acting by and through its Board of Harbor Commissioners,
8 its successors and assigns, the full prompt and faithful payment,
9 performance and discharge by SSM CARBON, a division of SSM Coal
10 North America, Inc., of each of the agreements, terms, conditions
11 and obligations of the foregoing Lease, or any other instrument
12 given or executed in pursuance thereof.

13 Guarantor hereby waives all notice of default by
14 SSM CARBON, and consent is hereby given to any extension of time
15 which may be granted by said CITY OF LONG BEACH:

16 Guarantor's obligations hereunder shall be limited to
17 the sum of Twenty Million Dollars U.S. (\$20,000,000), plus the
18 amount of liability insurance required by paragraph 18 of the
19 Lease, as such amount may be periodically adjusted pursuant to
20 paragraph 9 of the Lease, to the extent such liability insurance
21 or any portion thereof is not actually in place.

22 Guarantor's obligations hereunder shall be limited to
23 claims made within two (2) years after termination of the fore-
24 going Lease, including any extensions or renewals thereof.

25 Guarantor hereby covenants and agrees to submit to the
26 personal jurisdiction of any state court in the State of California

27 /

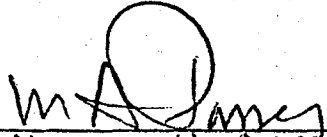
28 /

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6061

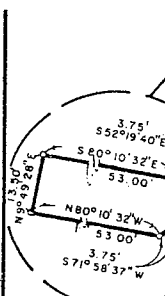
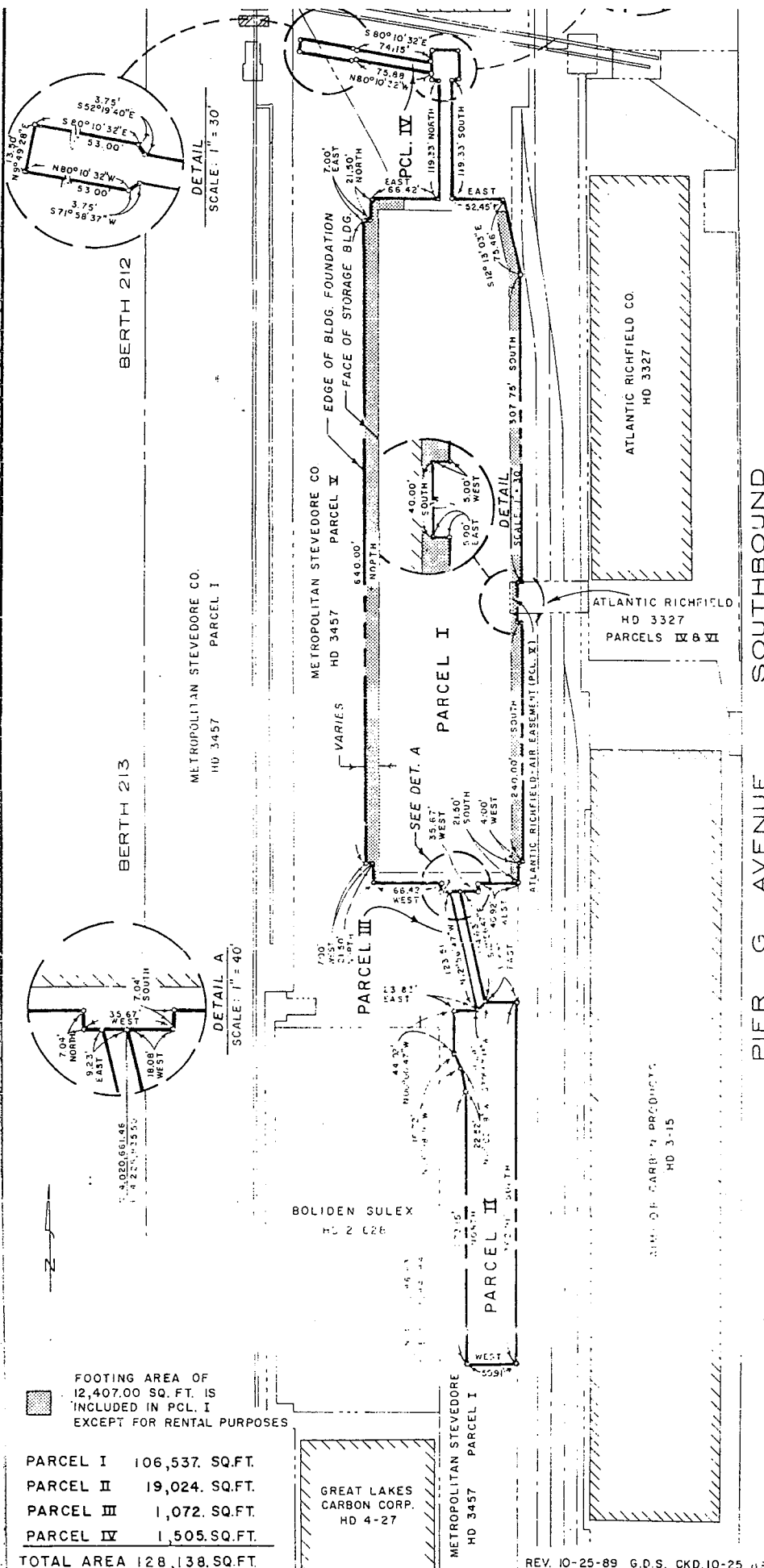
1 for resolution of any dispute, claim or matter arising out of or
2 related to this Guarantee.

3 Dated at Cincinnati, Ohio, this
4 13 day of November, 1986.

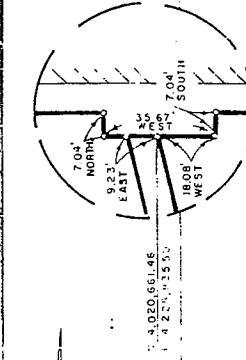
6 SHV NORTH AMERICA CORPORATION

7
8 By: 
9 Name: MORRIS H. PASSER
10 Title: VP and Sec'y
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17
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28
GUARANTOR

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6061



DETAIL
SCALE: 1" = 30'



DETAIL A
SCALE: 1" = 40'

FOOTING AREA OF 12,407.00 SQ. FT. IS INCLUDED IN PCL. I EXCEPT FOR RENTAL PURPOSES

PARCEL I 106,537. SQ.FT.
 PARCEL II 19,024. SQ.FT.
 PARCEL III 1,072. SQ.FT.
 PARCEL IV 1,505. SQ.FT.
 TOTAL AREA 128,138. SQ.FT.

GREAT LAKES CARBON CORP.
HD 4-27

REV. 10-25-89 G.D.S. CKD.10-25 03 A

PORT OF LONG BEACH - CALIFORNIA
 OFFICE OF THE EXECUTIVE DIRECTOR
 SCALE 1" = 100' DATE 7-9-86
 DESIGNED _____
 DRAWN M. L. A. _____
 CHECKED L. A. A. _____

165 PIER G AVE. SOUTHBOUND
 SSM CARBON LEASE AREA
 HD 3-21

MEMORANDUM AGREEMENT
Renegotiated Rental
(SSM CARBON, a division of SSM Coal North America, Inc.
Harbor Department Document No. HD-4239)

Pursuant to the provisions of paragraph 9 of the Lease dated January 8, 1987, ("Lease"), between the City of Long Beach, acting by and through its Board of Harbor Commissioners ("City") and SSM Carbon, a division of SSM Coal North America, Inc., an Ohio corporation ("Lessee"), the ground rent for that portion of the term of the Lease commencing February 1, 1992 and ending January 31, 1997 has been adjusted.

For the five (5) year period commencing February 1, 1992 and ending January 31, 1997, Lessee shall pay to City as ground rent the following:

- February 1, 1992 through January 31, 1993 - \$13,351.63 per month
- February 1, 1993 through January 31, 1994 - \$13,351.63 per month
- February 1, 1994 through January 31, 1995 - \$13,351.63 per month
- February 1, 1995 through January 31, 1996 - \$15,455.00 per month
- February 1, 1996 through January 31, 1997 - \$16,225.00 per month

Any ground rent shall be payable in advance on the first (1st) day of each calendar month without deduction, set off, prior notice or demand.

Except for the amount of ground rent payable by Lessee to City, all of the other terms of the Lease shall remain unchanged and in full force and effect.

The Board of Harbor Commissioners approved the renegotiated rental set forth above and authorized the Executive Director of the Harbor Department to execute this Memorandum Agreement at its February 3, 1992 meeting.

SSM CARBON, a division of SSM Coal North America, Inc., an Ohio corporation

By Robert E. Moore

By _____

LESSEE

CITY OF LONG BEACH, a municipal corporation

By S. R. Dillenbeck

S. R. Dillenbeck,
Executive Director
Long Beach Harbor Department

CITY

Jan 29, 1992

APPROVED AS TO FORM
1992

February 6, 1992
JOHN R. CALHOUN, City Attorney

By Einar O. Stuser
SENIOR DEPUTY CITY ATTORNEY.

Feb. 10, 1992

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } SS.

On JANUARY 29, 1992 before me, DIANA L. CONNOLLY
Notary Public in and for said State, personally appeared ROBERT E. MOORE

↑
STAPLE HERE
↓

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Diana L. Connolly

DIANA L. CONNOLLY

Name (Typed or Printed)

L-10 (7/91)



(This area for official notarial seal)

ASSIGNMENT

THIS ASSIGNMENT is made and entered into as of the Effective Date specified below, by and between SSM Coal North America, Inc., an Ohio corporation, having an address at Paine Webber Building, Suite 800, 10440 Little Patuxent Pkwy., Columbia, Maryland 21044 (hereinafter referred to as "SSM"), and Koch Carbon, Inc., a Kansas corporation, having an address at 4111 East 37th Street North, Wichita, Kansas 67220 (hereinafter referred to as "Koch").

RECITALS:

A. Pursuant to the terms and conditions of that certain Lease dated as of January 8, 1987, being identified as Document No. HD-4239, as amended by that certain First Amendment To Lease dated as of March 8, 1990, being identified as Document No. HD-4722 (collectively, the "Port Lease"), SSM Carbon, a division of SSM, leased from the City of Long Beach, California, a municipal corporation, acting by and through its Board of Harbor Commissioners (the "City"), certain real property and improvements located on Pier G near Berths 212-213, as more particularly described in the Port Lease; and

B. Subject to the consummation of a certain asset purchase and sale transaction between SSM and Koch (the "Asset Purchase and Sale Agreement"), SSM desires to assign and convey to Koch, and Koch desires to accept and receive from SSM, all of the right, title and interest of SSM in and to the Port Lease, together with all improvements, fixtures, equipment and other property located upon or appurtenant to the premises covered thereunder;

NOW, THEREFORE, in consideration of the recitals, promises and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Subject to the written consent of the City as hereinafter provided and effective as of the Effective Date, SSM hereby assigns, transfer and conveys to Koch all right, title and interest of SSM in and to the Port Lease, together with all improvements, fixtures, equipment and other property located upon or appurtenant to the premises covered thereunder.

2. Koch hereby accepts the foregoing assignment, transfer and conveyance from SSM and agrees to be bound by and to comply with all the terms, covenants and conditions of the Port Lease from and after the Effective Date, as specified below.

3. The Effective Date of this Assignment shall be the later of (i) the date of a notice delivered to the City and signed by SSM and Koch, stating that SSM and Koch have consummated the Asset Purchase and Sale Agreement; or (ii) the date on which the City shall have complied with the provisions of the Shipping Act of 1984 with respect to the filing of marine terminal agreements with the Federal Maritime Commission.

IN WITNESS WHEREOF, the parties have duly executed this Assignment, to be effective as of the Effective Date, subject to the written consent of the City.

ATTEST:

Ronald H. [Signature]
Secretary

SSM Coal North America, Inc.

Robert E. Moore
Title: *President*

ATTEST:

Ronald D. Watson
Asst. Secretary

Koch Carbon, Inc.

David K. [Signature]
Title: *Ex. V.P.*

CONSENT TO ASSIGNMENT

In consideration of the assumption by Koch of the obligations of SSM under the Port Lease and the Guarantee by Koch Industries, Inc. of the obligations of Koch (which Guarantee is attached hereto and is hereby accepted), the **CITY OF LONG BEACH**, a municipal corporation, acting by and through its Board of Harbor Commissioners (the "City"), hereby consents to the foregoing Assignment by SSM to Koch and agrees that SSM and its guarantor, SHV North America Corporation, shall be released from all liability under the Port Lease which accrues after the Effective Date.

APPROVED AS TO FORM

February 6, 1992
JOHN R. CALHOUN, City Attorney

By *Einar [Signature]*
SENIOR DEPUTY CITY ATTORNEY

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

By: *[Signature]*

Title: *Executive Director*

GUARANTEE

For good and valuable consideration to the undersigned, the receipt of which is hereby acknowledged, **KOCH INDUSTRIES, INC.**, a Kansas corporation ("Guarantor"), hereby unconditionally guarantees to the **CITY OF LONG BEACH**, a municipal corporation, acting by and through its Board of Harbor Commissioners (the "City"), its successors and assigns, the full, prompt and faithful payment, performance and discharge by **KOCH CARBON, INC.**, as successor in interest to **SSM Coal North America, Inc.**, of each of the agreements, terms, conditions and obligations by under that certain Lease dated as of January 8, 1987, between the City and **SSM Coal North America, Inc.**, as amended by that certain First Amendment To Lease dated as of March 8, 1990. This Guarantee shall be effective from and after the Effective Date, as that term is defined in the Assignment between **SSM Coal North America, Inc.** and **Koch Carbon, Inc.**, to which this Guarantee is attached.

Guarantor hereby waives all notice of default by **KOCH CARBON, INC.**, and consent is hereby given to any extension of time which may be granted by the City.

Guarantor's obligations hereunder shall be limited to the sum of Twenty Million Dollars U.S. (\$20,000,000.00), plus the amount of liability insurance required by paragraph 18 of the Lease, as such amount may be periodically adjusted pursuant to paragraph 9 of the Lease, to the extent such liability insurance or any portion thereof is not actually in place.

Guarantor's obligations hereunder shall be limited to claims made within two (2) years after termination of the foregoing Lease, including any extensions or renewals thereof.

Guarantor hereby covenants and agrees to submit to the personal jurisdiction of any state court in the State of California for resolution of any dispute, claim or matter arising out of or related to this Guarantee.

Dated at Wichita, Kansas, this 17th day of October, 1991.

GUARANTOR

KOCH INDUSTRIES, INC.

By: C. J. N. N. N.
Title: Treasurer

NOTICE OF EFFECTIVE DATE

To: The City of Long Beach, acting by and through its Board of Harbor Commissioners

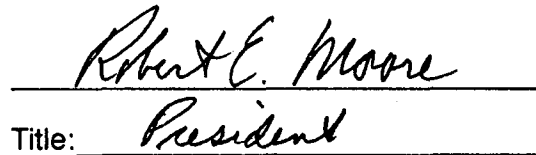
Ladies and Gentlemen:

SSM Coal North America, Inc. ("SSM") and Koch Carbon, Inc. ("Koch") have previously delivered to you a certain Assignment for the purpose of assigning to Koch all of SSM's right, title and interest under a certain Lease dated as of January 8, 1987, being identified as Document No. HD-4239, as amended by that certain First Amendment To Lease dated as of March 8, 1990, being identified as Document No. HD-4722 (collectively, the "Port Lease"). You have consented to said Assignment. Pursuant to Section 3(i) of said Assignment, SSM and Koch hereby notify you that they have consummated the Asset Purchase and Sale Agreement and request that you immediately take such additional steps, if any, as may be necessary to comply with the provisions of the Shipping Act of 1984 with respect to the filing of the Assignment with the Federal Maritime Commission.

ATTEST:

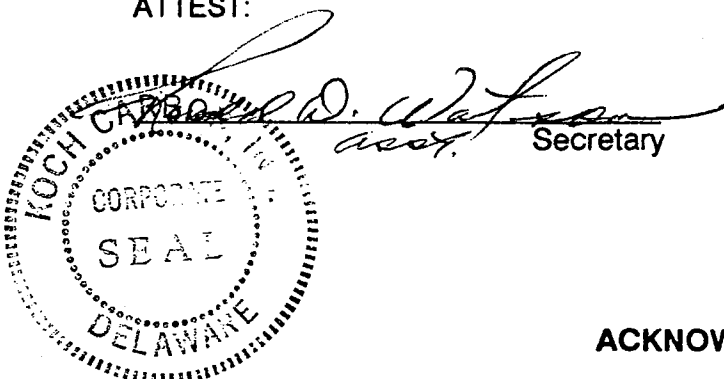
SSM Coal North America, Inc.

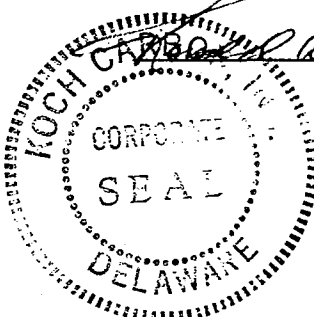

Secretary

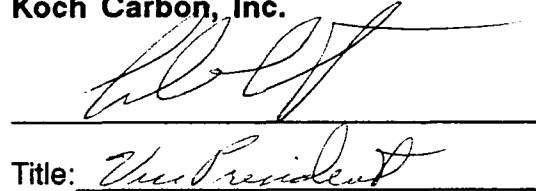

Title: President

ATTEST:

Koch Carbon, Inc.


Secretary




Title: Vice President

ACKNOWLEDGEMENT

Receipt of this Notice is acknowledged this 16th day of March, 1992.

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

By: 
S. R. Dillenbeck
Title: Executive Director



1 FIRST AMENDMENT TO LEASE

2
3 THIS FIRST AMENDMENT TO LEASE is made and entered into as
4 of the 23rd day of December, 1998, by and between CITY OF
5 LONG BEACH, a municipal corporation, acting by and through its
6 Board of Harbor Commissioners ("City"), pursuant to Ordinance No.
7 HD-1786, adopted by said Board at its meeting of November 23,
8 1998, and APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware
9 corporation ("Lessee").

10 1. RECITALS:

11 1.1 City and Lessee entered into a lease for certain
12 premises on Pier G on August 10, 1989 (HD-4638). Rental was
13 increased by the Memorandum Agreement of January 31, 1994 (HD-
14 5307).

15 1.2 City and Lessee have now negotiated compensation
16 and insurance provisions for the third five-year segment of
17 the lease and have agreed to extend the term of the lease by
18 ten (10) years.

19 2. TERM:

20 The term of the lease shall be for a period of
21 thirty-two (32) years commencing on July 1, 1989. For purposes of
22 renegotiation of compensation, said term shall be divided into six
23 (6) segments of five (5) years each and one (1) segment of two (2)
24 years.

25 3. GROUND RENT:

26 Pursuant to the provisions of paragraph 8 of the
27 lease, the parties have renegotiated the ground rent for that
28 portion of the term of the lease commencing July 1, 1999 and ending

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 June 30, 2004.

2 For said five (5) year period, Lessee shall pay to
3 City as ground rent the sum of Two Hundred Eighteen Thousand Eight
4 Hundred Forty-three Dollars (\$218,843.00) per year, payable in four
5 (4) equal quarterly installments on July 1, October 1, January 1
6 and April 1 of each calendar year. Ground rent for any subsequent
7 segment of the term shall be subject to renegotiation and
8 arbitration in accordance with paragraph 8 of the lease.

9 4. OTHERWISE UNCHANGED:

10 Except as otherwise stated herein, all of the other
11 terms and conditions of the lease shall remain unchanged and in
12 full force and effect.

13 Robert E. Shannon
14 City Attorney of Long Beach
15 333 West Ocean Boulevard
16 Long Beach, California 90802-4664
17 Telephone (562) 570-2200

14 APPLIED INDUSTRIAL MATERIALS
15 CORPORATION, a Delaware corporation

16 Oct. 22, 1998

16 By: [Signature]
17 Name: PETER SCOTT-HANSON
18 Title: CEO and President

19 Oct 22, 1998

19 By: [Signature]
20 Name: Vincent P. Kenwick
21 Title: Vice President - President Carbon Energy

20 Mary D. Appleson
21 Mayor Public
22 By Commission et pass
April 30, 2000

LESSEE

CITY OF LONG BEACH, a municipal
corporation, acting by and through
its Board of Harbor Commissioners

25 12/23, 1998

25 By: [Signature]
26 for Richard D. Steinke,
27 Executive Director
28 Long Beach Harbor Department

CITY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Connecticut

County of Fairfield

On Oct. 22, 1998 before me, Mary J. Appleman, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Peter Scott-Hansen and Vincent P. Kennedy

Name(s) of Signer(s)

- personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary J. Appleman
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: First Amendment to Lease

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
 Corporate Officer
Title(s): _____
 Partner — Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer Is Representing:

Signer's Name: _____

- Individual
 Corporate Officer
Title(s): _____
 Partner — Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer Is Representing:

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The foregoing First Amendment to Lease is hereby approved
as to form.

ROBERT E. SHANNON, City Attorney

December 2, 1998

By: *Dominic Holzhaus*
Dominic T. Holzhaus, Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

DTH:dmp
9/18/98
A-4\APPLIED

LEASE

between

CITY OF LONG BEACH

and

APPLIED INDUSTRIAL MATERIALS CORPORATION

("AIMCOR")

Document No. HD-4638

LEASE

between

CITY OF LONG BEACH

and

APPLIED INDUSTRIAL MATERIALS CORPORATION

("AIMCOR")

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AIMCOR

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AIMCOR

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Attachments:

Exhibit "A" - Harbor Department Document No. HD 4-86, dated
March 2, 1989

LEASE

1
2
3 THIS LEASE is made and entered into as of the 10th
4 day of AUGUST, 1989, by and between CITY OF LONG BEACH,
5 a municipal corporation, acting by and through its Board of
6 Harbor Commissioners ("City"), pursuant to Ordinance No.
7 HD-1516, adopted by said Board at its meeting of JULY 10,
8 1989, and APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware
9 corporation ("Lessee").

10 1. PURPOSE

11 This Lease is entered into for the purpose of
12 permitting Lessee to operate an existing proprietary and/or
13 contract dry bulk shipping and storage facility on certain
14 Premises owned by City in conjunction with City's existing Pier
15 G Bulk Terminal, to facilitate the waterborne shipment of
16 petroleum coke and other dry bulk products from Southern
17 California via the Port of Long Beach. The granting of this
18 Lease is for a purpose in connection with and for the promotion
19 and accommodation of commerce and navigation and is consistent
20 with the trusts upon which said Premises are held by City.

21 2. TERM

22 The term of this Lease shall be for a period of
23 twenty two (22) years commencing on July 1, 1989. For purposes
24 of renegotiation of compensation, said term shall be divided
25 into four (4) segments of five (5) years each and one (1)
26 segment of two (2) years.

27 3. PREMISES

28 3.1 As of the commencement of the term hereof,

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6061

1 City grants to Lessee, and Lessee accepts, the following
2 rights in certain property located on Pier G in the Harbor
3 District of the City of Long Beach, as shown on Harbor
4 Department Drawing No. HD 4-86, a copy of which drawing is
5 attached hereto as Exhibit "A" and by this reference made
6 a part hereof:

7 (a) An exclusive lease of those certain premises
8 containing approximately 127,238 square feet and
9 designated Parcel I on Exhibit "A" attached hereto;

10 (b) A nonexclusive easement to construct,
11 maintain and operate a conveyor system in, over, upon
12 and under those certain premises containing
13 approximately 6,100 square feet and designated Parcel
14 II on said Exhibit "A" attached hereto;

15 (c) A nonexclusive surface easement to
16 construct, maintain and operate a conveyor transfer
17 system in, over and upon those certain premises
18 containing approximately 1,200 square feet and
19 designated Parcel III on Exhibit "A" attached hereto;

20 (d) A nonexclusive surface easement for the
21 construction, installation, use, operation,
22 maintenance, repair, and renewal of a roadway for
23 vehicular and pedestrian access to and from Parcel I,
24 in, over and across those certain premises containing
25 approximately 1,092 square feet and designated Parcel
26 IV on Exhibit "A" attached hereto;

27 (e) An exclusive subsurface easement to
28 construct and maintain footings and any other

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6061

1 structures related to operation of storage facilities
2 on Parcel I, upon those certain premises containing
3 approximately 3,910 square feet and designated Parcel
4 V on Exhibit "A" attached hereto;

5 (f) An exclusive lease of those certain premises
6 containing approximately 8,976 square feet and
7 designated Parcel VI on Exhibit "A" attached hereto,
8 excepting therefrom an area containing approximately
9 1,176 square feet which is occupied by a transformer
10 pad of Southern California Edison Company, together
11 with pedestrian and vehicular access thereto to
12 service said electrical equipment.

13 Said Parcels I, II, III, IV and VI shall extend
14 downward only fifty (50) feet below the ground surface
15 thereof, and said Parcel V shall extend from two (2) feet
16 below the ground surface to fifty (50) feet below the
17 ground surface of said parcel as it exists at the time of
18 the commencement of this Lease. Said areas, together with
19 the improvements now situated thereon and improvements to
20 be constructed thereon, are collectively referred to in
21 this Lease as the "Premises".

22 City also grants to Lessee nonexclusive rights of
23 access to the Premises for vehicles and for utilities
24 across adjacent property of City within such corridors or
25 rights of way as shall be determined by City.

26 3.2 There are excepted and reserved from the
27 Premises all minerals and mineral rights of every kind and
28 character now known to exist or hereafter discovered,

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6081

1 including, without limitation, oil, gas and water rights,
2 together with the full, exclusive and perpetual rights to
3 explore for, remove and dispose of said minerals from the
4 Premises without, however, the right of surface entry upon
5 the Premises for such purposes.

6 3.3 This Lease, and all rights granted to Lessee
7 hereunder, are subject to restrictions, reservations,
8 conditions and encumbrances of record, including, without
9 limitation, the trusts and limitations set forth in
10 Chapter 676, Statutes of 1911; Chapter 102, Statutes of
11 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes
12 of 1956, First Extraordinary Session; Chapter 138,
13 Statutes of 1964, First Extraordinary Session; and the
14 federal navigational servitude.

15 3.4 City reserves to itself such rights of way
16 and rights of entry for such sewers, storm drains,
17 pipelines and utility conduits for telephone, electricity
18 and water service as may from time to time be determined
19 by the Board of Harbor Commissioners in accordance with
20 Section 1207(g) of the Charter of the City of Long Beach.

21 **4. USE OF PREMISES**

22 4.1 The Premises may be used by Lessee for the
23 following purposes:

24 (a) Parcel I may be used for the construction,
25 erection, installation, use, operation, maintenance,
26 repair, and renewal of storage facilities and other
27 improvements by Lessee thereon, all in conjunction
28 with the operation on the Premises of a facility for

John R. Calhoun
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the receipt, handling, loading, unloading, storage, transporting, marketing and other disposition of bulk commodities.

(b) Parcel II may be used for the construction, erection, installation, use, operation, maintenance, repair, and renewal of a conveyor system for the conveying and transferring of said bulk commodities from Parcel I to Parcel III for transfer to City's Pier G conveyor system for ultimate conveyance and transfer of said bulk commodities to the shiploader or shiploaders at Berths 212 to 215, inclusive, Pier G.

(c) Parcel III may be used for the construction, installation, use, operation, maintenance, repair, and renewal of a structure or additions to or modification of City's existing equipment located thereon, said structure to be used to support a conveyor system and motor-drive unit for the conveying and transferring of bulk commodities from Parcel I, via the conveyor system on Parcel II, to City's conveyor system at Parcel III and the mechanical shiploader at the wharf at Berths 212 to 215, inclusive.

(d) Parcel IV may be used for the construction, installation, use, operation, maintenance, repair, and renewal of a roadway for vehicular and pedestrian access to and from Parcel I. It is understood that said Parcel IV will be jointly used by the operator

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1 of an adjacent bulk storage facility for vehicular
2 and pedestrian access from its leased premises.

3 (e) Parcel V may be used for the construction,
4 installation, use, operation, maintenance, repair,
5 and renewal of subsurface facilities and other
6 improvements in connection with facilities installed
7 by Lessee on Parcel I.

8 (f) Parcel VI may be used for access to Lessee's
9 facilities on Parcel I and for uses in connection
10 with Lessee's operations conducted on the Premises
11 pursuant to this Lease. It is understood that
12 Southern California Edison Company will use portions
13 of said parcel for access to its electrical equipment
14 located within said parcel.

15 4.2 Lessee shall not stockpile or handle any
16 bulk commodities on the Premises, other than petroleum
17 coke, coke breeze, coal, soda ash, potash and cement
18 clinker, without the prior approval of the Executive
19 Director of the Long Beach Harbor Department ("Executive
20 Director"), which approval shall not be unreasonably
21 withheld.

22 4.3 Lessee is not granted the right to, nor
23 shall Lessee, operate a public terminal or public ware-
24 housing business upon the Premises.

25 4.4 The Premises shall not be used for any other
26 purposes without the prior consent in writing of the
27 Executive Director, which consent shall not be unreason-
28 ably withheld. The Premises shall not be used for any

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1 purpose which shall interfere with commerce, navigation or
2 fisheries or be inconsistent with the trusts and limita-
3 tions upon which the Premises are now or may hereafter be
4 held by the City of Long Beach.

5 **5. CITY'S CONVEYOR SYSTEM**

6 City owns a conveyor system, consisting of mechanical
7 shiploaders, conveyors, structures and appurtenant equipment
8 for stockpiling and reclaiming bulk commodities at the wharf
9 premises adjacent to the wharf at Berths 212 to 215, inclusive,
10 and for the loading of vessels with bulk commodities at said
11 berths. Said conveyor system, wharves and wharf premises are
12 presently preferentially assigned to Metropolitan Stevedore
13 Company ("City's preferential assignee"). It is contemplated
14 City's conveyor system and shiploaders will be used to move
15 bulk commodities from the Premises to vessels berthed at Berths
16 212-215.

17 Lessee shall have the right, in accordance with the
18 provisions of City's Tariff No. 4, and subject to the rights of
19 City's preferential assignee, to use City's conveyor system and
20 shiploaders and wharves at Berths 212-215 for the conveyance of
21 bulk commodities from the Premises for loading aboard vessels.
22 In moving bulk commodities from the Premises over City's
23 conveyor system and through City's shiploaders, Lessee may
24 exercise its rights granted hereunder by contracting with
25 City's preferential assignee, or by contracting with
26 independent stevedoring contractors and terminal operators who
27 would request assignments of said conveyor system and ship-
28 loaders from City pursuant to the provisions of said Tariff No.

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1 4, or Lessee itself may obtain assignments thereof, subject to
2 the preferential rights held by City's preferential assignee
3 and to the provisions of said Tariff No. 4. The intent of the
4 parties is to assure the movement of Lessee's bulk commodities
5 from the Premises over City's conveyor system to vessels at
6 Berths 212-215, without unreasonable delay or expense to
7 Lessee.

8 Lessee's right to use City's conveyor system and
9 shiploaders to convey and load any dry bulk commodity other
10 than petroleum coke or other product presently handled by the
11 conveyor system and shiploaders is subject to City's
12 determination, set forth in writing, that the handling of such
13 commodity will not be unduly detrimental to said conveyor
14 system or shiploaders.

15 6. COMPENSATION

16 6.1 Definitions

17 6.1.1 The word "year" as used herein shall
18 mean the twelve (12) consecutive month period
19 commencing on July 1 of each calendar year during
20 the term hereof and ending the following June 30.
21 Any period which is less than a year shall be
22 deemed and called a "partial year".

23 6.1.2 The words "tariff" or "Tariff No. 4"
24 as used herein shall mean City's "Tariff No. 4
25 naming Rates, Rules and Regulations Governing the
26 Port of Long Beach, California" as amended, or
27 the successor to such tariff.

28 6.1.3 The words "ton" or "metric ton" as

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1 used herein shall mean 1000 kilograms.

2 6.2 During the initial five-year segment of the
3 term hereof, Lessee shall pay to City ground rent of One
4 Hundred Forty One Thousand One Hundred Eighty Nine Dollars
5 (\$141,189.00) per year, payable in four equal quarterly
6 installments on July 1, October 1, January 1, and April 1
7 of each calendar year. Ground rent for any subsequent
8 segment of the term is subject to renegotiation and
9 arbitration in accordance with paragraph 8 hereof.

10 6.3 In addition to the ground rent for use of
11 the Premises, Lessee shall pay, or cause to be paid, to
12 City the total amount of all applicable tariff charges
13 accruing in connection with the movement of Lessee's bulk
14 commodities across the wharves at Berths 212-215. In
15 connection therewith, Lessee shall file, or cause to be
16 filed, with the Executive Director on forms provided or
17 approved by City, on or before the tenth day following the
18 departure of each vessel docking at Berths 212-215 and
19 aboard which bulk commodities from the Premises have been
20 loaded, a verified statement showing all charges which
21 shall have accrued for wharfage, shiploader charges and
22 other applicable charges with reference to each such
23 vessel. Lessee shall furnish any additional reports
24 relating to its bulk commodity terminal operations when
25 requested by City. Unless required for reasons of public
26 safety or necessity, nothing herein shall require Lessee
27 to disclose names of customers, pricing, or similar
28 proprietary information.

* insert: or by direct loading to vessel from truck or rail car

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6.4 During the initial five-year segment of the term hereof, Lessee guarantees that it will ship from the Premises ^{* MK P} 400,000 metric tons of petroleum coke or other dry bulk commodities ("product") per year ("Guaranteed Minimum Annual Throughput" or "GMAT"). If Lessee has not, by the end of each year, shipped quantities of product from the Premises ^{* MK P} at least equal to the GMAT, Lessee shall pay to City, within thirty (30) days after the end of said year, the difference between the amount actually paid to City during said year and the amount which would have been paid to City had such quantity of product been shipped from the Premises ^{* MK P} during said year. Said sum shall be calculated by multiplying the difference in quantity between the GMAT and the actual quantity shipped (the "throughput deficiency") times a rate calculated by multiplying each of the wharfage and shiploader charges established in City's Tariff No. 4, Items 356 and 515 which were in effect during said year times the number of days each of said rates was in effect divided by 365 (the "average Tariff rate"). If said sum is paid within said thirty (30) days, Lessee's failure to ship the specified minimum quantities of product from the Premises ^{* MK P} shall not otherwise constitute a default of its obligations hereunder. GMAT for any subsequent segment of the term subject to renegotiation and arbitration in accordance with paragraph 8 hereof.

6.5 If the Premises or the improvements thereon are damaged or destroyed so as to render them wholly or

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1 partially untenable or unfit for use or so as to make
2 it impracticable for Lessee to make reasonably full use of
3 the Premises for the authorized purposes, the Guaranteed
4 Minimum Annual Throughput for the then-current year shall
5 be adjusted according to the nature and extent of the
6 damage sustained and the impairment of use. In the event
7 the parties cannot agree upon the amount of such adjust-
8 ment, the amount thereof shall be determined by
9 arbitration as provided in paragraph 8 herein.

10 6.6 If, by reason of strikes or other labor
11 disputes, lockouts, or other work stoppages occurring
12 within the Harbor District of the City of Long Beach for a
13 period in excess of thirty (30) consecutive days, Lessee
14 is prevented from making substantial use of the Premises
15 for the purposes authorized, then the Guaranteed Minimum
16 Annual Throughput for the then-current year shall be
17 proportionately adjusted in an amount determined by mutual
18 agreement. In the event the parties cannot agree upon the
19 amount of such adjustment, the amount thereof shall be
20 determined by arbitration as provided in paragraph 8
21 herein.

22 **7. BOOKS OF ACCOUNTS, RECORDS AND STATEMENTS**

23 Lessee shall keep at the Premises or at another
24 location within thirty (30) miles of the Premises, full and
25 accurate books of accounts and records relating to its
26 operations on the Premises. City shall be entitled at all
27 reasonable times during the term and within two (2) years after
28 the expiration or termination of this Lease to inspect and

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1 examine such books of account and records so City can ascertain
2 the total quantity of petroleum coke and other product handled
3 at the Premises. Lessee shall cooperate fully with City's
4 representatives in making the inspection. City shall also be
5 entitled once during each rental year and once after the
6 expiration of each five-year segment of the term, to an
7 independent audit at City's expense of Lessee's books of
8 account and records, by a certified public accountant
9 designated by City or by other representative of City, to
10 determine the total quantity of petroleum coke or other product
11 handled by Lessee on the Premises. Any such audit shall be
12 conducted during usual business hours at Lessee's office.
13 Lessee shall not be required to disclose pricing or similar
14 proprietary information. If the audit shows that there is a
15 deficiency in the payment of any sums due City, the deficiency
16 shall become immediately due and payable, together with
17 interest thereon at the rate set forth in City's Tariff No. 4
18 from the date the payment or payments should have been made.
19 If the audit shows an overpayment, such overpayment shall be
20 credited against current or future payment obligations of
21 Lessee; if no further payments are due, such overpayment shall
22 be promptly refunded to Lessee.

23 Lessee shall also, at City's request, make available
24 at Lessee's local offices or at City's offices for City's
25 review, at no cost to City, a copy of Lessee's current balance
26 sheet, certified by Lessee's chief financial officer to be true
27 and correct. Such statement shall be available to City within
28 ten (10) business days after City's request. Such statement

1 shall not be duplicated nor retained as City records.

2 **8. COMPENSATION AND INSURANCE RENEGOTIATION/**
3 **ARBITRATION**

4 8.1 In accordance with the provisions of Long
5 Beach City Charter Section 1207(d), the parties agree to
6 renegotiate the ground rent, the Guaranteed Minimum Annual
7 Throughput, and the insurance coverage and limits to be
8 provided by Lessee for the use of the Premises for each
9 five-year segment and the final two-year segment of the
10 term, commencing at least one hundred eighty (180) days
11 prior to the beginning of each succeeding segment of the
12 term. If the parties cannot reach agreement at least one
13 hundred twenty (120) days before the end of the
14 then-current segment of the term, either party may
15 initiate arbitration pursuant to subparagraph 8.3 hereof.

16 8.2 In the negotiations to establish such
17 renegotiated compensation, the parties shall take into
18 consideration the character of the Premises, their value,
19 the fair rental value of similar premises and facilities
20 within the Long Beach and Los Angeles Harbor Districts
21 devoted to similar use, the terms, conditions and
22 restrictions of this Lease, the terms, conditions and
23 restrictions of other marine bulk terminal leases for
24 similar premises and facilities within the Long Beach and
25 Los Angeles Harbor Districts, the quantity of material
26 handled at, on or from the Premises, the return on
27 investment to City, maintenance costs, insurance, taxes
28 and any other facts and data necessary for the proper

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1 determination of such compensation; provided, the
2 compensation to be paid by Lessee shall be determined
3 without regard to any improvements or facilities
4 constructed at Lessee's expense.

5 8.3 If the parties cannot reach agreement with
6 respect to compensation at least ninety (90) days prior to
7 the beginning of the next five-year segment of the term,
8 the matter shall be resolved in the following manner:

9 8.3.1 Each party, at its cost, shall appoint
10 a real estate appraiser with at least five (5) years'
11 full time commercial and/or industrial appraisal
12 experience in the Long Beach and Los Angeles harbor
13 areas and who is a member in good standing of the
14 American Institute of Real Estate Appraisers. If a
15 party does not appoint an appraiser within ten (10)
16 business days after the other party has given notice
17 of the name of its appraiser, the single appraiser
18 appointed shall be the sole appraiser and shall
19 determine the compensation within forty-five (45)
20 days after his or her appointment. If two (2)
21 appraisers are appointed, each within forty-five (45)
22 days after the selection of the second appraiser
23 shall report his or her opinion, as provided in
24 subparagraph 8.3.3 below, as to the compensation
25 payable by Lessee to the City.

26 8.3.2 In forming an opinion of the
27 compensation payable by Lessee, the appraiser or
28 appraisers shall consider only comparable marine bulk

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1 terminals within the Long Beach and Los Angeles
2 Harbor Districts and the provisions of those marine
3 bulk terminal leases for such comparable premises and
4 facilities.

5 8.3.3 On or before the expiration of the
6 forty-five (45) day period, the appraiser or
7 appraisers shall prepare and furnish the party who
8 appointed the appraiser with a report setting forth
9 the amount of compensation payable by Lessee with
10 supporting data and his or her reasons supporting the
11 conclusions. The parties shall promptly exchange
12 reports and shall have ten (10) business days after
13 the exchange of the reports to further negotiate the
14 amount of compensation payable by Lessee.

15 8.3.4 If the parties cannot agree as to the
16 compensation payable by Lessee, City and Lessee shall
17 each promptly notify its designated appraiser of that
18 fact and the two appraisers shall promptly select a
19 third appraiser meeting the qualifications stated in
20 subparagraph 8.3.1. If they are unable to agree on
21 the third appraiser, either of the parties, by giving
22 ten (10) days' notice to the other party, may apply
23 to the Presiding Judge or Assistant Presiding Judge
24 of the Superior Court of the County of Los Angeles,
25 or the Presiding Judge of the South District of said
26 Court, who shall select and appoint the third
27 appraiser. Each of the parties shall bear one-half
28 of the cost of appointing the third appraiser and of

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1 paying the third appraiser's fee. The third
2 appraiser shall: (i) promptly meet and confer with
3 the two appraisers appointed by the parties; (ii)
4 review the reports of the two appraisers and the
5 supporting data and reasons supporting the respective
6 conclusions; (iii) determine the compensation payable
7 by Lessee, provided however that said determination
8 shall not result in Lessee paying compensation for
9 the use of the Premises in an amount lower than the
10 lowest of, nor higher than the highest of, the
11 determinations of the two appraisers appointed by the
12 parties; and (iv) notify the parties of his or her
13 determination of compensation within ten (10)
14 business days after his or her appointment.

15 8.4 After the compensation has been determined
16 (whether by agreement or by arbitration), the parties
17 shall promptly execute a memorandum setting forth the
18 adjusted compensation. If either party fails or refuses
19 to execute the memorandum after the compensation has been
20 determined, the other party shall execute the memorandum
21 on behalf of the party refusing as that party's special
22 attorney-in-fact, and the memorandum shall thereupon be
23 effective.

24 8.5 For adjustment of insurance coverages and
25 limits which are submitted for determination by
26 arbitration, the party desiring arbitration shall select
27 an arbitrator and give written notice to the other party,
28 who shall select an arbitrator within ten (10) business

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1 days after receipt of such notice. If the other party
2 fails to name such second arbitrator within said ten (10)
3 business days, the arbitrator named by the first party
4 shall decide the matter. The two (2) arbitrators chosen
5 shall, within ten (10) business days after the appointment
6 of the second, select a third. If the two arbitrators
7 cannot agree upon selection of a third arbitrator, such
8 third arbitrator shall be appointed by any judge of the
9 Superior Court of the County of Los Angeles, California,
10 upon application made therefor by either party, upon ten
11 (10) days' written notice to the other. Upon their
12 appointment, the arbitrator or arbitrators shall enter
13 immediately upon the discharge of their duties. In doing
14 so, the arbitrator or arbitrators shall consider the risks
15 inherent in Lessee's operations, the number and type of
16 claims made during the preceding five-year segment of the
17 term, the disposition of such claims, and such other data
18 as may be deemed relevant. The arbitrators'
19 determinations shall be made and the parties notified of
20 that determination within thirty (30) days after the
21 appointment of the last arbitrator. Except as may
22 otherwise be provided in this subparagraph, such
23 arbitration proceedings shall be in accordance with the
24 provisions of Title 9 (Arbitration) of Part 3 of the
25 California Code of Civil Procedure.

26 **9. CONSTRUCTION OF IMPROVEMENTS**

27 Lessee has previously constructed and owns the
28 petroleum coke storage shed, various conveyors and other

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1 related improvements on the Premises. Lessee, at its cost, may
2 construct, erect and install additional improvements upon the
3 Premises, and may make alterations thereto, provided that all
4 such additional improvements and alterations of any type must
5 be so constructed, erected and installed only in accordance
6 with plans and specifications approved in writing by City's
7 Executive Director or his designee, which approval shall not be
8 unreasonably withheld.

9 **10. MAINTENANCE AND REPAIR**

10 10.1 Lessee, at its cost, shall keep and
11 maintain the Premises, and all buildings, structures and
12 improvements of any kind thereon including surface paving,
13 in good and substantial repair and condition and shall
14 perform all necessary maintenance.

15 10.2 Should Lessee fail to make any repairs or
16 perform the required maintenance within thirty (30) days
17 after receipt of notice from City to do so, City may, but
18 shall not be obligated to, make and perform such repairs
19 or maintenance. Lessee agrees to reimburse City for the
20 actual cost thereof within thirty (30) days after receipt
21 of City's invoice therefor. Should Lessee commence to
22 prosecute and diligently make such repairs or begin to
23 perform the required maintenance within the thirty (30)
24 day period, City shall refrain from commencing to make any
25 repairs or required maintenance and from making demand for
26 such payment until the work has been completed by Lessee,
27 and then only for such portion thereof as shall have been
28 made or performed by City. The making of any inspection

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1 or repair or the performance of any maintenance by City,
2 which repair or maintenance is the responsibility of
3 lessee, shall in no event be construed as a waiver of the
4 duty or obligation of Lessee to make future repairs or
5 perform required maintenance as provided in this Lease.

6 10.3 Lessee, at its cost, shall provide proper
7 containers for trash and keep the Premises free and clear
8 of rubbish, debris and litter at all times. Lessee, at
9 its cost, further agrees to keep and maintain all of the
10 Premises in a safe and reasonably clean, wholesome and
11 sanitary condition under all applicable federal, state,
12 local and other laws, rules, regulations and orders. No
13 offensive refuse, matter, nor any substance constituting
14 any unnecessary, unreasonable or unlawful fire hazard, nor
15 material detrimental to the public health shall be per-
16 mitted to be or remain on the Premises and Lessee shall
17 prevent such material or matter from being or accumulating
18 upon the Premises.

19 10.4 All fire protection sprinkler systems, fire
20 hydrant systems, standpipe systems, fire alarm systems,
21 portable fire extinguishers and other fire-protective or
22 extinguishing systems or appliances which may be installed
23 on the Premises shall be maintained by Lessee, at its
24 cost, in an operative condition at all times. All repairs
25 and servicing shall be made in accordance with the
26 provisions of the Long Beach Municipal Code, Chapter 18.48
27 and all revisions thereto.

28 10.5 Lessee shall provide personnel to accompany

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1 City's representatives on periodic inspections of the
2 Premises to determine Lessee's compliance with the
3 provisions of this Lease to be performed by Lessee.

4 **11. PROPERTY AND CARGO UNDER LESSEE'S CONTROL**

5 As between City and Lessee, any property of any kind
6 belonging to or in the care, custody or control of Lessee that
7 may be on the Premises during the term of this Lease shall be
8 at the sole risk of Lessee and Lessee hereby waives all claims
9 against City with respect to such property; provided, however,
10 that Lessee does not waive claim for injury, loss or damage to
11 property or to any person on the Premises in case such injury
12 or damage is caused by the active negligence of City, its
13 officers or employees.

14 **12. OBSERVE APPLICABLE LAWS**

15 Lessee shall at all times, in its use and occupancy
16 of the Premises and in the conduct of its operations thereon,
17 comply with all laws, ordinances and regulations applicable
18 thereto, enacted or adopted by federal, state, municipal or
19 other governmental bodies or departments or officers thereof,
20 including the City Charter and the Long Beach Municipal Code.
21 Lessee reserves the right to contest in appropriate proceedings
22 any change in laws, ordinances or regulations which would be in
23 derogation of Lessee's rights hereunder.

24 **13. UTILITY CHARGES**

25 Lessee shall make arrangements for and pay for all
26 utilities and services furnished to or used by it, including
27 without limitation gas, electricity, water, telephone service
28 and trash collection, and for all connection charges.

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14. TAXES

Except where contested in good faith in a court of appropriate jurisdiction, Lessee shall pay, prior to delinquency, all lawful taxes, assessments and other governmental or district charges that may be levied upon its property and improvements of any kind located on the Premises and upon the interest granted under this Lease. Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes and assessments levied on such interest. Lessee agrees that payment of any such possessory interest tax or assessment shall not reduce any compensation due City hereunder.

15. LIENS

Except where contested in good faith in a court of appropriate jurisdiction, and except for non-delinquent liens arising from taxes or tax assessments, Lessee shall keep the Premises free from liens of any kind or nature arising out of its operations, including any liens arising out of any labor performed for or materials furnished to or on behalf of Lessee on the Premises. Lessee agrees that it will at all times save City free and harmless and indemnify it against all claims for labor or materials in connection with the construction, erection or installation of Lessee's improvements made upon the Premises, or from additions or alterations made thereto, or the repair of the same, by or at the direction of Lessee, and the costs of defending against any such claim, including reasonable attorneys' fees.

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1 seq. of the California Labor Code or any federal, state or
2 local regulations or laws pertaining to the safety of the
3 Premises or of improvements or equipment located upon the
4 Premises. This paragraph applies regardless of whether
5 any act or omission of the indemnified parties or any of
6 them contributed thereto, but this paragraph does not
7 apply to any claim arising from or attributable to or
8 caused, directly or indirectly, from the sole negligence
9 or willful misconduct of the indemnified parties or any of
10 them.

11 16.2 With respect to any claim covered by
12 paragraph 16.1, City shall notify Lessee thereof, shall
13 tender Lessee defense thereof, and shall assist Lessee as
14 may reasonably be requested in the defense thereof.
15 Lessee shall resist and defend such action, suit or
16 proceeding, or appropriately settle same, shall conduct or
17 have conducted the necessary investigations and adjusting
18 related thereto, and Lessee shall indemnify the
19 indemnified parties. Payment of a claim by an indemnified
20 party shall not be a condition precedent to recovery under
21 this indemnity.

22 17. LIABILITY INSURANCE

23 17.1 In partial performance of Lessee's
24 obligations of indemnity, Lessee, at its cost, shall
25 procure and maintain in full force and effect, while this
26 Lease shall remain in effect and at such other times as
27 may be required under "claims-made" insurance, a policy or
28 policies of ~~comprehensive~~ general liability insurance or

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1 its equivalent from a company or companies authorized to
2 do business in the State of California, with minimum
3 coverage of \$5,000,000.00 combined single limit and
4 complying with the following provisions:

5 17.1.1 The City of Long Beach, the Board of
6 Harbor Commissioners, and their officers and
7 employees, while acting within the scope of their
8 authority, shall be included as additional insureds,
9 such insurance to be primary and any other insurance,
10 deductible, retention or self insurance maintained by
11 the foregoing shall not contribute with such primary
12 insurance.

13 17.1.2 The policy shall cover each insured
14 against whom claim is or may be made, in the same
15 manner as if separate policies had been issued to
16 each named and additional insured, except that the
17 limits of insurance shall not be increased thereby.

18 17.1.3 Said policy or policies shall either
19 contain a blanket form of contractual liability
20 coverage or there shall be attached to said policy or
21 policies an endorsement, providing that such
22 insurance as is provided for therein shall apply to
23 the obligations of indemnity assumed by Lessee under
24 this Lease.

25 17.1.4 Said policy or policies shall not be
26 cancelled or coverage reduced until a thirty-day
27 written notice of cancellation has been served upon
28 the Executive Director by registered or certified

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1 mail.

2 17.1.5 If any of the required insurance is
3 provided on a "claims-made" basis, any "prior acts"
4 coverage or "retroactive date" on such insurance and
5 all subsequent insurance shall be as of the first
6 date of the the "claims-made" coverage. Upon
7 expiration or termination of coverage of required
8 insurance, Lessee shall procure "tail" coverage or an
9 extended reporting coverage period endorsement and
10 submit proof thereof in accordance with the pro-
11 visions of paragraph 17.4.

12 Such insurance provided by Lessee may provide for such
13 deductibles or self-insured retention as shall be
14 acceptable to the Executive Director in his reasonable
15 discretion.

16 17.2 Lessee, at its cost, shall procure and
17 maintain in full force and effect while this Lease shall
18 remain in effect workers' compensation and longshoremen's
19 and harbor workers' compensation insurances to the extent
20 required by law. The provisions of paragraph 17.4 shall
21 be applicable to the insurances required by this
22 paragraph.

23 17.3 The City of Long Beach, the Board of Harbor
24 Commissioners, and their officers and employees shall not
25 be liable for the payment of any premiums or assessments
26 on any policy or policies required under this paragraph
27 17.

28 17.4 Lessee shall deliver said policy or

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1 policies of insurance, or certified photostatic copies
2 thereof, or certificates of insurance identifying same,
3 together with an endorsement bearing original signatures
4 to the general liability policy or policies satisfying the
5 above requirements and in form approved by the Board of
6 Harbor Commissioners, to the Executive Director for
7 approval as to sufficiency and to the City Attorney for
8 approval as to form. At least fifteen (15) days prior to
9 the expiration of any such policy, a certificate, showing
10 that such insurance coverage has been renewed or extended,
11 shall be filed with the Executive Director. If such
12 coverage is cancelled or reduced, Lessee shall, within ten
13 (10) days after receipt of written notice of such
14 cancellation or reduction of coverage, file with the
15 Executive Director an endorsement or certificate showing
16 that the required insurance has been reinstated or
17 provided through another insurance company or companies,
18 and said policy shall be submitted for approval as herein
19 provided.

20 17.5 The procuring of such policy or policies of
21 insurance shall not be construed to be a limitation in any
22 respect upon Lessee's obligation or indemnity hereunder.

23 18. ACCESS

24 18.1 Lessee, its agents, employees, and third
25 persons using the Premises with the consent and approval
26 of Lessee, shall have access to the Premises over the
27 street system and other property owned or controlled by
28 City, but only in connection with the business operations

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1 of Lessee on the Premises.

2 18.2 City's authorized representatives shall
3 have access to the Premises at any and all reasonable
4 times, for the purpose of determining whether or not
5 Lessee is complying with the terms and conditions hereof,
6 for fire and police purposes, or for any other purposes
7 incidental to the rights or duties of City. This right of
8 inspection reserved to City shall impose no obligation on
9 City to make inspections to ascertain the condition of the
10 Premises and shall impose no liability upon City for
11 failure to make such inspection.

12 19. SIGNS

13 No signs or placards of any type or design, except
14 safety or regulatory signs prescribed by law, shall be painted,
15 inscribed or placed in or on the Premises or any building or
16 structure located thereon without the prior written consent of
17 the Executive Director, which consent shall not be unreasonably
18 withheld. Signage existing on the Premises as of the
19 commencement of the term hereof is hereby approved by City.
20 Lessee, at its cost, agrees to remove promptly and to the
21 satisfaction of the Executive Director, upon the expiration or
22 termination of this Lease, any and all signs and placards
23 placed by it upon the Premises.

24 20. DEFAULT

25 20.1 If either party should fail to perform any
26 of its obligations hereunder (except when such failure
27 shall be excused under other provisions hereof), the
28 non-defaulting party may give written notice to the party

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1 in default, stating specifically the default or breach
2 relied upon by the party giving the notice as justifying
3 termination hereof.

4 20.1.1 If the default or breach is not remedied
5 within thirty (30) days, if it can be remedied within
6 that period, or if the party in default fails to
7 commence promptly and attempt diligently to remedy
8 the same where the default or breach is not
9 remediable within thirty (30) days after said written
10 notice, the party not in default shall have the right
11 forthwith to terminate this Lease.

12 20.1.2 If within the thirty (30) day period
13 the party in default does remedy or remove said
14 default or breach, or commences promptly and
15 continues diligently to attempt to remedy or remove
16 the same where not remediable within the thirty (30)
17 day period and agrees to fully indemnify the party
18 not in default from any and all loss and liability
19 resulting from such default or breach, the notice
20 shall be deemed withdrawn and this Lease shall
21 continue in full force and effect.

22 Upon any such termination by City, all improvements of
23 whatsoever character constructed, erected or installed
24 upon the Premises by Lessee shall, at City's option and
25 upon declaration of a forfeiture by City's Board,
26 immediately become the property of City as provided in
27 Subsection 1207(i) of the City Charter.

28 20.2 In the event of termination of this Lease

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1 by City due to the default of Lessee, or in case of
2 abandonment or vacation of the Premises by Lessee, and if
3 City does not elect to invoke a forfeiture of this Lease,
4 Lessee hereby irrevocably appoints City as the agent of
5 Lessee to enter upon the Premises, to remove any and all
6 persons and/or property whatsoever situated upon the
7 Premises, and to place all or any portion of said property
8 (except such property as may be forfeited to City) in
9 storage for the account of, and at the expense of, Lessee.
10 In such case, City may assign or lease the Premises upon
11 such terms as it deems proper. If a sufficient sum shall
12 not be thus realized after collecting compensation and
13 paying expenses of such assignment or lease to satisfy the
14 compensation and other sums to be paid by Lessee to City
15 hereunder, Lessee agrees to satisfy and pay any deficiency
16 and to pay expenses of such assignment or leasing and
17 collecting. Lessee agrees to save City harmless from any
18 cost, loss or damage arising out of or caused by any such
19 entry or re-entry upon the Premises and/or the removal of
20 persons and/or property and storage of such property by
21 City or its representative.

22 21. FORCE MAJEURE:

23 Neither City nor Lessee shall be deemed to be in
24 default in the performance of the terms, covenants or
25 conditions of this Lease if such party is prevented from
26 performing said terms, covenants or conditions by causes beyond
27 its control, including, without limiting the generality of such
28 causes, acts of God or the public enemy, failures due to

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1 nonperformance or delay of performance by suppliers or
2 contractors, any order, directive or other interference by
3 municipal, state, federal or other governmental official or
4 agency, any catastrophe resulting from the elements, flood,
5 fire, explosion, or any other cause reasonably beyond the
6 control of the defaulting party, but excluding strikes or other
7 labor disputes, lockouts or work stoppages (the effects of
8 which events shall be determined in accordance with the
9 provisions of subparagraph 6.6 above), as the circumstances may
10 indicate. In the event of the happening of any of such
11 contingencies, the party delayed by such force majeure shall as
12 soon as practicable give the other party written notice of such
13 contingency, specifying the cause for delay or failure, and
14 such notice from the party delayed shall be prima facie
15 evidence that the delay resulting from the causes specified in
16 the notice is excusable. The party delayed by force majeure
17 shall use reasonable diligence to remove the cause of delay,
18 and if and when the occurrence or condition which delayed or
19 prevented the performance of the party delayed shall cease or
20 be removed, the party delayed shall notify the other party
21 immediately, and the delayed party shall recommence its
22 performance of the terms, covenants and conditions of this
23 Lease.

24 **22. TERMINATION BY ACTIONS OF OTHERS**

25 22.1 In the event the United States of America,
26 the State of California, or any agency or instrumentality
27 of said governments (other than the City of Long Beach)
28 shall, by condemnation or otherwise, take title,

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1 possession or the right to possession of the Premises or
2 any part thereof, City may, at its option, and, if the
3 taking has substantially impaired the utility of the
4 Premises to Lessee, Lessee may, at its option, terminate
5 this Lease as of the date of such taking, and all further
6 rights and obligations of the parties shall thereupon
7 terminate, except as to liabilities which shall have
8 accrued prior to the date of taking. The condemnation
9 proceeds related to the land and improvements constructed
10 by City shall belong to City, and the proceeds related to
11 the improvements constructed by Lessee shall belong to
12 whichever party is the owner of said improvements as of
13 the date of taking.

14 22.2 In the event any court having jurisdiction
15 in the matter shall render a decision which has become
16 final and which will prevent the performance by City or
17 Lessee of any of its obligations hereunder, then either
18 party hereto may terminate this Lease by written notice
19 and all further rights and obligations of the parties
20 shall thereupon terminate, except as to liabilities which
21 shall have accrued prior to the date of termination.

22 **23. SURRENDER OF POSSESSION**

23 23.1 Upon the expiration or termination of this
24 Lease, and subject to the provisions of subparagraph 23.2
25 below, Lessee, at its cost, shall restore the Premises to
26 as good a state and condition as the same were in upon
27 taking possession thereof by Lessee, reasonable wear and
28 tear and damage by the elements excepted, and Lessee shall

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1 thereafter peaceably surrender possession.

2 23.2 Except in case of termination by City due
3 to the default of Lessee, as provided in paragraph 20
4 above, all improvements of any kind constructed, erected
5 or installed upon the Premises by Lessee during or prior
6 to the term of this Lease shall be and remain the property
7 of Lessee until the expiration or termination of this
8 Lease. Upon such expiration or termination, unless City
9 consents to accept conveyance of all of Lessee's improve-
10 ments without payment of compensation therefor, Lessee
11 shall remove all of its improvements within sixty (60)
12 days after such expiration or termination, repair at its
13 cost any damage caused by such removal and leave the
14 Premises in a clear, level-graded condition. If Lessee
15 shall not remove its improvements and repair such damage,
16 if any, within said sixty (60) day period, City shall have
17 the right to remove and/or sell and/or destroy the same at
18 the expense of Lessee, and Lessee agrees to pay to City
19 the reasonable cost of any such removal, sale or des-
20 truction. The obligations contained in this subpara-
21 graph shall remain in full force and effect, notwith-
22 standing the expiration or termination of this Lease.

23 23.3 Except as to property owned by City or in
24 which City may have an interest, with respect to any and
25 all personal property used by Lessee in its operations
26 upon the Premises (whether or not such property be owned
27 by Lessee or by third parties), Lessee shall cause all
28 such property to be removed from the Premises on or before

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1 the date of expiration or earlier termination and shall
2 cause to be repaired any damage occasioned by such
3 removal. If such property is not so removed from the
4 Premises, City shall have the right to remove and/or sell
5 and/or destroy the same (subject to the interest of any
6 person other than Lessee therein) at Lessee's expense, and
7 Lessee agrees to pay the reasonable cost of any such
8 removal, sale or destruction. The obligations contained
9 in this subparagraph shall remain in full force and
10 effect, notwithstanding the expiration or termination of
11 this Lease.

12 **24. HOLDING OVER:**

13 If Lessee shall hold over after the expiration of the
14 term of this Lease for any cause, such holding over shall be
15 deemed a tenancy from month to month only, and upon the same
16 terms, conditions and provisions of this Lease as are in effect
17 as of the date of expiration, except as to compensation, which
18 shall be established by the Executive Director at a level
19 consistent with other leases of similar facilities then in
20 effect.

21 **25. RELOCATION ASSISTANCE**

22 Nothing contained herein shall create any right in
23 Lessee for relocation assistance or payment from City upon the
24 expiration or termination of this Lease or upon the termination
25 of any holdover period. Lessee acknowledges and agrees that it
26 shall not be entitled to any relocation assistance or payment
27 from City pursuant to the provisions of Title 1, Division 7,
28 Chapter 16, of the Government code of the State of California

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(Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Lease or upon its earlier termination or upon the termination of any holdover tenancy.

26. ASSIGNMENT

26.1 Except as otherwise provided herein Lessee shall not assign or transfer this Lease or any interest therein, nor its right to use the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the written consent of City first obtained. City agrees that it will not unreasonably withhold such consent. In the event City gives such written consent to Lessee, a copy of the assignment agreement shall be provided to City.

26.2 Notwithstanding the foregoing, Lessee, without securing City's consent but after fifteen (15) days' written notice to City, may assign this Lease or sublet the Premises, in whole or in part, if (i) Lessee's assignee or sublessee shall have a net worth, determined in accordance with generally accepted accounting principles, at least equal to the net worth similarly determined of Lessee immediately prior to such assignment or subletting, and if (ii) such assignment or subletting occurs in connection with (a) the sale of substantially all of Lessee's business, or (b) the sale of that portion of Lessee's business conducted from the Premises and

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1 portion of Lessee's business conducted from the Premises
2 and other locations in the greater Long Beach/Los Angeles
3 metropolitan area. No such assignment of subletting shall
4 relieve Lessee of its liabilities under the Lease. Lessee
5 may also assign the Lease for security purposes to
6 Lessee's principal lenders, but such lenders shall have no
7 right to receive notices of Lessee's default under the
8 Lease or to cure Lessee's default as a condition to City's
9 exercise of its remedies. Any use and occupancy of the
10 Premises by an entity which controls, is controlled by, or
11 is under common control with Lessee shall be deemed a use
12 and occupancy of the Premises by Lessee and not be deemed
13 a subletting or assignment for which City's consent is
14 required.

15 **27. DAMAGE AND DESTRUCTION**

16 27.1 In addition to the insurance required under
17 paragraph 17, Lessee, at its cost, shall procure and
18 maintain in effect a policy or policies of insurance,
19 insuring Lessee to the extent of at least the full
20 replacement value of Lessee's improvements against loss by
21 reason of destruction or damage of said improvements from
22 fire and other hazards covered by a standard form of fire
23 insurance policy bearing an extended coverage endorsement.
24 The provisions of paragraph 17.5 shall be applicable to
25 the insurance required by this paragraph.

26 27.2 In the event of partial destruction of or
27 damage to the building or other improvements owned by
28 Lessee during the term hereof, Lessee shall apply the

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1 proceeds of said insurance policy or policies to the
2 repair or restoration of any damaged part or portion of
3 the Premises to a condition comparable to that existing
4 prior to such damage or destruction, provided that all
5 necessary permits required for such repair or restoration
6 can be obtained.

7 27.3 In the event of total destruction or such
8 substantial damage or destruction that the Premises and
9 improvements are substantially unusable by Lessee in the
10 conduct of its operations, either party may terminate this
11 Lease by giving a thirty (30) day written notice of its
12 intention to so terminate to the other party.

13 28. HAZARDOUS SUBSTANCES AND ACTIVITIES

14 No goods, merchandise or material shall be kept,
15 stored or sold in or on the Premises which are in any way
16 explosive or hazardous without complying with applicable
17 federal, state and local laws, rules, regulations, and orders.
18 No offensive or dangerous trade, business or occupation shall
19 be conducted on the Premises, and nothing shall be done therein
20 or thereon, other than as is provided for in paragraph 4
21 hereof, which will increase the rate of suspend the insurance
22 upon the Premises hereby leased to Lessee or upon adjacent
23 buildings or other structures owned by the City. No machinery
24 or apparatus shall be used or operated on said premises which
25 will in any way injure the Premises or adjacent structures.
26 However, nothing contained in this paragraph shall preclude
27 Lessee from bringing, keeping or using, on or about said
28 Premises and structures, such materials, supplies, equipment

1 and machinery as are necessary or customary in carrying out the
2 uses specified in paragraph 4 hereof.

3 **29. MISCELLANEOUS PROVISIONS**

4 29.1 Any notice, demand, request, consent,
5 approval or communication that either party desires or is
6 required to give to the other party or any other person
7 shall be in writing and either served personally or sent
8 by prepaid, first-class mail addressed as follows:

9 To City: Executive Director
10 Long Beach Harbor Department
11 P.O. Box 570
12 Long Beach, California 90801

13 To Lessee: Applied Industrial Materials
14 Corporation
15 100 First Stamford Place
16 Stamford, Connecticut 06904

17 with a copy to: Applied Industrial Materials
18 Corporation
19 1270 Pier G Avenue
20 Long Beach, California 90802

21 Either party may change its address by notifying the other
22 party of a change of address. Notice shall be deemed
23 communicated within forty-eight (48) hours from the time
24 of mailing if mailed as provided in this paragraph, and
25 upon receipt if personally served.

26 29.2 In the performance of this Lease, Lessee
27 shall not discriminate against any employee or applicant
28 for employment or any person using or desiring to use the
Premises because of age, sex, religion, race, color,
ancestry, national origin or handicapped condition.
Lessee will take affirmative action to ensure that

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1 applicants are employed, that employees are treated during
2 employment and that persons desiring to use the Premises
3 are treated without regard to their age, sex, religion,
4 race, color, ancestry, national origin or handicapped
5 condition. Such action shall include, without limitation,
6 the following: employment, promotion, demotion or
7 transfer; recruitment or recruitment advertising; layoff
8 or termination; rates of pay or other forms of
9 compensation; selection for training, including
10 apprenticeship; and maintenance of the Premises and
11 facilities in a condition permitting reasonable access
12 thereto by handicapped persons. Lessee shall post in
13 conspicuous places notice setting forth the provisions of
14 this paragraph.

15 29.3 City hereby warrants and represents that
16 it has full power and authority and the unrestricted right
17 to enter into, execute and deliver this Lease. The
18 execution and delivery of this Lease will not violate any
19 provision of City's municipal charter, or any law,
20 ordinance, regulation, indenture, agreement or contract to
21 which the City is a party or by which it is bound.

22 29.4 City covenants that Lessee, upon
23 performance of Lessee's obligations hereunder, shall have
24 quiet possession and enjoyment of the premises of the term
25 hereof.

26 29.5 The parties hereto hereby waive all claims
27 against the other for damage or loss caused by any suit or
28 proceeding, directly or indirectly attacking the validity

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1 of this Lease, or any part thereof, or by any judgment or
2 award in any suit or proceeding declaring this Lease null,
3 void or voidable, or delaying the same, or any part
4 thereof, from being carried out, provided that Lessee
5 shall not be liable for payment of compensation hereunder
6 to the extent that, during any period, it is so prevented
7 from exercising its rights hereunder.

8 29.6 The use of paragraph headings or captions
9 herein is solely for the purpose of convenience, and the
10 same shall be entirely disregarded in construing any part
11 or portion hereof.

12 29.7 This Lease shall be governed by the laws
13 of the State of California, both as to interpretation and
14 performance.

15 29.8 No waiver by either party at any time of
16 any of the terms, conditions, covenants or agreements
17 contained herein shall be deemed or taken as a waiver at
18 any time thereafter of the same or any other term,
19 condition, covenant or agreement contained herein nor of
20 the strict and prompt performance thereof by the party
21 obligated to perform. No delay, failure or omission of
22 either party to exercise any right, power, privilege or
23 option arising from any default nor subsequent acceptance
24 of compensation then or thereafter accrued shall impair
25 any such right, power, privilege or option or be construed
26 to be a waiver of any such default or relinquishment
27 thereof or acquiescence therein. No option, right, power,
28 remedy or privilege of either party hereto shall be

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1 construed as being exhausted or discharged by the exercise
2 thereof in one or more instances. It is agreed that each
3 and all of the rights, powers, options or remedies given
4 to the parties by this Lease are cumulative, and no one of
5 them shall be exclusive of the other or exclusive of any
6 remedies provided by law, and that the exercise of one
7 right, power, option, or remedy by a party shall not
8 impair its rights to any other right, power, option or
9 remedy.

10 29.9 This Lease shall be binding upon and shall
11 enure to the benefit of the successors and assigns of City
12 and shall be binding upon and enure to the benefit of the
13 permitted successors and assigns of Lessee.

14 29.10 Should any of the covenants, conditions or
15 agreements contained herein be held by a court of
16 competent jurisdiction to be illegal or in conflict with
17 any applicable law, or with any provision of the Charter
18 of the City of Long Beach, the validity of the remaining
19 portions or provisions shall not be affected thereby if
20 Lessee's use of the Premises is not substantially
21 impaired.

22 29.11 The parties hereto agree that this Lease
23 may be amended or terminated at any time by the mutual
24 agreement of the parties.

25 29.12 This document constitutes the whole
26 agreement between City and Lessee. There are no terms,
27 obligations or conditions other than those contained
28 herein. No modification or amendment hereof shall be

(Corporation)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } SS.

On June 9, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared Vincent P. Keasidy and Joseph Lombardi

() personally known to me or () proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as Vice President and Treasurer Secretary on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Signature Linda M. Johnson

LINDA M. JOHNSON
Name (Typed or Printed)

↑ STAPLE HERE ↓



(This area for official notarial seal)

1 valid and effective, unless evidence by an agreement in
2 writing and signed by the parties making specific
3 reference to this Lease.

4 **30. TERMINATION OF PRIOR LEASE**

5 This Lease is a successor to an existing lease
6 entered into on April 23, 1970 between City and Lessee's
7 predecessor in interest (Harbor Department Document No.
8 HD-1975, as amended). Upon the commencement of the term
9 hereof, said Document No. HD-1975 shall terminate and be of no
10 further force or effect, except as to rights and obligations of
11 the parties arising prior to said date of termination.

12
13 APPLIED INDUSTRIAL MATERIALS
14 CORPORATION, a Delaware
15 corporation

16 Dated: June 9, 1989

17 By: *Robert P. Kennedy*
18 Name: ROBERT P. KENNEDY
19 Title: Vice President Supply Operations

20 Dated: June 9, 1989

21 By: *Joseph Lombardi*
22 Name: JOSEPH LOMBARDI
23 Title: MANAGER - V. C. OPERATIONS

24 LESSEE

25 CITY OF LONG BEACH, a municipal
26 corporation, by and through its
27 Board of Harbor Commissioners

28 Dated: 8-10-, 1989

By: *Paul E. Brown*
Paul E. Brown,
Acting Executive Director
Long Beach Harbor Department

CITY

The foregoing Lease is hereby approved as to form.

JOHN R. CALHOUN, City Attorney

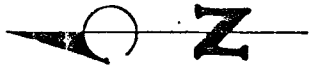
Date: July 12, 1989

BY Richard L. Landes
Richard L. Landes, Deputy

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RL.L:mm
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A-3



Scale 1" = 100'

UNION PACIFIC RESOURCES COMPANY
LEASE AREA HD 3-1
PARCEL I

AIMCOR CARBON PRODUCTS
LEASE AREA HD 3-147
PARCEL I

PIER G

PIER G

AVE.

SOU

PANORAMA DR.

STACKER & CONVEYOR NO. 12

CONVEYOR NO. 10

CONVEYOR C-1

CHAMPLIN

ATLANTIC
LEASE AREA

AIMCOR
PARCEL III

MET. STEV. PCL IV

PARCEL II

610.00

N 49° 21' 47.2" 0.0'
E 4° 25' 9.45" 5.50'

CONVEYOR 15 A
CONVEYOR 15 B

SSM PCL. IV

MET. STEV.
PCL. I

METROP

G AVENUE

CONVEYOR C-20

CHEVRON U.S.A. INC.
LEASE AREA HD 3406
PARCEL I

SEA-LAND SERVICE, INC.
REVOCABLE PERMIT
HD 2-665

OUTHBOUND

N 4,020,938.00
E 4,226,116.50

NORTH
478.91'

PARCEL I

N 8°00'00"E
24.91'

R=312.00'

L=43.56'

NOTE:

SHADED AREAS HAVE JOINT USE
BY ATLANTIC RICHFIELD & AIMCJR

SOUTH

866.00'

ANTIC RICHFIELD CO.
AREA HD 3327

N 4,020,892.00
E 4,225,965.50

WEST
128.00'

WEST
3.00'

PARCEL IV

91.00' NORTH

782.00'

PARCEL V

510.00'

ATLANTIC RICHFIELD
PARCEL VI

SSM CARBON
LEASE AREA HD 3-221
PARCEL I

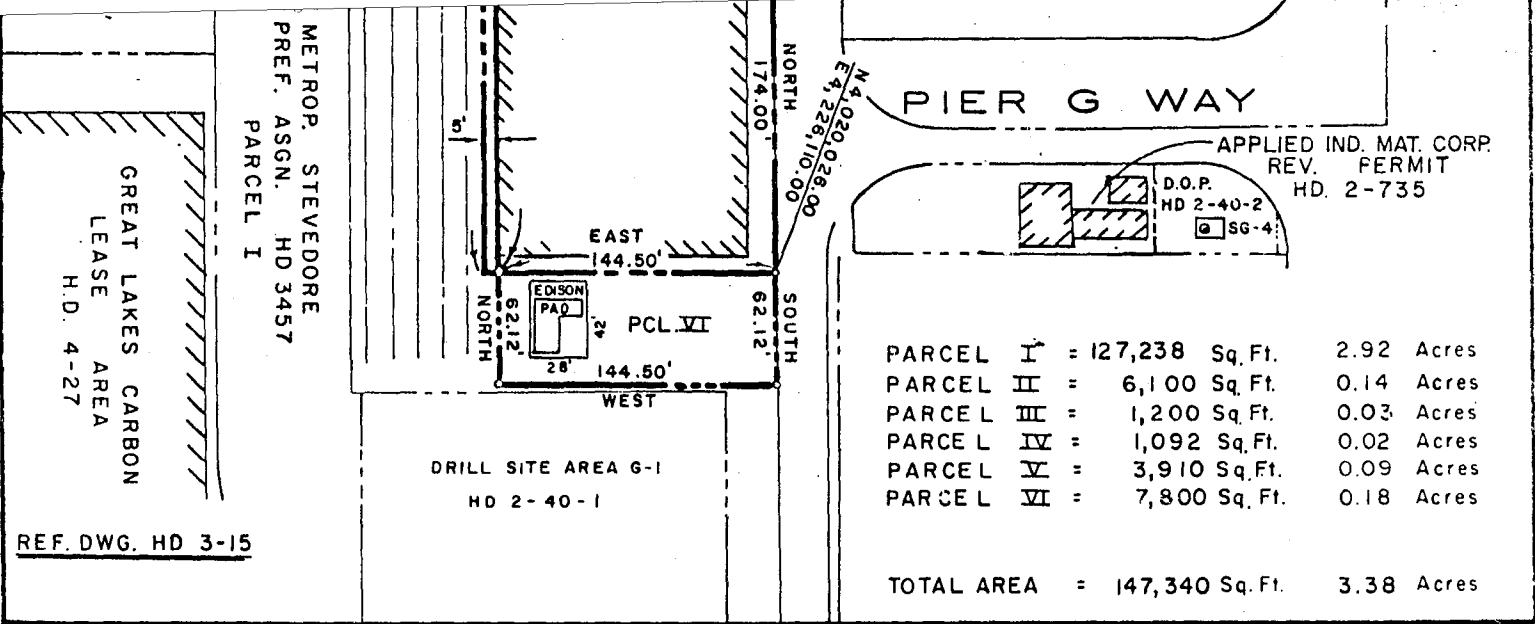
SSM PCL. III

SSM CARBON PCL. II

BOLIDEN SULEX

HD 2-628

TROPOLITAN STEVEDORE PREF. ASGN. HD 3457 PARCEL V



PARCEL I	= 127,238 Sq. Ft.	2.92 Acres
PARCEL II	= 6,100 Sq. Ft.	0.14 Acres
PARCEL III	= 1,200 Sq. Ft.	0.03 Acres
PARCEL IV	= 1,092 Sq. Ft.	0.02 Acres
PARCEL V	= 3,910 Sq. Ft.	0.09 Acres
PARCEL VI	= 7,800 Sq. Ft.	0.18 Acres
TOTAL AREA	= 147,340 Sq. Ft.	3.38 Acres

PORT OF LONG BEACH - CALIFORNIA
OFFICE OF THE EXECUTIVE DIRECTOR

SCALE 1" = 100' DATE 5-24-89

DESIGNED _____

DRAWN F.E.N. / M.L.A. J. Moran

CHECKED J.H.F. / G.D.S. LS 3881

PIER G 1235 PIER G AVE.
APPLIED INDUSTRIAL MATERIALS CORPORATION
(AIMCOR)
LEASE AREA
HD 4-86

EXHIBIT (A)

CERTIFICATE OF SECRETARY

OF

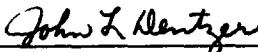
APPLIED INDUSTRIAL MATERIALS CORPORATION

The undersigned, John L. Dentzer, Secretary of Applied Industrial Materials Corporation, a Delaware corporation (the "Corporation"), hereby certifies that the following resolutions have been duly adopted by the Board of Directors of the Corporation, and such resolutions have not been rescinded, amended or modified and are in full force and effect on and as of the date hereof:

RESOLVED: That Vincent Kennedy and Joseph Lombardi be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Corporation, to execute and deliver a lease and revocable permit with the City of Long Beach, California, in substantially the form presented to the directors of the Corporation.

FURTHER RESOLVED: That the appropriate officers of the Corporation be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Corporation, to take all steps and do all acts and things, including without limitation, the execution and delivery of documents, which such officer or officers shall deem necessary or appropriate to effect the purpose and intent of the foregoing resolution.

IN WITNESS WHEREOF, the undersigned has executed this Certificate and caused this Certificate to be delivered this 14th day of June, 1989.



John L. Dentzer, Secretary

MEMORANDUM AGREEMENT
Renegotiated Rental
(Applied Industrial Materials Corporation -
Harbor Department Document No. HD-4638)

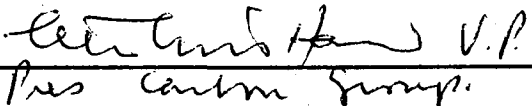
Pursuant to the provisions of paragraph 8 of the Lease dated August 10, 1989 ("Lease"), between the City of Long Beach, acting by and through its Board of Harbor Commissioners ("City") and Applied Industrial Materials Corporation ("Lessee"), the parties have renegotiated the ground rent for that portion of the term of the Lease commencing July 1, 1994 and ending June 30, 1999.

For said five (5) year period, Lessee shall pay to City as ground rent the sum of One Hundred Sixty-nine Thousand Four Hundred Twenty-eight Dollars (\$169,428.00) per year payable in four (4) equal quarterly installments of Forty-two Thousand Three Hundred Fifty-seven Dollars (\$42,357.00) each on July 1, October 1, January 1 and April 1 of each calendar year. Ground rent for any subsequent segment of the term shall be subject to renegotiation and arbitration in accordance with paragraph 8 of the Lease.

Except for the amount of ground rent payable by Lessee to City, all of the other terms and conditions of the Lease shall remain unchanged and in full force and effect.


The Board of Harbor Commissioners approved the renegotiated rental set forth above and authorized the Executive Director of the Harbor Department to execute this Memorandum Agreement at its JANUARY 24, 1994 meeting.

APPLIED INDUSTRIAL MATERIALS
CORPORATION, a Delaware corporation

Jan 5, 1994 BY 
Pres Carlton Group

Jan 5, 1994 BY 
LESSEE U.P. Carlton Group


CITY OF LONG BEACH, a municipal
corporation

Jan 31, 1994 BY 
S. R. Dillenbeck,
Executive Director

CITY

Approved as to form this 27th day of January, 1994.

JOHN R. CALHOUN, City Attorney

By 
Senior Deputy

State of Connecticut

ss. Stamford, CT 1/5/94

County of Fairfield

On this the 5th day of January, 1994, before me, Mary J. Appleman, the undersigned officers, personally appeared Vincent P. Kennedy and Peter Scott-Hansen, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.



Date Commission Expires: 3/31/95

SECOND AMENDMENT TO LEASE

1
2
3 **THIS SECOND AMENDMENT TO LEASE** is made and entered into
4 as of the 18th day of March, 2005, by and between **CITY**
5 **OF LONG BEACH**, a municipal corporation, acting by and through its
6 Board of Harbor Commissioners ("**City**"), pursuant to Ordinance No.
7 HD-1927, adopted by said Board at its meeting of February 14,
8 2005, and **OXBOW CARBON & MINERALS LLC**, a Delaware limited liability
9 company, as successor to **APPLIED INDUSTRIAL MATERIALS CORPORATION**,
10 a Delaware corporation ("**Lessee**").

11 **1. RECITALS:**

12 1.1 City and Lessee entered into a lease for
13 certain premises on Pier G on August 10, 1989 (HD-4638).
14 Rental was increased by the Memorandum Agreement of
15 January 31, 1994 (HD-5307). The lease was amended on
16 December 23, 1998 (HD-4638A). The lease, as so amended,
17 is hereinafter referred to as the "Amended Lease".

18 1.2 City and Lessee desire to amend the
19 compensation and insurance provisions.

20 2. Paragraph 6.1.1 of the Amended Lease is amended and
21 restated in its entirety to read as follows:

22 "6.1.1 The word "lease year" as used herein shall
23 mean the twelve (12) consecutive month period commencing
24 on July 1 of each calendar year during the term hereof
25 and ending on the following June 30. Any period which is
26 less than a lease year shall be deemed and called a
27 "partial lease year." For any partial lease year, ground
28 rent (as defined in paragraph 6.2) and the Guaranteed

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Long Beach, California 90802-4664
Telephone (562) 570-2200

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Telephone (562) 570-2200

1 Minimum Annual Throughput (as defined in paragraph 6.4)
2 shall be prorated on the basis of a three hundred and
3 sixty-five (365) day year."

4 3. Paragraph 6.2 of the Amended Lease is amended and
5 restated in its entirety to read as follows:

6 "6.2(a) For the period commencing on July 1, 2004
7 and ending on June 30, 2009, Lessee shall pay to City as
8 ground rent the sum of Two Hundred Seventy-six Thousand
9 Seven Hundred Thirty Dollars (\$276,730.00) per lease
10 year, payable quarterly in advance (July 1, October 1,
11 January 1, and April 1); however, and notwithstanding any
12 other provision, the ground rent for the period specified
13 in this paragraph 6.2 shall be adjusted annually on July
14 1st of each lease year without further action of the
15 parties. Said adjustment shall be made by comparing the
16 Consumer Price Index for All Urban Consumers ((base years
17 1982-84 = 100) for Los Angeles - Anaheim - Riverside,
18 published by the United States Department of Labor,
19 Bureau of Labor Statistics ("Index"), which is published
20 for the month of January of the then current year
21 ("Current Index"), and with the Index published for
22 January 2004 ("Beginning Index"). The adjusted rent
23 shall be determined by multiplying the original rent by
24 a fraction, the numerator of which is the Current Index
25 and the denominator of which is the Beginning Index.
26 Notwithstanding the foregoing, the adjusted rent shall
27 not be less than the original rent. Ground rent for any
28 segment of the term subsequent to June 30, 2009, shall be

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1 subject to renegotiation and arbitration in accordance
2 with paragraph 8 of the Amended Lease."

3 4. Paragraph 6.4 of the Amended Lease is amended and
4 restated in its entirety to read as follows:

5 "6.4. For the period commencing July 1, 2004, and
6 ending on June 30, 2009, Lessee guarantees that it will
7 ship from the Premises or by direct loading to vessel
8 from truck or rail car four hundred fifty thousand
9 (450,000) metric tons of petroleum coke or other dry
10 commodities ("product") per lease year ("Guaranteed
11 Minimum Annual Throughput" or "GMAT"). If Lessee has
12 not, by the end of each lease year, shipped quantities of
13 product from the Premises or by direct loading to vessel
14 from truck or rail car at least equal to the GMAT, Lessee
15 shall pay to City, within thirty (30) days after the end
16 of said lease year, a sum which shall be calculated by
17 multiplying the difference in quantity between the GMAT
18 and the actual quantity shipped (the "throughput
19 deficiency") times a rate calculated by multiplying each
20 of the wharfage and shiploader charges established in
21 City's Tariff No. 4, Items 356 and 515 which were in
22 effect during said lease year times the number of days
23 each of said rates was in effect divided by 365 (the
24 "average Tariff rate"). If said sum is paid within said
25 thirty (30) days, Lessee's failure to ship the specified
26 minimum quantities of product from the Premises or by
27 direct loading to vessel from truck or rail car shall not
28 otherwise constitute a default of its obligations

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1 hereunder. GMAT for any segment of the term subsequent
2 to June 30, 2009 is subject to renegotiation and
3 arbitration in accordance with paragraph 8."

4 5. Paragraph 17 of the Amended Lease is amended and
5 restated in its entirety to read as follow:

6 **"17. INSURANCE:**

7 **17.1 Insurance Required.** As a condition precedent to
8 Lessee's right to continued occupancy of the Premises, and
9 without limiting Lessee's obligations of indemnity, Lessee, at
10 no cost to City shall procure and maintain in full force and
11 effect during the term of this lease, and at such other times
12 as may be required under "claims-made" insurance if such form
13 of insurance is provided, the following types and levels of
14 insurance.

15 **17.1.1 Commercial General Liability**
16 **Insurance.** Commercial general liability insurance with
17 coverage at least as broad as Insurance Services Office
18 Commercial General Liability Form CG0001, with limits of not
19 less than \$5,000,000 per occurrence and, if written within
20 aggregate, the aggregate shall be double the per occurrence
21 limit.

22 **17.1.2 Automobile Liability Insurance.** Automobile
23 liability insurance with coverage at least as broad as
24 Insurance Services Office Form CA0001 covering automobile
25 liability code 1 (any auto), with a limit of \$5,000,000 per
26 accident.

27 **17.1.3 Workers' Compensation.** Workers' compensation
28 insurance, as required by the State of California, and

1 employer's liability insurance, with a limit of not less than
2 \$1,000,000 per accident for bodily injury and disease and any
3 required coverage under the U.S. Longshore and Harbor Workers'
4 Compensation Act, Federal Employers Liability Act and/or Jones
5 Act for employees performing services covered by said Act(s).

6 **17.1.4 Environmental Impairment Liability.**

7 Environmental Impairment Liability Insurance to include onsite
8 and offsite coverage for bodily injury (including death and
9 mental anguish), property damage, defense costs and cleanup
10 costs with minimum limits of \$5 million per loss and \$10
11 million total all losses. Non-owned disposal site coverage
12 shall be provided if handling, storing or generating hazardous
13 materials or any material/substance otherwise regulated under
14 environmental laws/regulations.

15 **17.2 Ratings and Deductibles.** Each policy shall be

16 from a company or companies with a current A.M. Best's rating
17 of no less than A:VII and authorized to do business in the
18 State of California, or otherwise allowed to place insurance
19 through surplus line brokers under applicable provisions of
20 the California Insurance Code or any federal law. Any
21 deductible or self-insured provision must be approved in
22 writing by the Executive Director and shall protect the
23 Indemnified Parties in the same manner and to the same extent
24 as they would have been protected had the insurance not
25 contained such provision. The deductible or self-insured
26 amount shall be shown on any evidence of insurance provided to
27 City, and City reserves the right to limit said amount and to
28 review the self-insured's financial statements if the amount

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1 exceeds a level acceptable to City.

2 **17.3 Endorsements Required for All Policies.** Each
3 such policy shall be endorsed to provide that the policy shall
4 not be canceled or coverage reduced until a thirty (30) day
5 written notice of cancellation has been served upon the
6 Executive Director of the Harbor Department by registered or
7 certified mail except ten (10) days notice shall be sufficient
8 upon cancellation for non-payment of premium.

9 **17.4 Additional Endorsements for Liability**
10 **Policies.** The policy or policies required under paragraphs
11 17.1.1 and 17.1.2 above shall also be endorsed to provide as
12 follows:

13 **17.4.1 Additional Insured.** That the Indemnified
14 Parties shall be additional insureds with regard to
15 liability and defense of claims arising from the
16 operations, products, and activities performed by or on
17 behalf of the named insured.

18 **17.4.2 Primary Insurance.** That such insurance is
19 primary and any other insurance, deductible, retention or
20 self-insurance maintained by the Indemnified Parties
21 shall not contribute with such primary insurance.

22 **17.4.3 Severability.** That in the event a claim
23 is made or a suit is filed against an insured (whether
24 named or additional), including a claim or suit by
25 another insured (whether named or additional), the policy
26 shall cover the insured against whom the claim is made or
27 suit is filed in the same manner as if separate policies
28 had been issued to each insured, except that the limits

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1 of insurance shall not be increased thereby.

2 **17.4.4 Indemnity Coverage.** That the coverage
3 provided therein shall apply to the obligations assumed
4 by Lessee under the indemnity provisions of this Lease,
5 unless the policy or policies contain a blanket form of
6 contractual liability coverage.

7 **17.4.5 Duties.** Any failure by the named insured
8 to comply with reporting provisions of the policy or
9 breaches or violation of warranties shall not affect
10 coverage provided to the Indemnified Parties.

11 **17.5 Additional Endorsements for Workers' Policies.**
12 The policy or policies required under paragraph 17.1.3 above
13 shall also be endorsed to provide a waiver of subrogation
14 stating that the insurer waives indemnification from the
15 Indemnified Parties or any of them.

16 **17.6 Claims-Made Policies.** If any of the required
17 insurance is provided on a "claims-made" basis, any "prior
18 acts" coverage or "retroactive date" on such insurance and all
19 subsequent insurance shall be as of beginning of the term of
20 this lease. Upon expiration or termination of coverage of
21 required insurance, Lessee shall procure and submit to City
22 evidence of "tail" coverage or an extended reporting coverage
23 period endorsement for the period of at least three (3) years
24 from termination or expiration of this lease.

25 **17.7 Procedures.** Lessee shall deliver either
26 certified copies of the required policies or endorsements on
27 forms approved by the City ("evidence of insurance") to the
28 Executive Director for approval as to sufficiency and to the

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1 City Attorney for approval as to form. At least fifteen (15)
2 days prior to the expiration of any such policy, evidence of
3 insurance showing that such insurance coverage has been
4 renewed or extended shall be filed with the Executive
5 Director. If such coverage is canceled or reduced, Lessee
6 shall, within ten (10) days after receipt of written notice of
7 such cancellation or reduction of coverage, file with the
8 Executive Director evidence of insurance showing that the
9 required insurance has been reinstated or has been provided
10 through another insurance company or companies. Lessee agrees
11 to suspend and cease all operations hereunder during such
12 period of time as the required insurance coverage is not in
13 effect and evidence of insurance has not been furnished to the
14 City.

15 6. Except as otherwise stated herein, all of the other
16 terms and conditions of the Amended Lease shall remain unchanged
17 and in full force and effect.

18 OXBOW CARBON & MINERALS LLC, a
19 Delaware limited liability company,
20 as successor to APPLIED INDUSTRIAL
MATERIALS CORPORATION, a Delaware
corporation

21 January 28, 2005

By: [Signature]
Name: ERIN C. MYERS
Title: Vice Pres. West Coast Terminals

23 January 28, 2005

By: [Signature]
Name: TORRANT LANGRISH
Title: VICE-PRESIDENT - WEST COAST BUSINESS

"Lessee"

26 ///

27 ///

28 ///

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

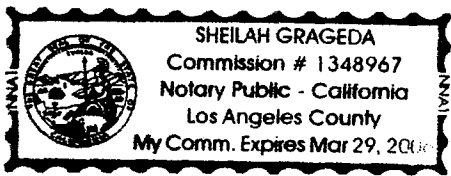
County of LOS ANGELES } ss.

On JAN 28, 2005, before me, SHEILAH GRAGEDA, NOTARY PUBLIC

personally appeared ERVIN C. MYERS
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public") Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
[Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

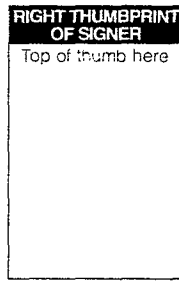
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

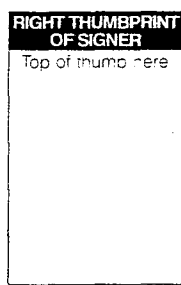
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____




Signer Is Representing: _____

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City Attorney of Long Beach
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Telephone (562) 570-2200

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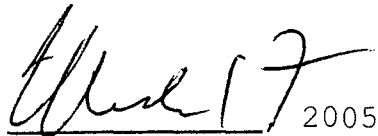
CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

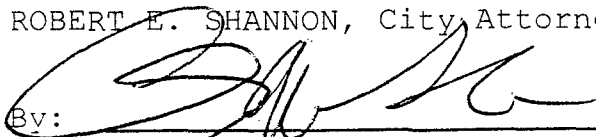
3-18, 2005

By: 
Richard D. Steinke
Executive Director
Long Beach Harbor Department

"City"

The foregoing Second Amendment to Lease is hereby approved as to form.

 2005

ROBERT E. SHANNON, City Attorney
By: 
Charles M. Gale, Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE ("Third Amendment") is made and entered into as of December 8, 2009, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to Ordinance No. HD-2060, adopted by the Board at its meeting of November 2, 2009, and OXBOW CARBON & MINERALS, LLC, a Delaware limited liability company, as successor to APPLIED INDUSTRIAL MATERIALS CORPORATION, a Delaware corporation ("Lessee").

1. RECITALS.

1.1 City and Lessee entered into a Lease for certain premises on Pier G on August 10, 1989 (HD-4638). Rental was increased by the Memorandum Agreement of January 31, 1994 (HD-5307). The lease was amended on December 23, 1998 (HD-4638A) and March 18, 2005 (HD-4638B). The lease, as so amended, is hereinafter referred to as the "Amended Lease."

1.2 City and Lessee desire to amend the compensation provisions.

2. Paragraph 6.2 of the Amended Lease is amended and restated in its entirety to read as follows:

"6.2(a) For the period commencing on July 1, 2009 and ending on June 30, 2014, Lessee shall pay to City as ground rent the sum of **\$324,320** per lease year ('Third Amendment Base Rent'), payable quarterly in advance (July 1, October 1, January 1, and April 1); however, and notwithstanding any other provision, the ground rent for the period specified in this paragraph 6.2 shall be adjusted annually on July 1st of each lease year without further action of the parties. Said adjustment shall be made by comparing the Consumer Price Index for All Urban Consumers (base years 1982-84 = 100) for Los Angeles – Anaheim –

1 Riverside, published by the United States Department of Labor, Bureau of
2 Labor Statistics ('Index'), which is published for the month of January of
3 the then current year ('Current Index'), and with the Index published for
4 January 2009 ('Beginning Index'). The adjusted rent shall be determined
5 by multiplying the Third Amendment Base Rent by a fraction, the
6 numerator of which is the Current Index and the denominator of which is
7 the Beginning Index. Notwithstanding the foregoing, the adjusted rent
8 shall not be less than the Third Amendment Base Rent. Ground rent for
9 any segment of the term subsequent to June 30, 2014 shall be subject to
10 renegotiation and arbitration in accordance with paragraph 8 of the
11 Amended Lease."

12
13 3. Paragraph 6.4 of the Amended Lease is amended and
14 supplemented as follows:

15
16 "For the period commencing July 1, 2009, and ending on
17 June 30, 2014, Lessee guarantees that it will ship from the Premises or by
18 direct loading to vessel from truck or rail car **500,000** metric tons of
19 petroleum coke or other dry commodities ('product') per lease year
20 ('Guaranteed Minimum Annual Throughput' or 'GMAT'). If Lessee has
21 not, by the end of each lease year, shipped quantities of product from the
22 Premises or by direct loading to vessel from truck or rail car at least equal
23 to the GMAT, Lessee shall pay to City, within thirty (30) days after the end
24 of said lease year, a sum which shall be calculated by multiplying the
25 difference in quantity between the GMAT and the actual quantity shipped
26 (the 'throughput deficiency') times a rate calculated by multiplying each of
27 the wharfage and shiploader charges established in City's Tariff No. 4,
28 Items 356 and 515 which were in effect during said lease year times the

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 number of days each of said rates was in effect divided by 365 (the
2 'average Tariff rate'). If said sum is paid within said thirty (30) days,
3 Lessee's failure to ship the specified minimum quantities of product from
4 the Premises or by direct loading to vessel from truck or rail car shall not
5 otherwise constitute a default of its obligations hereunder. GMAT for any
6 segment of the term subsequent to June 30, 2014 is subject to
7 renegotiation and arbitration in accordance with paragraph 8."

8
9 4. Except as otherwise stated in this Third Amendment, all of the other
10 terms and conditions of the Amended Lease shall remain unchanged and in full force and
11 effect.

12 OXBOW CARBON & MINERALS, LLC, a
13 Delaware limited liability company, as
14 successor to APPLIED INDUSTRIAL
MATERIALS CORPORATION, a
Delaware corporation

15 SEPTEMBER 24, 2009

By: [Signature]
Name: Jessica Lonsdale
Title: V.P. - WEST COAST BUSINESS

16 October 1, 2009

By: [Signature]
Name: Lawrence H. Black
Title: Executive Vice President

17
18 LESSEE

19
20 CITY OF LONG BEACH, a municipal
21 corporation, acting by and through its
Board of Harbor Commissioners

22 12-8, 2009

By: [Signature]
Richard D. Steinke
Executive Director
Long Beach Harbor Department

23
24 CITY

25 The foregoing document is hereby approved as to form.

26 ROBERT E. SHANNON, City Attorney

27 12/3, 2009

By: [Signature]
Dominic T. Holzhaus, Principal Deputy

28 DTH:rjr 08/19/09 #A09-02649
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On 9-24-09 before me, Nancy L. Mitchell, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Joseph Leonard Lombardi
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Nancy L. Mitchell
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Third Amendment to Lease

Document Date: _____ Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

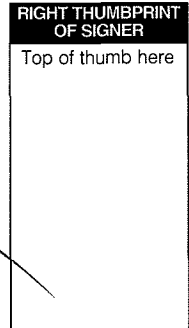
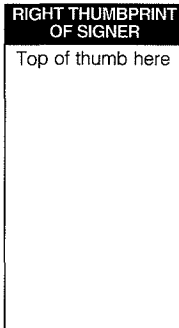
Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

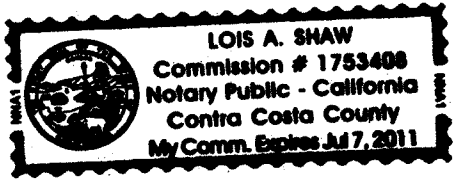
State of California

County of Contra Costa }

On 10-5-09 before me, Lois A. Shaw, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Lawrence H. Black
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Lois A. Shaw
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Third Ammendment to Lease

Document Date: 10-1-09 Number of Pages: 3

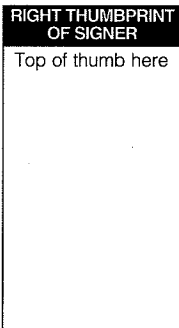
Signer(s) Other Than Named Above: Joseph Leonard Lombardi

Capacity(ies) Claimed by Signer(s)

Signer's Name: Lawrence H. Black Signer's Name: _____

Corporate Officer — Title(s): EVP

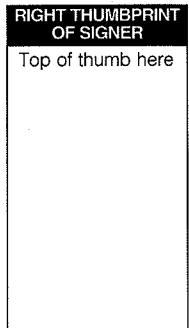
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Corporate Officer — Title(s): _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____